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- 4. The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinaance, 2007.
- 5. The State Bank of India (Amendment) Ordinance, 2007.
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- The Indian Medical Council (Amendment) Ordinance, 2010.
- 3. The Securities and Insurance Laws (Amendment) Ordinance, 2010.
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# 2011

- 1. The Indian Medical Cruncil (Amendment) Ordinance, 2011
- 2. The Indian Institute of Information, Technology Design and Manufacturing, Kancheepuram Ordinance, 2011
- 3. The cable Televisión Networks (Regulatión) Amendment Ordinance, 2011

**REGISTERED No. DL-33004/2001** 



रजिस्ट्री सं॰ डी॰एल॰-33004 / 2001

HEA an XIS147 The Gazette of India

> असाधारण EXTRAORDINARY भांग II---खण्ड 1 PART II--Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 4] No. 4] नई दिल्ली, शुक्रवार, जनवरी 5, 2001 / पौष 15, 1922 NEW DELHI, FRIDAY, JANUARY 5, 2001/ PAUSA 15, 1922

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

#### (Legislative Department)

New Delhi, the 5th January, 2001/Pausa 15, 1922 (Saka)

#### THE INDIAN COUNCIL OF WORLD AFFAIRS ORDINANCE, 2001

- No. 1 of 2001

Promulgated by the President in the Fifty-first Year of the Republic of India.

An Ordinance to declare the Indian Council of World Affairs to be an institution of national importance and to provide for its incorporation and matters connected therewith.

WHEREAS the Indian Council of World Affairs Ordinance, 2000, to provide for the aforesaid matters was promulgated by the President on the 1st day of September, 2000;

AND WHEREAS the Indian Council of World Affairs Bill, 2000, to replace the said Ordinance has been passed by the House of the People and is pending in the Council of States;

AND WHEREAS the Indian Council of World Affairs Ordinance, 2000 ceased to operate on the 1st day of January, 2001;

AND WHEREAS it is considered necessary to give continued effect to the provisions of the Indian Council of World Affairs Ordinance, 2000 and to validate the actions taken under the said Ordinance;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

Now THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is cleased to promulgate the following Ordinance:----

THE GAZETTE OF INDIA EXTRAORDINARY

Short title and commercement.

Declaration of

World Affairs

as institution of national

the Indian

Council of

1. (1) This Ordinance may be called the Indian Council of World Affairs Ordinance, 2091.

(?) It shall be deemed to have come into force on the 1st day of September, 2000.

2. Whereas the objects of the Indian Council of World Affairs, a society registered under the Societies Registration Act, 1860 are such as to make the institution one of national importance, it is hereby declared that the institution, known as the Indian Council of World Affairs, is an institution of national importance.

importance. Definitions.

3. In this Ordinance, unless the context otherwise requires, ---

(a) "appointed day" means the date of commencement of this Ordinance;

(b) "Chairperson" means the Chairperson of the Governing Body;

(c) "Council" means the Indian Council of World Affairs incorporated under section 4;

(d) "Director-General" means the Director-General of the Council;

(e) "existing Council" means the Indian Council of World Affairs, a society registered under the Societies Registration Act, 1860 and functioning as such immediately before the appointed day;

(f) "Fund" means the Fund of the Council referred to in section 18;

(g) "Governing Body" means the Governing Body of the Council;

(h) "member" means a member of the Council and includes the President and Vice-President;

(i) "President" means the President of the Council;

(*j*) "regulations" means the regulations made under this Ordinance;

(k) "rules" means the rules made under this Ordinance;

(1) "Vice-President" means the Vice-President of the Council.

Incorporation of the Council.

4. (1) The Indian Council of World Affairs is hereby constituted a body corporate by the name of the Indian Council of World Affairs and as such body corporate it shall have perpetual succession and a common seal with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by that name sue and be sued.

(2) The head office of the Council shall be at Delhi and the Council may, with the previous approval of the Central Government, establish branches at other places in India.

5. (1) On and from the appointed day,--

(a) all properties and other assets vested in the existing Council immediately before that day, shall vest in the Council;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Council immediately before that day for or in connection with the purposes of the existing Council, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Council;

(c) all sums of money due to the existing Council, immediately before that day, shall be destand to be due to the Council;

(d) all suits and other legal proceedings instituted of which could have been instituted by or against the existing Council, manediately before that day, may be continued or instituted by or against the Council; and

A Transfer of assets and liabilities of the existing

Council to the

Council.

21 of 1860.

21 of 1860.

SEC. 1]

(e) every employee holding any office under the existing Council immediately before that day, shall, on that day, hold his office or service under the Council with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting; and shall continue to do so unless and until his employment under the Council is duly terminated or until his remuneration and other conditions of service are duly altered by the Council.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the absorption of any employee by the Council in its regular service under this section shall not entitle such employee to any compensation under that Act or any other law and no such claim shall be entertained by any court, tribunal or other authority.

6. (1) Every person having possession, custody or control of property forming part of the properties and other assets referred to in clause (a) of sub-section (1) of section 5 shall deliver forthwith such property to the Director-General.

Obligation to transfer property of assets.

(2) Any person incharge of the property and other assets of the existing Council immediately before the commencement of this Ordinance shall, within ten days from that day, furnish to the Director-General a complete inventory of all properties and assets (including particulars of book debts and investments and belongings) immediately before the commencement of this Ordinance and also of all agreements entered into by the existing Council or any person on its behalf.

7. (1) The Council shall consist of the following members, namely:---

Composition of the Council.

Term of

among

members

office and vacancies

(a) the Union Minister for External Affairs who shall be the President, ex officio;

(b) a Vice-President, who shall be elected by the Council from amongst its members;

(c) a Director-General, who shall be appointed by the Central Government;

(d) three members to be nominated by the Central Government who are distinguished in the field of diplomacy, international affairs and law;

(e) four members to be nominated by the Central Government from amongst experts in the fields of history, economics, security studies and social sciences;

(f) two members to be nominated by the Central Government from amongst the Vice-Chancellors of Universities; and

(g) four members to be nominated by the Council.

(2) It is hereby declared that the office of the member of the Council shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament.

(3) A person shall be disqualified for being nominated as a member if he

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court.

8. (1) Save as otherwise provided in this section, the term of office of a member shall / be three years from the date of his nomination.

(2) The terms of office of the member nominated to fill a casual vacancy shall continue for remainder of the term of the member in whose place he is nominated.

(3) A member shall, unless the Central Government otherwise directs, continue in office until another person is nominated as a member in his place.

14 of 1947.

(4) The Central Government shall remove a member if he-

(a) becomes subject to any of the disqualifications mentioned in sub-section (3) of section 7; or

(b) refuses to act or becomes incapable of acting; or

(c) is, without obtaining leave of absence from the Council, absent from three consecutive meetings of the Council; or

(d) in the opinion of the Central Government, has so abused his position as to render his continuance in office detrimental to the public interest:

Provided that no member shall be removed under this caluse unless he has been given a reasonable opportunity of being heard in the matter.

(5) A member shall, unless disqualified under sub-section (3) of section 7, be eligible for reinomination.

(6) A member may resign his office by writing under his hand addressed to the Central Government but shall continue in his office until his resignation is accepted by that Government.

(7) The manner of filling vacancies among members shall be such as may be prescribed by rules.

9. The President shall exercise such powers and discharge such functions as are laid down in this Ordinance or as may be prescribed by rules.

10. The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be prescribed by rules or as may be delegated to him by the President.

11. Members shall receive such allowances, if any, from the Council as may be prescribed by rules.

12. The Council shall hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the transaction of business at the first meeting as may be laid down by that Government; and thereafter the Council shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulations.

Objects of -Council. 13. The objects of the Council shall be-

(a) to promote the study of Indian and international affairs so as to develop a body of informed opinion on international matters;

(b) to promote India's relations with other countries through study, research, discussion, lectures, exchange of ideas and information with other organisations within and outside India engaged in similar activities;

(c) to serve as a clearing house of information and knowledge regarding world affairs;

(d) to publish books, periodicals, journals, reviews, papers, pamphlets and other literature on subjects covered under clauses (a) and (b);

(e) to establish contacts with organisations promoting objects mentioned in this section;

(f) to arrange conferences and seminars to discuss and study the Indian policy towards international affairs; and

functions of President.

Powers and

Powers and functions of Vice-President.

Allowances of members.

Meetings of Council. (g) to undertake such other activities for the promotion of ideas and attainment of the above-mentioned objects.

14. (1) There shall be a Governing Body of the Council which shall be constituted by the Council from amongst its members in such manner as may be prescribed by regulations.

(2) The Governing Body shall be the executive committee of the Council and shall exercise such powers and discharge such functions as the Council may, by regulations made in this behalf, confer or impose upon it.

(3) The President shall be the Chairperson of the Governing Body and as Chairperson thereof shall exercise such powers and discharge such functions as may be prescribed by regulations.

(4) The procedure to be followed by the Governing Body in the exercise of its powers and discharge of its functions and the term of office of, and the manner of filling vacancies among the members of, the Governing Body, shall be such as may be prescribed by regulations.

(5) Subject to such control and restrictions as may be prescribed by rules, the Council may constitute as many standing committees and as many *ad hoc* committees as it thinks fit for exercising any power or discharging any function of the Council or for inquiring into, or reporting or advising upon, any matter which the Council may refer to them.

(6) The Chairperson and members of the Governing Body or a standing committee or an *ad hoc* committee shall receive such allowances as may be prescribed by regulations.

15. (1) There shall be a chief executive officer of the Council who shall be designated as the Director-General and shall be appointed by the Ministry of External Affairs.

(2) The Director-General shall act as the Secretary to the Council as well as to the Governing Body.

(3) The Director-General shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Council or the President or the Governing Body or the Chairperson.

(4) The Financial Advisor of the Ministry of External Affairs shall be the Financial Advisor of the Council.

(5) Subject to such rules as may be made in this behalf, the Council may appoint such number of other officers and employees as may be necessary for the exercise of its powers and efficient discharge of its functions and may determine the designations and grades of such other officers and employees.

(6) Subject to such rules as may be made in this behalf, the Director-General and other officers and employees of the Council shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, gratuity, provident fund and other matters, as may be prescribed by regulations made in this behalf.

16. The Council shall undertake various plans to promote, organise and implement various programmes for efficiently achieving the objects of the Council specified in section 13 and shall also perform such other functions as the Central Government may, by rules, prescribe.

17. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Council in each financial year such sums as may be considered necessary for the exercise of powers and efficient discharge of functions of the Council under this Ordinance.

18. (1) The Council shall maintain a Fund to which shall be credited-

(a) all moneys received from the Central Government;

Governing Body and other committees of Council.

5

SEC. 1]

Staff of Council.

Functions of Council.

Payment to Council.

Fund of Council.

(b) all moneys received by the Council by way of grants, gifts, donations, benefications, bequests or transfers; and

(c) all moneys received by the Council in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited in such banks or invested in such manner as the Council may, subject to the approval of the Central Government, decide.

(3) The Fund shall be applied towards meeting the administrative and other expenses of the Council, including expenses incurred in the exercise of its powers and discharge of its functions under section 16 or in relation to any of the activities referred to therein or for anything relatable thereto.

19. The Council shall prepare, in such form and at such time every year, as may be prescribed by rules, a budget in respect of the financial year next ensuing, showing the estimated receipts and expenditure of the Council and shall forward to the Central Government such number of copies thereof as may be prescribed by rules.

20. (1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance-sheet in such form as the Central Government may, by rules, prescribe and in accordance with such general direction as may be issued by that Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office or offices of the Council.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Annual report.

Authentication of orders and

instruments of

Council.

Vacancy,

etc., n<u>o</u>t to invalidate

proceedings or the

Council. etc

O.

21. The Council shall prepare every year, in such form and at such time as may be prescribed by rules, an annual report giving a true and full account of its activities during the previous year and copies thereof shall be fowarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

22. All orders and decisions of the Council shall be authenticated by the signature of the President or the Vice-President and all other instruments issued by the Council shall be authenticated by the signature of the Director-General or any other officer of the Council authorised by the Council in this behalf.

23. No act or proceeding of the Council, Governing Body or any standing or *ad hoc* committee under this Ordinance shall be invalid merely by reason of--

(a) any vacancy in, or any defect in the constitution of, the Council; or

(b) any defect in the appointment of a person acting as a member of the Council:

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

Budget of Council.

Accounts and audit.

6

24. The Council shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

**25.** (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Ordinance.

(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 manner of filling vacancies among members under sub-section (7) of section 8;

(b) the powers and functions to be exercised and discharged by the President and the Vice-President under sections 9 and 10, as the case may be;

(c) the allowances to be paid to the members under section 11;

(d) the control and restrictions in relation to the constitution of standing and ad hoc committees under sub-section (5) of section 14;

(e) the number of other officers and employees that may be appointed by the Council and the manner of such appointment under sub-section (5) of section 15;

(f) the salaries and allowances payable to the Director-General and other officers and employees of the Council under sub-section (6) of section 15;

(g) such other functions to be performed by the Council under section 16;

(h) the form in which and the time at which the budget shall be prepared by the Council and the number of copies thereof to be forwarded to the Central Government under section 19;

(i) the form in which an annual statement of accounts including the balancesheet shall be prepared by the Council under sub-section (1) of section 20;

(j) the form in which and the time at which the annual report of the activities of the Council shall be submitted to the Central Government under section 21;

(k) any other matter which has to be or may be prescribed by rules.

26. (1) The Council may, with the previous approval of the Central Government, make regulations consistent with the provisions of this Ordinance and the rules to carry out the provisions of this Ordinance.

Power to make regulations

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:----

(a) the summoning and holding of meetings, other than the first meeting of the Council, the time and place where such meetings are to be held and the transaction of business at such meetings under section 12;

(b) the manner in which the Governing Body shall be constituted under subsection (1) of section 14;

(c) the powers and functions to be exercised and discharged by the Governing Body and the Chairperson under sub-sections (2) and (3) of section 14;

(d) the procedure to be followed by the Governing Body in exercise of its powers and discharge of its functions and the term of office of, and the manner of filling vacancies among, the members of the Governing Body under sub-section (4) of section 14;

(e) the allowances to be paid to the members of the standing and *ad hoc* committees under sub-section (6) of section 14;

SEC. 1]

Reports, returns and information.

Power to make rules.

(f) the powers and functions to be exercised and discharged by the Director-General under sub-section (3) of section 15;

(g) the conditions of service of the Director-General and other officers and employees of the Council under sub-section (6) of section 15;

(h) any other matter which has to be or may be prescribed by regulations.

(3) Notwithstanding anything contained in sub-section (1), the first regulations under this Ordinance shall be made by the Central Government and any regulations so made may be altered or rescinded by the Council in exercise of its powers under sub-section (1).

Rules and

27. Every rule and every regulation made under this Ordinance 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 rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation 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 or regulation.

28. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the promulgation of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

29. Notwithstanding the fact that the Indian Council of World Affairs Ordinance, 2000 has ceased to operate, it shall not affect-

Ord. 3 of 2000.

Ord. 3 of

2000

(a) the previous operation of, or anything duly done or suffered under the provisions of the Indian Council of World Affairs Ordinance, 2000 (hereinafter referred to as "the Ordinance");

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Ordinance;

(c) any investigation, legal proceeding or remedy in respect of any right, privilege, obligation or liability as aforesaid.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the provisions of the Indian Council of World Affairs Ordinance, 2001 had been in force at all material times.

K. R. NARAYANAN,

President.

SUBHASH C. JAIN, Secy. to the Govt. of India.

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Regulations to be laid before Parliament.

Power to remove difficulties.

Validation and savings 8

रजिस्ट्री सं॰ डी॰एल॰-33004 / 2001

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REGISTERED NO. DL-33004/2001

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> भाग II — खण्ड 1 PART II — Section 1

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PUBLISHED BY AUTHORITY

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separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 3rd February, 2001/Magha 14, 1922 (Saka)

THE TAXATION LAWS (AMENDMENT) ORDINANCE, 2001

382 No. 2 of 2001

Promulgated by the President in the Fifty-second Year of the Republic of India.

An Ordinance further to amend the Finance Act, 2000 and the Income-tax Act, 1961.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Taxation Laws (Amendment) Ordinance, 2001.

(2) It shall come into force at once.

2. In section 2 of the Finance Act, 2000 (hereinafter referred to as the principal Act),— (a) in sub-section (4),—

(i) in clause (a), for the words "ten per cent." the words "twelve per cent." shall be substituted;

(*ii*) in clause (b), for the words "eleven per cent.", the words "thirteen per cent." shall be substituted;

(b) in sub-section (6),-

• (i) in clause (a), for the words "ten per cent." the words "twelve per cent." shall be substituted;

Short title and commencement. Amendment of section 2 of Finance Act, 2000. (*ii*) in clause (*b*), for the words "eleven per cent.", the words "thirteen per cent." shall be substituted;

(c) in sub-section (7),—

(i) in clause (a), for the words "ten per cent." the words "twelve per cent." shall be substituted;

(*ii*) in clause (*b*), for the words "eleven per cent.", the words "thirteen per cent." shall be substituted;

(d) in sub-section (8), in the third proviso, in clause (a),--

(i) in sub-clause (i), for the words "ten per cent.", the words "twelve per cent." shall be substituted;

(*ii*) in sub-clause (*ii*),---

(A) in item (A), for the words "ten per cent.", the words "twelve per cent." shall be substituted;

(B) in item (B), for the words "fifteen per cent.", the words "seventeen per cent." shall be substituted.

(e) in sub-section (8), in the third proviso, in clause (b), for the words "eleven per cent.", the words "thirteen per cent." shall be substituted;

(f) in sub-section (9), in the proviso,-

(i) in clause (a),—

(A) in sub-clause (i), for the words "ten per cent.", the words "twelve per cent." shall be substituted;

(B) in sub-clause (ii), for the words "fifteen per cent.", the words "seventeen per cent." shall be substituted;

(*ii*) in clause (*b*), for the words "ten per cent.", the words "twelve per cent." shall be substituted.

3. In the First Schedule to the principal Act,-

(a) in Part II, under the heading, "Surcharge on income-tax",---

(i) in item (a), for the words "ten per cent." the words "twelve per cent." shall be substituted;

(ii) in item (b), for the words "eleven per cent.", the words "thirteen per cent." shall be substituted:

(b) in Part III, in Paragraph A, under the heading "Surcharge on income-tax",-

(i) in item (i),—

(A) in sub-item (A), for the words "ten per cent.", the words "twelve per cent." shall be substituted;

(B) in sub-item (B), for the words "fifteen per cent.", the words "seventeen per cent." shall be substituted;

(ii) in item (ii), for the words "ten per cent.", the words "twelve per cent." shall be substituted;

(c) in Part III, in Paragraph B, under the heading "Surcharge on income-tax", for the words "ten per cent.", the words "twelve per cent." shall be substituted;

(d) in Part III, in Paragraph C, under the heading "Surcharge on income-tax", for the words "ten per cent.", the words "twelve per cent." shall be substituted;

(e) in Part III, in Paragraph D, under the heading "Surcharge on income-tax", for the words "ten per cent.", the words "twelve per cent." shall be substituted.

Amendment of the First Schedule.

### THE GAZETTE OF INDIA EXTRAORDINARY

(f) in Part III, in Paragraph E, under the heading "Surcharge on income-tax", for the words "eleven per cent.", the words "thirteen per cent." shall be substituted.

43 of 1961.

4. In section 10 of the Income-tax Act, 1961 (herein after referred to as the Income-tax Act), in clause (23C), after the eighth proviso, the following proviso shall be inserted, namely:—

"Provided also that any amount of donation received by the fund or institution in terms of clause (d) of sub-section (2) of section 80G which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Ministers' National Relief Fund on or before the 31st day of March, 2002 shall be deemed to be the income of the previous year and shall accordingly be charged to tax.".

5. In section 12 of the Income-tax Act, after sub-section (2) and the explanation thereto, the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Ministers' National Relief Fund on or before the 31st day of March, 2002 shall be deemed to be the income of the previous year and shall accordingly be charged to tax.".

6. In section 80G of the Income-tax Act,-

(a) in sub-section (1), in clause (i),—

(i) after the words, brackets, figures and letter "or in sub-clause (iiig)", the words, brackets, figures and letter "or in sub-clause (iiiga)" shall be inserted;

(ii) after the words, letter and brackets "or in clause (c)", the words, letter and brackets "or in clause (d)" shall be inserted;

(b) in sub-section (2),—

(i) in clause (a), after the sub-clause (iiig), the following sub-clause shall be inserted, namely:—

"(*iiiga*) any fund set up by the State Government of Gujarat exclusively

for providing relief to the victims of earthquake in Gujarat.";

(ii) after clause (c), the following clause shall be inserted, namely:-

"(d) any sums paid by the assessee, during the period beginning on the 26th day of January, 2001 and ending on the 30th day of September, 2001, to any trust, institution or fund to which this section applies for providing relief to the victims of earthquake in Gujarat.";

(c) after sub-section (5B), the following sub-section shall be inserted, namely:-

"(5C) This sub-section applies in relation to amounts referred to in clause (d) of sub-section (2) only if the trust or institution or fund is established in India for a charitable purpose and it fulfills the following conditions, namely:—

(i) it is approved in terms of clause (vi) of sub-section (5);

(*ii*) it maintains separate accounts of income and expenditure for providing relief to the victims of earthquake in Gujarat;

(*iii*) the donations made to the trust or institution or fund are applied for providing relief to the earthquake victims of Gujarat on or before the 31st day of March, 2002;

Amendment of section 80G.

Amendment of section 10 of the Income-tax Act.

Amendment of section 12. THE GAZETTE OF INDIA EXTRAORDINARY

(*iv*) the amount of donation remaining unutilised on the 31st day of March, 2002 is transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2002;

(v) it renders accounts of income and expenditure to such authority and in such manner as may be prescribed, on or before the 30th day of June, 2002.".

7. In Section 234C of the Income-tax Act, in sub-section (1), after the second proviso, the following shall be inserted, namely:—

"Provided also that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of increase in the rate of surcharge under section 2 of the Finance Act, 2000 as amended by the Taxation Laws (Amendment) Ordinance, 2001 and the assessee has paid the amount of shortfall on or before the 15th day of March, 2001 in respect of the instalment of advance tax due on the 15th day of June, 2000, the 15th day of September, 2000 and 15th day of December, 2000,".

8. Notwithstanding anything contained in the Income-tax Act, the surcharge payable under section 2 of, and Part III of the First Schedule to, the principal Act, as amended by this Ordinance,—

(i) in the case of an assessee, in respect of the instalment of "advance tax" paid or payable on or before the 15th day of June, 2000, the 15th day of September, 2000 and the 15th day of December, 2000, shall be payable on or before the 15th day of

(*ii*) in any case in which income-tax has to be charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 of the Income-tax Act, shall be payable, only where such income-tax is so charged after the date on which this Ordinance comes into force.

K. R. NARAYANAN, President.

SUBHASH C. JAIN, Secy. to the Govt. of India.

### Corrigendum

In the Indian Council of World Affairs Ordinance, 2001 (Ord. 1 of 2001) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 5th January, 2001 (Issue No. 4) at page 4, in line 9, for "caluse", read "clause".

PRINTED BY THE MANAGER, GOVT. OF INDIA PRESS, (PLU) MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI-2001.

Instalment of advance tax in case of additional surcharge, payable on 15th March, 2001.

March, 2001;

Amendment

section

of

234C

रजिस्ट्री सं॰डी॰एल॰-33004 / 2001

**REGISTERED NO. DL-33004/2001** 



असाधारण

EXTRAORDINARY

भाग II --- खण्ड 1

PART II --- Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं 12] नई दिल्ली, मंगलवार, मई 8, 2001/वैशाख 18, 1923 (शक) No. 12] NEW DELHI, TUESDAY, MAY 8, 2001/VAISAKHA 18, 1923 (Saka)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 8th May, 2001/Vaisakha 18, 1923 (Saka)

### THE INDIAN COUNCIL OF WORLD AFFAIRS (SECOND) ORDINANCE, 2001

#### No. 3 of 2001

Promulgated by the President in the Fifty-second Year of the Republic of India.

An Ordinance to declare the Indian Council of World Affairs to be an institution of national importance and to provide for its incorporation and matters connected therewith.

WHEREAS the Indian Council of World Affairs Ordinance, 2000, to provide for the aforesaid matters was promulgated by the President on the 1st day of September, 2000;

AND WHEREAS the Indian Council of World Affairs Bill, 2000, to replace the said Ordinance has been passed by the House of the People and is pending in the Council of States;

[PART II----

AND WHEREAS the Indian Council of World Affairs Ordinance, 2000 ceased to operate on the 1st day of January, 2001;

AND WHEREAS for giving continued effect to the provisions of the said Ordinance, the Indian Council of World Affairs Ordinance, 2001 was promulgated by the President on the 5th day of January, 2001;

AND WHEREAS the said Ordinance ceased to operate on the 2nd day of April, 2001;

AND WHEREAS it is considered necessary to give continued effect to the provisions of the Indian Council of World Affairs Ordinance, 2001 and to validate the actions taken under the said Ordinance;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Indian Council of World Affairs (Second) Ordinance, 2001.

(2) It shall be deemed to have come into force on the 1st day of September, 2000.

2. Whereas the objects of the Indian Council of World Affairs, a society registered under the Societies Registration Act, 1860 are such as to make the institution one of national importance, it is hereby declared that the institution, known as the Indian Council of World Affairs, is an institution of national importance.

21 of 1860.

21 of 1860.

importance. Definitions.

Short title and commencement

Declaration

of the Indian

World Affairs

as institution of national

Council of

3. In this Ordinance, unless the context otherwise requires,--

(a) "appointed day" means the date of commencement of this Ordinance;

(b) "Chairperson" means the Chairperson of the Governing Body;

(c) "Council" means the Indian Council of World Affairs incorporated under section 4;

(d) "Director-General" means the Director-General of the Council;

(e) "existing Council" means the Indian Council of World Affairs, a society registered under the Societies, Registration Act, 1860 and functioning as such immediately before the appointed day;

(f) "Fund" means the Fund of the Council referred to in section 18;

(g) "Governing Body" means the Governing Body of the Council;

(h) "member" means a member of the Council and includes the President and Vice-President;

(i) "President" means the President of the Council;

(j) "regulations" means the regulations made under this Ordinance;

(k) "rules" means the rules made under this Ordinance;

(1) "Vice-President" means the Vice-President of the Council.

Incorporation of the Council.

4. (1) The Indian Council of World Affairs is hereby constituted as a body corporate by the name of the Indian Council of World Affairs and as such body corporate it shall have perpetual succession and a common seal with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by that name sue and be sued. (2) The head office of the Council shall be at Delhi and the Council may, with the previous approval of the Central Government, establish branches at other places in India.

5. (1) On and from the appointed day,—

(a) all properties and other assets vested in the existing Council immediately before that day, shall vest in the Council;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Council immediately before that day for or in connection with the purposes of the existing Council, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Council;

(c) all sums of money due to the existing Council, immediately before that day, shall be deemed to be due to the Council;

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the existing Council, immediately before that day, may be continued or instituted by or against the Council; and

(e) every employee holding any office under the existing Council immediately before that day, shall, on that day, hold his office or service under the Council with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting; and shall continue to do so unless and until his employment under the Council is duly terminated or until his remuneration and other conditions of service are duly altered by the Council.

14 of 1947.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the absorption of any employee by the Council in its regular service under this section shall not entitle such employee to any compensation under that Act or any other law and no such claim shall be entertained by any court, tribunal or other authority.

6. (1) Every person having possession, custody or control of property forming part of the properties and other assets referred to in clause (a) of sub-section (1) of section 5 shall deliver forthwith such property to the Director-General.

(2) Any person incharge of the property and other assets of the existing Council immediately before the commencement of this Ordinance shall, within ten days from that day, furnish to the Director-General a complete inventory of all properties and assets (including particulars of book debts and investments and belongings) immediately before the commencement of this Ordinance and also of all agreements entered into by the existing Council or any person on its behalf.

7. (1) The Council shall consist of the following members, namely:---

(a) the Union Minister for External Affairs who shall be the President, ex-officio;

(b) a Vice-President, who shall be elected by the Council from amongst its members;

(c) a Director-General, who shall be appointed by the Central Government;

(*d*) three members to be nominated by the Central Government who are distinguished in the field of diplomacy; international affairs and law;

(e) four members to be nominated by the Central Government from amongst experts in the fields of history, economics, security studies and social sciences;

(f) two members to be nominated by the Central Government from amongst the Vice-Chancellors of Universities; and

(g) four members to be nominated by the Council.

SEC. 1]

Composition of the Council.

Obligation to transfer

property or

assets.

PART II

(2) It is hereby declared that the office of the member of the Council shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament.

(3) A person shall be disgualified for being nominated as a member if he-

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court.

8. (1) Save as otherwise provided in this section, the term of office of a member shall be three years from the date of his nomination.

(2) The terms of office of the member nominated to fill a casual vacancy shall continue for remainder of the term of the member in whose place he is nominated.

(3) A member shall, unless the Central Government otherwise directs, continue in ~ office until another person is nominated as a member in his place.

(4) The Central Government shall remove a member if he-

(a) becomes subject to any of the disqualifications mentioned in sub-section (3) of section 7; or

(b) refuses to act or becomes incapable of acting; or

(c) is, without obtaining leave of absence from the Council, absent from three consecutive meetings of the Council; or

(d) in the opinion of the Central Government, has so abused his position as to render his continuance in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

(5) A member shall, unless disqualified under sub-section (3) of section 7, be eligible for re-nomination.

(6) A member may resign his office by writing under his hand addressed to the Central Government but shall continue in his office until his resignation is accepted by that Government.

(7) The manner of filling vacancies among members shall be such as may be prescribed by rules.

Powers and functions of President.

Powers and

functions

President.

members.

of Vice-

9. The President shall exercise such powers and discharge such functions as are laid down in this Ordinance or as may be prescribed by rules.

10. The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be prescribed by rules or as may be delegated to him by the President.

11. Members shall receive such allowances, if any, from the Council as may be pre-Allowances of scribed by rules.

Meetings of Council.

12. The Council shall hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the transaction of business at the first meeting as may be laid down by that Government; and thereafter the Council shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulations.

Term of office and vacancies among members.

13. The objects of the Council shall be---

(a) to promote the study of Indian and international affairs so as to develop a body of informed opinion on international matters;

(b) to promote India's relations with other countries through study, research, discussion, lectures, exchange of ideas and information with other organisations within and outside India engaged in similar activities;

(c) to serve as a clearing house of information and knowledge regarding world affairs;

(d) to publish books, periodicals, journals, reviews, papers, pamphlets and other literature on subjects covered under clauses (a) and (b);

(e) to establish contacts with organisations promoting objects mentioned in this section;

(f) to arrange conferences and seminars to discuss and study the Indian policy towards international affairs; and

(g) to undertake such other activities for the promotion of ideas and attainment of the above-mentioned objects.

14. (1) There shall be a Governing Body of the Council which shall be constituted by the Council from amongst its members in such manner as may be prescribed by regulations.

(2) The Governing Body shall be the executive committee of the Council and shall exercise such powers and discharge such functions as the Council may, by regulations made in this behalf, confer or impose upon it.

(3) The President shall be the Chairperson of the Governing Body and as Chairperson thereof shall exercise such powers and discharge such functions as may be prescribed by regulations.

(4) The procedure to be followed by the Governing Body in the exercise of its powers and discharge of its functions and the term of office of, and the manner of filling vacancies among the members of, the Governing Body, shall be such as may be prescribed by regulations.

(5) Subject to such control and restrictions as may be prescribed by rules, the Council may constitute as many standing committees and as many *ad hoc* committees as it thinks fit for exercising any power or discharging any function of the Council or for inquiring into, or reporting or advising upon, any matter which the Council may refer to them.

(6) The Chairperson and members of the Governing Body or a standing committee or an *ad hoc* committee shall receive such allowances as may be prescribed by regulations.

15. (1) There shall be a chief executive officer of the Council who shall be designated as the Director-General and shall be appointed by the Ministry of External Affairs.

(2) The Director-General shall act as the Secretary to the Council as well as to the Governing Body.

(3) The Director-General shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Council or the President or the Governing Body or the Chairperson.

(4) The Financial Advisor of the Ministry of External Affairs shall be the Financial Advisor of the Council.

(5) Subject to such rules as may be made in this behalf, the Council may appoint such number of other officers and employees as may be necessary for the exercise of its powers and efficient discharge of its functions and may determine the designations and grades of such other officers and employees.

Staff of Council.

of Council.

#### THE GAZETTE OF INDIA EXTRAORDINARY

(6) Subject to such rules as may be made in this behalf, the Director-General and other officers and employees of the Council shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, gratuity, provident fund and other matters, as may be prescribed by regulations made in this behalf.

various programmes for efficiently achieving the objects of the Council specified in section 13 and shall also perform such other functions as the Central Government may, by rules,

16. The Council shall undertake various plans to promote, organise and implement

17. The Central Government may, after due appropriation made by Parliament by law in

Functions of Council.

Payment to Council.

/Fund of

Council

this behalf, pay to the Council in each financial year such sums as may be considered necessary for the exercise of powers and efficient discharge of functions of the Council under this Ordinance.

18. (1) The Council shall maintain a Fund to which shall be credited---

(a) all moneys received from the Central Government;

(b) all moneys received by the Council by way of grants, gifts, donations, benefications, bequests or transfers; and

(c) all moneys received by the Council in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited in such banks or invested in such manner as the Council may, subject to the approval of the Central Government, decide.

(3) The Fund shall be applied towards meeting the administrative and other expenses of the Council, including expenses incurred in the exercise of its powers and discharge of its functions under section 16 or in relation to any of the activities referred to therein or for anything relatable thereto.

19. The Council shall prepare, in such form and at such time every year, as may be prescribed by rules, a budget in respect of the financial year next ensuing, showing the estimated receipts and expenditure of the Council and shall forward to the Central Government such number of copies thereof as may be prescribed by rules.

20. (1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance-sheet in such form as the Central Government may, by rules, prescribe and in accordance with such general direction as may be issued by that Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office or offices of the Council.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Annual report.

21. The Council shall prepare every year, in such form and at such time as may be prescribed by rules, an annual report giving a true and full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Budget of Council.

Accounts and audit.

prescribe.

22. All orders and decisions of the Council shall be authenticated by the signature of the President or the Vice-President and all other instruments issued by the Council shall be authenticated by the signature of the Director-General or any other officer of the Council authorised by the Council in this behalf.

23. No act of proceeding of the Council, Governing Body or any standing or *ad hoc* committee under this Ordinance shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Council; or

(b) any defect in the appointment of a person acting as a member of the Council; or

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

24. The Council shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

25. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Ordinance.

(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 manner of filling vacanices among members under sub-section (7) of section 8;

(b) the powers and functions to be exercised and discharged by the President and the Vice-President under sections 9 and 10, as the case may be;

(c) the allowances to be paid to the members under section 11;

(d) the control and restrictions in relation to the constitution of standing and ad hoc committees under sub-section (5) of section 14;

(e) the number of other offices and employees that may be appointed by the Council and the manner of such appointment under sub-section (5) of section 15;

(f) the salaries and allowances payable to the Director-General and other officers and employees of the Council under sub-section (6) of section 15;

(g) such other functions to be performed by the Council under section 16;

(*h*) the form in which and the time at which the budget shall be prepared by the Council and the number of copies thereof to be forwarded to the Central Government under section 19;

(*i*) the form in which an annual statement of accounts including the balancesheet shall be prepared by the Council under sub-section (1) of section 20;

(*j*) the form in which and the time at which the annual report of the activities of the Council shall be submitted to the Central Government under section 21;

(k) any other matter which has to be or may be prescribed by rules,

26. (1) The Council may, with the previous approval of the Central Government, make regulations consistent with the provisions of this Ordinance and the rules to carry out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :----

(a) the summoning and holding of meetings, other than the first meeting of the Council, the time and place where such meetings are to be held and the transaction of business at such meetings under section 12;

(b) the manner in which the Governing Body shall be constituted under subsection (1) of section 14;

(c) the powers and functions to be exercised and discharged by the Governing Body and the Chairperson under sub-sections (2) and (3) of section 14; Power to make regulations.

proceedings of the Council, etc.

Authentication of orders and

instruments

of Council.

Vacancy, etc., not to

invalidate

Reports, returns and information.

Power to make rules.

(d) the procedure to be followed by the Governing Body in exercise of its powers and discharge of its functions and the term of office of, and the manner of filling vacancies among, the members of the Governing Body under sub-section (4) of section 14;

(e) the allowances to be paid to the Chairperson and members of the Governing Body, standing and *ad hoc* committees under sub-section (6) of section 14;

(f) the powers and functions to be exercised and discharged by the Director-General under sub-section (3) of section 15;

(g) the conditions of service of the Director-General and other officers and employees of the Council under sub-section (6) of section 15;

(h) any other matter which has to be or may be prescribed by regulations.

(3) Notwithstanding anything contained in sub-section (1), the first regulations under this Ordinance shall be made by the Central Government and any regulations so made may be altered or rescinded by the Council in exercise of its powers under sub-section (1).

27. Every rule and every regulation made under this Ordinance 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 rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation 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 or regulation.

28. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the promulgation of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**29.** Notwithstanding the fact that the Indian Council of World Affairs Ordinance, 2001 has ceased to operate, it shall not affect—

(a) the previous operation of, or anything duly done or suffered under the provisions of the Indian Council of World Affairs Ordinance, 2001;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Ordinance;

(c) any investigation, legal proceeding or remedy in respect of any right, privilege, obligation or liability as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the provisions of the Indian Council of World Affairs (Second) Ordinance, 2001 had been in force at all material times.

> K.R. NARAYANAN, President.

Ord. 1 of 2001.

Ord. 1 of 2001.

#### SUBHASH C. JAIN, Secy. to the Govt. of India.

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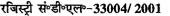
Rules and regulations to be laid before Parliament.

Power to remove difficulties.

Validation and

savings.

**REGISTERED NO. DL-33004/2001** 





असाघारण EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं<sup>0</sup> 20] नई दिल्ल्ग्रे, मंगलवार, मई 22, 2001 / ज्येष्ठ 1, 1923 No. 20] NEW DELHI, TUESDAY, MAY 22, 2001 / JYAISTHA 1, 1923

इस भाग में भिन्न यृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

#### (Legislative Department)

New Delhi, the 22nd May, 2001/Jyaistha 1, 1923 (Saka)

#### THE FOOD CORPORATIONS (AMENDMENT) ORDINANCE, 2001

#### No. 4 of 2001

Promulgated by the President in the Fifty-second Year of the Republic of India.

An Ordinance further to amend the Food Corporations Act, 1964.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :---

1. (1) This Ordinance may be called the Food Corporations (Amendment) Ordinance, 2001.

(2) It shall come into force at once.

2. In section 27 of the Food Corporations Act, 1964, in sub-section (1), for the proviso, the following shall be substituted, namely :---

"Provided that the amount borrowed by a food corporation under clause (b) shall not at any time exceed ten times the paid-up capital and the reserve fund established under section 33".

K. R. NARAYANAN, President.

SUBHASH C. JAIN, Secy. to the Govt. of India.

- PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS (PLU), MINTO ROAD, NEW DELHL AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2001. Short title and commencement.

Amendment of Section 27 of Act 37 of 1964.

रजिस्ट्री सं॰ डी॰एल॰-33004 / 2001

**REGISTERED NO. DL-33004/2001** 



असाधारण EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

 सं॰ 21]
 नई दिल्ली, बृहस्पतिवार, जुलाई 5, 2001 / आषाढ़ 14, 1923 (शक)

 No. 21]
 NEW DELHI, THURSDAY, JULY 5, 2001 / ASADHA 14, 1923 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 5th July, 2001/Asadha 14, 1923 (Saka)

THE LIVE-STOCK IMPORTATION (AMENDMENT) ORDINANCE, 2001

No. 5 of 2001

Promulgated by the President in the Fifty-second Year of the Republic of India.

An Ordinance further to amend the Live-stock Importation Act, 1898.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Live-stock Importation (Amendment) Ordinance, 2001.

Short title and commencement

(2) It shall come into force at once.

THE GAZETTE OF INDIA EXTRAORDINARY [PART II—Sec. 1]

In the preamble of the Live-stock Importation Act, 1898 9 of 1898.

Amendment of preamble.

2.

(hereinafter referred to as the principal Act), after the word "livestock", the words "and live-stock products" shall be inserted.

Amendment of section 2.

3. In section 2 of the principal Act, after clause (c), the following clause shall be inserted, namely:-

(d) "live-stock products" include meat and meat products of all kinds including fresh, chilled and frozen meat, tissue, organs of poultry, pig, sheep, goat; egg and egg powder; milk and milk products; bovine, ovine and caprine embryos, ova, semen; pet food products of animal origin and any other animal product which may be specified by the Central Government by notification in the Official Gazette.'.

Amendment of section 3.

4. In section 3 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) A notification issued under sub-section (1) or under section 3A shall operate as if it has been issued under section 11 of the Customs Act, 1962 and the officers of the customs at every port, airport, Inland Container Depot and Land Customs Station shall have the same powers in respect of any live-stock or live-stock product or thing with regard to the importation of which such a notification has been issued and the vessel, aircraft, vehicle and other mode of conveyance containing the same, as they have for the time being in respect of any article the importation of which is regulated, restricted or prohibited by the law relating to customs and the vessel, aircraft, vehicle and other mode of conveyance containing the same; and the enactments for the time being in force relating to customs or any such article or vessel, aircraft, vehicle and other mode of conveyance shall apply accordingly.".

Insertion of 5. After section 3 of the principal Act, the following section new section shall be inserted, namely:-3A.

Power to regulate importation of livestock products.

"3A. The Central Government may, by notification in the Official Gazette, regulate, restrict or prohibit, in such manner and to such extent as it may think fit, the import into the territories to which this Act extends, of any live-stock product, which may be liable to affect human or animal health.".

> K. R. NARAYANAN, President.

### SUBHASH C. JAIN,

Secy. to the Govt. of India.

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52 of 1962.

REGISTERED NO. DL-33004/2001



भाग II --- खण्ड 1 PART II --- Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 55] नई दिल्ली, शुक्रवार, सितम्बर 21, 2001 / भाद्रा 30, 1923 No. 55] NEW DELHI, FRIDAY, SEPTEMBER 21, 2001 / BHADRA 30, 1923

इस भाग में भिन्न पुष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 21st September, 2001/Bhadra 30, 1923 (Saka)

THE INSTITUTE OF TECHNOLOGY (AMENDMENT) **ORDINANCE**, 2001

#### No. 6 of 2001

An Ordinance further to amend the Institutes of Technology Act, 1961.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Institutes of Technology (Amendment) Ordinance, 2001.

Short title and Commencement.

(2) It shall come into force at once.

रजिस्ट्री सं. डी.एल.-33004 / 2001

[Part II-

Amendment of section 2.

2. In section 2 of the Institutes of Technology Act, 1961, (hereinafter referred to as 59 of 1961, the principal Act), for the words "Kanpur and the Indian Institute of Technology, Madras", the words "Kanpur, the Indian Institute of Technology, Madras and the Indian Institute of Technology, Roorkee" shall be substituted.

Amendment of section 3. 3. In section 3 of the principal Act,-

(a) in clause (c),-

(i) the word "and" appearing at the end of sub-clause (ii) shall be omitted;

- (ii) in sub-clause (iii) after the words "the Indian Institute of Technology, Madras;" the word "and" shall be inserted; and
- (iii) after sub-clause (iii), the following sub-clause shall be inserted, namely:-

"(iv) in relation to the University of Roorkee, Roorkee, the Indian Institute of Technology, Roorkee;".

(b) after clause (k), the following clause shall be inserted, namely:-

"(I) "University of Roorkee" means the University of Roorkee established under the Roorkee University Act, 1947. U.P. Act IX of 1948.

Amendment of section 4.

4. In section 4 of the principal Act, after sub-section (IB), the following sub-section shall be inserted, namely:-

"(IC) The University of Roorkee, Roorkee shall, on such incorporation, be called the Indian Institute of Technology, Roorkee.".

Insertion of new section  $5\Lambda$ .

namely:-

(Amendment) Ordinance, 2001,-

Effect of incorporation of Institute of Technology, Roorkee.  $5\Lambda$ . On and from the commencement of the Institutes of Technology

5. After section 5 of the principal Act, the following section shall be inserted,

(a) any reference to the University of Roorkee in any law (other than this Ordinance) or in any contract or other instrument shall be deemed as a reference to the Indian Institute of Technology, Roorkee;

(b) all property, movable and immovable, of or belonging to the University of Roorkee, shall vest in the Indian Institute of Technology, Roorkee;

(c) all rights and liabilities of the University of Roorkee shall be transferred to, and be the rights and liabilities of, the Indian Institute of Technology, Roorkee; and

(d) every person employed by the University of Roorkee immediately before such commencement shall hold his office or service in the Indian Institute of Technology, Roorkee by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Ordinance had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenuro, remuneration and terms and conditions are duly aitered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the Indian Institute of Technology, Roorkee in accordance with the terms of the contract with the employee or, if no provision is made therein in this behalf, on payment to him by the Indian Institute of Technology, Roorkee of compensation equivalent to three months' remuneration in the case of permanent employees and one month's remuneration in the case of other employees:

Provided further that any reference, by whatever form of words, to the Vice-Chancellor and Pro-Vice-Chancellor of the University of Roorkee in any law for the time being in force, or in any instrument or other document, shall be construed as a reference to the Director and the Deputy Director, respectively, of the Indian Institute of Technology, Roorkee.

(e) On the commencement of the Institutes of Technology (Amendment) Ordinance, 2001, the Vice-Chancellor of the University of Roorkee, appointed under the provisions of the Roorkee University Act, 1947 shall be deemed to have been appointed as Director under the Ordinance, and shall hold office for a period of three months or till such time the Director is appointed, whichever is earlier.

Explanation.-The reference in this section to the commencement of this Ordinance shall be construed in relation to the Indian Institute of Technology, Roorkee as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Ordinance, 2001 come into force.

6. In section 38 of the principal Act,-

Amendment of section 38.

(i) after clause (d), the following clauses shall be inserted, namely:-

"(e) the Syndicate of the University of Roorkee functioning as such immediately before the commencement of this Ordinance shall continue to so function until a new Board is constituted for the Indian Institute of Technology, Roorkee under this Ordinance, but on the constitution of a new Board under this Ordinance, the members of the Syndicate holding office before such constitution shall cease to hold office;

(f) the Academic Council of the University of Roorkee functioning as such immediately before the commencement of this Ordinance shall continue to so function until a new Senate is constituted for the Indian Institute of Technology, Roorkee under this Ordinance, but on the constitution of a new Senate under this Act, the members of the Academic Council holding office before such constitution shall cease to hold office;

(g) until the first Statutes and the Ordinances in relation to the Indian Institute of Technology, Roorkee are made under this Ordinance, the Statutes and Ordinances of the Indian Institute of Technology, Bombay as in force immediately before the commencement of the Institutes of Technology (Amendment) Ordinance, 2001 shall apply to the Indian Institute of Technology, Roorkee with the necessary modifications and adaptations in so far as they are not inconsistent with the provisions of this Ordinance; (h) notwithstanding anything contained in the Institutes of Technology (Amendment) Ordinance, 2001, any student who joined classes of the University of Roorkee on or after the commencement of 1994-95 shall, for the purpose of clause (b) of sub-section (1) of section 6, be deemed to have pursued a course of study in the Indian Institute of Technology, Roorkee provided that such student has not already been awarded degree or diploma for the same course of study;

(i) if any difficulty arises in giving effect to the provisions of the Institutes of Technology (Amendment) Ordinance, 2001, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this clause after the expiry of two years from the commencement of the Institutes of Technology (Amendment) Ordinance, 2001:

Provided further that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

(ii) Explanation shall be numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:-

"Explanation 2.- The reference in clauses (e) and (f) of this section to the commencement of this Ordinance shall be construed in relation to the Indian Institute of Technology Roorkee as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Ordinance, 2001 come into force."

Repeal and savings.

7. (1) The Roorkee University Act, 1947 is hereby repealed.

U.P. Act IX of 1948,

(2) Notwithstanding such repeal, anything done or any action taken under the repealed Act shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Ordinance.

K.R.NARAYANAN, President.

SUBHASH C. JAIN, Secy. to the Govt. of India.

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रजिस्ट्री सं॰ डी॰एल॰-(एन)04/0007/2003---05



असावारण EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं॰ 61] नई दिल्ली, बुधवार, नवम्बर 5, 2003/ कार्तिक 14, 1925 No. 61] NEW DELHI, WEDNESDAY, NOVEMBER 5, 2003/ KARTIKA 14, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 5th November, 2003/Kartika 14, 1925 (Saka)

### THE INDIAN TELEGRAPH (AMENDMENT) ORDINANCE, 2003

#### NO. 7 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance further to amend the Indian Telegraph Act, 1885.

WHEREAS the Indian Telegraph (Amendment) Bill, 2003 was introduced in the House of the People, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: -

1. (1) This Ordinance may be called the Indian Telegraph (Amendment) Ordinance, 2003.

Short title and commencement.

(2) It shall be deemed to have come into force on the 1st day of April, 2002

Amendment of section 3.

2. In section 3 of the Indian Telegraph Act, 1885 (hereinafter referred to as 13 of 1885. the principal Act), clause (1) shall be renumbered as clause (IAA) and before clause (IAA) as so renumbered, the following clauses shall be inserted, namely:-

(1) "Fund" means the Universal Service Obligation Fund established under sub-section (1) of section 9A;

(1A) "Universal Service Obligation" means the obligation to provide access to basic telegraph services to people in the rural and remote areas at affordable and reasonable prices;".

Amendment of • section 4. 3. In section 4 of the principal Act, in sub-section (1), the following *Explanation* shall be inserted at the end, namely:-

"Explanation.-The payments made for the grant of a license under this sub-section shall include such sum attributable to the Universal Service Obligation as may be determined by the Central Government after considering the recommendation made in this behalf by the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997.".

24 of 1997.

Amendment of section 7.

4. In section 7 of the principal Act, in sub-section (2), after clause (ee), the following clauses shall be inserted, namely:-

"(eea) the manner in which the Fund may be administered;

(eeb) the criteria based on which sums may be released.".

Insertion of new Part IIA.

Establishment of Universal Service Obligation Fund.

Crediting of

Consolidated

Fund of India

sum to

5. After Part II of the principal Act, the following Part shall be inserted, namely:-

#### "PART IIA

#### UNIVERSAL SERVICE OBLIGATION FUND

9A. (1) On and from the commencement of the Indian Telegraph (Amendment) Ordinance, 2003, there shall be deemed to have been established, for the purposes of this Act, a Fund to be called the Universal Service Obligation Fund.

(2) The Fund shall be under the control of the Central Government and there shall be credited thereto-

(a) any sums of money paid under section 9B;

(b) any grants and loans made by the Central Government under section 9C.

(3) The balance to the credit of the Fund shall not lapse at the end of the financial year.

9B. The sums of money received towards the Universal Service Obligation under section 4 shall first be credited to the Consolidated Fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit such proceeds to the Fund from time to time for being utilised exclusively for meeting the Universal Service Obligation. 9C. The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants and loans such sums of money as that Government may consider necessary in the Fund.

Grants and loans by the Central Government.

Administration

Fund.

and utilisation of

3

9D. (1) The Central Government shall have the power to administer the Fund in such manner as may be prescribed by rules made under this Act.

(2) The Fund shall be utilised exclusively for meeting the Universal Service Obligation.

(3) The Central Government shall be responsible for the coordination and ensuring timely utilisation and release of sums in accordance with the criteria as may be prescribed by rules made under this Act.".

### A.P.J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

PICNTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MENTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2003.

MGIPMRND-3227GI-5-11-2003.

जिस्ट्री सं॰ डी॰एल॰-33004 / 2001

**REGISTERED NO. DL-33004/2001** 



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सं62]नई दिल्ली, मंगल्यार, अक्तूबर 23, 2001 / कार्तिक 1, 1923 (शक)No. 62]NEW DELHI, TUESDAY, OCTOBER 23, 2001 / KARTIKA 1, 1923 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 23rd October, 2001/Kartika 1, 1923 (Saka)

THE PASSPORTS (AMENDMENT) ORDINANCE, 2001

No. 8 of 2001

Promulgated by the President in the Fifty-second Year of the Republic of India.

An Ordinance further to amend the Passports Act, 1967.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

(1) This Ordinance may be called the Passports (Amendment) Ordinance, 2001.
 (2) It shall come into force at once.

Short title and commencement.

2. After section 10 of the Passports Act, 1967, the following sections shall be

PART II

15 of 1967.

Insertion of new sections 10A and 10B.

Suspension

certain cases.

or travel

inserted, namely:-

'10A. (1) Without prejudice to the generality of the provisions contained in section 10, if the Central Government or any designated officer is satisfied that the of passports passport or travel document is likely to be impounded or caused to be impounded or documents in revoked under clause (c) of sub-section (3) of section 10 and it is necessary in the

> (a) by order, suspend, with immediate effect, any passport or travel document;

> (b) pass such other appropriate order which may have the effect of rendering any passport or travel document invalid,

for a period not exceeding four weeks:

public interest so to do, it or he may, -

Provided that the Central Government or the designated officer may, if it or he considers appropriate, extend, by order and for reasons to be recorded in writing, the said period of four weeks till the proceedings relating to variation, impounding or revocation of passport or travel document under section 10 are concluded:

Provided further that no order under this sub-section shall be passed unless a notice in writing to show cause has been issued to the holder of the passport or travel document:

Provided also that the Central Government or the designated officer may, for reasons to be recorded in writing and in the public interest, waive the requirement of issue of notice referred to in the second proviso:

Provided also that every holder of the passport or travel document, in respect of whom an order under this sub-section had been passed without giving him a prior notice, shall subsequently be given an opportunity of being heard and thereupon the Central Government may, if necessary, by order in writing, modify or revoke the order passed under this sub-section.

The designated officer shall immediately communicate the orders passed under sub-section (1), to the concerned authority at an airport or any other point of embarkation or immigration, and to the passport authority.

(3) Every authority referred to in sub-section (2) shall, immediately on receipt of the order passed under sub-section (1), give effect to such order.

Validation of intimations.

10B. Every intimation, given by the Central Government or the designated officer, before the commencement of the Passports (Amendment) Ordinance, 2001, to any immigration authority at an airport or any other point of embarkation or immigration, restricting or in any manner prohibiting the departure from India of any holder of the passport or travel document under sub-section (3) of section 10, shall be deemed to be an order under sub-section (1) of section 10A and such order shall continue to be in force for a period of three months from the date of commencement

of the Passports (Amendment) Ordinance,2001 or the date of giving such intimation, whichever is later.

*Explanation.*- For the purposes of sections 10A and 10B, the expression "designated officer" means such officer or authority designated, by order in writing, as such by the Central Government or the State Government.'.

## K. R. NARAYANAN, President.

SUBHASH C. JAIN, Secy. to the Govt. of India.

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रजिस्ट्री सं. डी.एल.-33004/2001

**REGISTERED NO. DL-33004/2001** 



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सं॰ 63] नई दिल्ली, बुधवार, अक्तूबर 24, 2001/कार्तिका 2, 1923 No. 63] NEW DELHI, WEDNESDAY, OCTOBER 24, 2001/ KARTIKA 2, 1923

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### **MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

## (Legislative Department)

New Delhi, the 24th October, 2001/Kartika 2, 1923 (Saka)

# **THE PREVENTION OF TERRORISM ORDINANCE, 2001**

NO. 9 OF 2001

Promulgated by the President in the Fifty-second Year of the Republic

#### of India.

An Ordinance to make provisions for the prevention of, and for dealing

with, terrorist activities and for matters connected therewith.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

# CHAPTER I PRELIMINARY

1. (1) This Ordinance may be called the Prevention of Terrorism Ordinance, 2001.

(2) It extends to the whole of India.

(3) Every person shall be liable to punishment under this Ordinance for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(4) Any person who commits an offence beyond India which is punishable under this Ordinance shall be dealt with according to the provisions of this Ordinance in the same manner as if such act had been committed in India.

(5) The provisions of this Ordinance apply also to-

(a) citizens of India outside India;

(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in India, wherever they may be

(6) It shall come into force at once and shall remain in force for a period of five years from the date of its commencement, but its expiry under the operation of this sub-section shall not affect -

(a) the previous operation of, or anything duly done or suffered under this Ordinance, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Ordinance, or

Short title, extent, application, commencement, duration and savings. (c) any penalty, forfeiture or punishment incurred in respect of any offence under this Ordinance, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Ordinance had not expired.

2. (1) In this Ordinance, unless the context otherwise requires,(a) "Code" means the Code of Criminal Procedure, 1973;

Definitions.

2 of 1974.

(b) "Designated Authority" shall mean such officer of the Central Government not below the rank of Joint Secretary to the Government, or such officer of the State Government not below the rank of Secretary to the Government, as the case may be, as may be specified by the Central Government or as the case may be, the State Government, by a notification published in the Official Gazette:

(c) "proceeds of terrorism" shall mean all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, and shall include cash, irrespective of person in whose name such proceeds are standing or in whose possession they are found;

(d) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets;

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor

appointed under section 28 and includes any person acting under the directions of the Public Prosecutor;

(f) "Special Court" means a Special Court constituted under section 23;

(g) "terrorist act" has the meaning assigned to it in sub-section(1) of section 3, and the expression "terrorist" shall be construed accordingly;

(h) "State Government", in relation to a Union territory, means the Administrator thereof;

(i) words and expressions used but not defined in this Ordinance and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Ordinance to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

## CHAPTER II

# PUNISHMENT FOR, AND MEASURES FOR DEALING WITH, TERRORIST ACTIVITIES

3. (1) Whoever, -.

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(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever,

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in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed 'firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,

commits a terrorist act.

Explanation.- For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism.

(2) Whoever commits a terrorist act, shall,-

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

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(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the husband or wife of the offender.

(5) Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

*Explanation.*- For the purposes of this sub-section, "terrorist organisation" means an organisation which is concerned with or involved in terrorism.

(6) Whoever knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the

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terrorist funds shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

(7) Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine.

(8) A person receiving or in possession of information which he knows or believes to be of material assistance-

(i) in preventing the commission by any other person of a terrorist act; or

(ii) in securing the apprehension, prosecution or conviction of any other person for an offence involving the commission, preparation or instigation of such an act,

and fails, without reasonable cause, to disclose that information as soon as reasonably practicable to the police, shall be punishable with imprisonment for a term which may extend to one year or with fine or with both:

Provided that a legal practitioner of the accused shall not be bound to disclose such information which he might have received while defending the accused.

4. Where any person is in unauthorized possession of any,-

Possession of certain unauthorized arms, ctc.

(a) arms or ammunition specified in columns (2) and (3) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, in a notified area,

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(b) bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not,

he shall be guilty of terrorist act notwithstanding anything contained in any other law for the time being in force, and be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

*Explanation* - In this section "notified area" means such area as the State Government may, by notification in the Official Gazette, specify.

Enhanced penalties.

5. (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

6. (1) No person shall hold or be in possession of any proceeds of Holding of terrorism.

proceeds of terrorism illegal.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Ordinance, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

7. (1) If an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Ordinance, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority, or the Special Court, as the case may be, before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority or, as the case may be, the Special Court, within forty-eight hours of the seizure or attachment of such property.

(3) It shall be open to the Designated Authority or the Special Court before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued:

Powers of investigating officers.

Provided that an opportunity of making a representation by the person whose property is being attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority or the Special Court, as the case may be, when the investigating officer notifies his report and places it at the disposal of the Designated Authority or the Special Court, as the case may be.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that-

(a) it is intended to be used for the purposes of terrorism;

(b) it forms the whole or part of the resources of an organisation declared as terrorist organisation under this Ordinance:

Provided that the cash seized under this sub-section by the investigating officer shall be released not later than the period of fortyeight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority, or as the case may be, the Special Court and such authority or, as the case may be, the Court passes an order allowing its retention beyond forty-eight hours.

Explanation.- For the purposes of this sub-section "cash" means-

(a) coins and notes in any currency;

(b) postal orders;

(c) traveller's cheques;

(d) banker's drafts; and

(e) such other monetary instruments as the Central Government, or as the case may be, the State Government may specify by an order made in writing. 8. Where any property is seized or attached in the belief that it constitutes proceeds of terrorism and is produced before the Designated Authority, it shall, on being satisfied that the said property consists of proceeds of terrorism, order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a Special Court for an offence under this Ordinance.

9. (1) No order forfeiting any proceeds of terrorism shall be made under section 8 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he' is a *bona fide* transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the Designated Authority to make an order in respect of property seized or attached,-

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central or State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Designated Authority.

Forfeiture of proceeds of terrorism.

Issue of show cause notice before forfeiture of proceeds of terrorism.

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10. (1) Any person aggrieved by an order of forfeiture under section8 may, within one month from the date of the receipt of such order,appeal to the High Court within whose jurisdiction, the DesignatedAuthority, who passed the order appealed against, is situated.

(2) Where an order under section 8 is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Ordinance, the person against whom an order of forfeiture has been made under section 8 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

11. The order of forfeiture made under this Ordinance by the Designated Authority, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Ordinance.

Claims by third party.

Order of

other

forfeiture not to

interfere with

punishments.

12. (1) Where any claim is preferred, or any objection is made to the seizure of any property under section 7 on the ground that such property is not liable to seizure, the Designated Authority, or as the case may be, the Special Court, before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority or the Special Court considers that the claim or objection was designed to cause unnecessary delay.

Appeal.

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(2) In case claimant or objector establishes that the property specified in the notice issued under section 9 is not liable to be attached or forfeited under the Ordinance, the said notice shall be withdrawn or modified accordingly.

13. The Designated Authority, acting under the provisions of this Ordinance, shall have all the powers of a Civil Court required for making a full and fair enquiry into the matter before it. Powers of Designated Authority.

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14. (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Ordinance, with prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority or a Bank, company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Ordinance.

(2) Failure to furnish the information called for under sub-section (1), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except subsection (2) of section 262] shall be applicable thereto.

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Certain transfers to be null and void. 15. Where, after the issue of an order under section 7 or issue of a notice under section 9, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Ordinance, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

Forfeiture of property of certain persons. 16. (1) Where any person is accused of any offence under this Ordinance, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, if not already attached under this Ordinance.

(2) Where a person has been convicted of any offence punishable under this Ordinance, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

Company to transfer shares to Government. 17. Where any shares in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Ordinance, then, the company shall on receipt of the order of the Special Court, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such shares.

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# CHAPTER III

# TERRORIST ORGANISATIONS

18. (1) For the purposes of this Ordinance an organisation is a terrorist organisation if,-

(a) it is listed in the Schedule, or

(b) it operates under the same name as an organisation listed in that Schedule.

(2) The Central Government may by order, in the Official Gazette,-

(a) add an organisation to the Schedule;

(b) remove an organisation from that Schedule;

(c) amend that Schedule in some other way.

(3) The Central Government may exercise its power under clause (a) of sub-section (2) in respect of an organisation only if it believes that it is involved in terrorism.

(4) For the purposes of sub-section (3) an organisation shall be deemed to be involved in terrorism if it—

(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise involved in terrorism.

19. (1) An application may be made to the Central Government for the exercise of its power under clause (b) of sub-section (2) of section 18 to remove an organisation from the Schedule.

Denotification of a terrorist organisation.

(2) An application may be made by—(a) the organisation, or

Declaration of an organisation as a terrorist organisation.

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(b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may make rules to prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been refused, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of section 59 within one month from the date of receipt of the order by the applicant.

(5) The Review Committee may allow an application for review against refusal to remove an organisation from the Schedule, if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section(5) by or in respect of an organisation, it may make an order under this sub-section.

(7) Where an order is made under sub-section (6), the Central Government shall as soon as the certified copy of the order is received by it, make an order removing the organisation from the list in the Schedule.

Offence relating to membership of a terrorist organisation. 20. (1) A person commits an offence if he belongs or professes to belong to a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove-

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for a term not exceeding ten years or with fine or with both.

21. (1) A person commits an offence if-

Offence relating to support given to a terrorist organisation.

(a) he invites support for a terrorist organisation, and

(b) the support is not, or is not restricted to, the provision of money or other property within the meaning of section 22.

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is -

(a) to support a terrorist organisation,

(b) to further the activities of a terrorist organisation, or

(c) to be addressed by a person who belongs or professes to belong to a terrorist organisation.

(3) A person commits an offence if he addresses a meeting for the purpose of encouraging support for a terrorist organisation or to further its activities

(4) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding ten years or with fine or with both.

*Explanation.*- For the purposes for this section, the expression "meeting" means a meeting of three or more persons whether or not the public are admitted.

22. (1) A person commits an offence if he-

Fund raising for a terrorist organisation to be an offence.

(a) invites another to provide money or other property, and(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(2) A person commits an offence if he-

(a) receives money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(3) A person commits an offence if he-

(a) provides money or other property, and

(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(4) In this section, a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration. (5) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding fourteen years, or with fine or with both.

# CHAPTER IV

# SPECIAL COURTS

23. (1) The Central Government or a State Government may, by Special Courts. notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where a notification constituting a Special Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section (1), and a notification constituting a Special Court for the same area or areas or for the same case or class or group of cases has also been issued by the State Government under that sub-section, the Special Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Special Court by the State Government, shall have, and the Special Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases and all cases pending before any Special Court constituted by the State Government shall stand transferred to the Special Court constituted by the Central Government

(3) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

(4) A Special Court shall be presided over by a judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction of a Special Court.

(6) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such judge or additional judge.

(8) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

Place of sitting.

24. A Special Court may, on its own motion, or on an application made by the Public Prosecutor and if it considers it expedient or

desirable so to do, sit for any of its proceedings at any place, other than its ordinary place of sitting:

Provided that nothing in this section shall be construed to change the place of sitting of a Special Court constituted by a State Government to any place outside that State.

25. (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Ordinance shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under section 23.

Jurisdiction of Special Courts.

(2) If, having regard to the exigencies of the situation prevailing in a State,--

(i) it is not possible to have a fair, impartial or speedy trial; or

(*ii*) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and a judge of the Special Court or any of them; or

(*iii*) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India, be supported by an affidavit or affirmation.

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Power of Special Courts with respect to other offences. 26. (1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Ordinance of any offence, it is found that the accused person has committed any other offence under this Ordinance or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorized by this Ordinance or such rule or, as the case may be, under such other law.

Power to direct for samples, etc.

27. (1) When a police officer investigating a case requests the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate in writing for obtaining samples of hand writing, finger prints, foot prints, photographs, blood, saliva, semen, hair, voice of any accused person, reasonably suspected to be involved in the commission of an offence under this Ordinance, it shall be lawful for the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate to direct that such samples be given by the accused person to the police officer either through a medical practitioner or otherwise, as the case may be.

(2) If any accused person refuses to give samples as provided in subsection (1), the court shall draw adverse inference against the accused.

Public Prosecutors.

28. (1) For every Special Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

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Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause(u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

29. (1) Subject to the provisions of section 49, a Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

Procedure and powers of Special Courts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall so far as may be, apply to such trial:

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Provided that when, in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to rupees five lakh.

(3) Subject to the other provisions of this Ordinance, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Ordinance, every case transferred to a Special Court under section 25 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination. Projection of

winesses.

**30.** (1) Notwithstanding anything contained in the Code, the proceedings under this Ordinance may, for reasons to be recorded in writing, be held in camera if the Special Court so desires.

(2) A Special Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include -

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

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(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees

Trial by Special Courts to have precedence. 31. The trial under this Ordinance of any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

Certain confessions made to police officers to be taken into consideration. 32. (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Ordinance or rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1) explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or induce him to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be in the same language in which the person makes it. (4) The person from whom a confession has been recorded under sub-section (1), shall be produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within forty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, if any, made by the person so produced and get his signature or thumb impression and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody.

**33.** Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Power to transfer cases to regular courts.

**34.** (1) Notwithstanding anything contained in the Code, an appeal Appeal. shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

*Explanation* .- For the purposes of this section, "High Court" means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated. (2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

#### CHAPTER V

## INTERCEPTION OF COMMUNICATION IN CERTAIN CASES

Definitions.

35. In this Chapter, unless the context otherwise requires,-

(a) "electronic communication" means any transmission of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include,-

(i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit;

(ii) any wire or oral communication;

(*iii*) any communication made through a tone only paging device; or

(*iv*) any communication from a tracking device;

(b) "intercept" means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device;

(c) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication;

(d) "wire communication" means any aural transmission made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication.

36. The Central Government or the State Government, as the case may be, may appoint an officer not below the rank of Secretary to the Government in case of State Government and not below the rank of Joint Secretary to the Government in the case of Central Government, to be the Competent Authority for the purposes of this Chapter.

Appointment of Competent Authority.

PART II-

Application for authorization of interception of wire, electronic or oral communication. 37. (1). A police officer not below the rank of Superintendent of Police supervising the investigation of any terrorist act under this Ordinance may submit an application in writing to the Competent Authority for an order authorizing or approving the interception of wire, electronic or oral communication by the investigating officer when he believes that such interception may provide, or has provided evidence of any offence involving a terrorist act.

(2) Each application shall include the following information:-

(a) the identity of the investigating officer making the application, and the head of the department authorizing the application;

(b) a statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including-

(i) details as to the offence of terrorist act that has been, is being, or is about to be committed;

(ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communications sought to be intercepted; and

(iv) the identity of the person, if known, committing the terrorist act whose communications are to be intercepted;

(c) a statement of the period of time for which the interception is required to be maintained, if the nature of the enquiry is such that the authorization of interception should not automatically terminate after the described type of communication has been first obtained; (d) a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter; and

(e) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

**38.** (1) Upon such application, the Competent Authority may reject the application, or issue an order, as requested or as modified, authorizing or approving interception of wire, electronic or oral communications, if the Competent Authority determines on the basis of the facts submitted by the applicant that-

Decision by Competent Authority on application for interception.

(a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence described and made punishable under sections 3 and 6 of this Ordinance;

(b) there is a probable cause of belief that particular communications concerning that offence may be obtained through such interception;

(c) there is probable cause of belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used or are about to be used, in connection with the commission of such offence, leased to, or are listed in the name of or commonly used by such person. (2) Each order by the Competent Authority authorizing or approving the interception of any wire, electronic or oral communication under this section shall specify-

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;

(d) the identity of the agency authorized to intercept the communications, and the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate after the described communication has been first obtained.

39. (1) The Competent Authority shall immediately after passing the order under sub-section (1) of section 38, but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 59 along with all the relevant underlying papers, record and his own findings, in respect of the said order, for consideration and approval of the order by the Review Committee.

(2) An order authorizing the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of

Submission of Order of inception to Review Committee. interference with the services that such service provider, landlord, custodian, or person is providing to the person whose communications are to be intercepted.

40. (1) No order issued under this section may authorize or approve Duration of an the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than sixty days and such sixty days period shall begin on the day immediately preceding the day on which the investigation officer first begins to conduct an interception under the order or ten days after order is issued whichever is earlier.

(2) The extension of an order may be granted, but only upon an application for an extension made in accordance with sub-section (1) of section 37 and the Competent Authority making the findings required by sub-section (1) of section 38, and the period of such extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time.

(3) Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable and shall be conducted in such manner as to minimize the interception of communications not otherwise subject to interception under this section and shall terminate upon attainment of the authorized objective. or in any event on the expiry of the period of said order or extension thereof.

41. (1) An interception under this Chapter may be conducted in whole or in part by a public servant, acting under the supervision of the investigating officer authorized to conduct the interception.

Authority competent to carry out interception.

order of

interception etc.

(2) Whenever an order authorizing an interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorized objective and the need for continued interception and such report shall be made at such intervals as the Competent Authority may require.

Interception of communication in emergency.

42. (1) Notwithstanding anything contained in any other provision of this section, an officer not below the rank of Additional Director General of Police or a police officer of equivalent rank who reasonably determines that-

(a) an emergency situation exists that involves-

(i) immediate danger of death or serious physical injury to any person;

(*ii*) conspiratorial activities threatening the security or interest of the State; or

(*iii*) conspiratorial activities, characteristic of a terrorist act, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds on which an order should be issued under this section to authorize such interception,

may authorize, in writing, the investigating officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-sections (1) and (2) of section 37 within forty-eight hours after the interception has occurred, or begins to occur.

(2) In the absence of an order approving the interception made under sub-section (1), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier; and in the event of an application for permitting interception being rejected under sub-section (1) of section 38 or an application under sub-section (1) of section 42 for approval being rejected, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.

43. (a) The contents of any wire, electronic or oral communication intercepted by any means authorized by this section shall as far as possible, be recorded on tape or wire or other comparable device and shall be done in such manner as to protect the recording from editing or other alterations.

Protection of information collected.

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(b) Immediately upon the expiration of the period of order, or extension thereof, such recording shall be made available to the Competent Authority issuing such order and shall be sealed under his directions and kept in the custody of such person or authority as the Competent Authority orders, and such recordings shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

(c) Applications made and orders issued under this section shall be sealed by the Competent Authority and custody of the applications and orders shall be kept in such manner as the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.

SEC. 1]

Admissibility of evidence collected through the interception of communications. 44. Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this Chapter shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this Chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorized or approved not less than ten days before trial, hearing or proceeding:

Provided further that, the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

Review of authorisation order.

**45.** (1) The Review Committee constituted by the Central Government or the State Government, as the case may be, shall review every order passed by the Competent Authority under section 38.

(2) Every order passed by the Competent Authority under section 38, or disapproved by the officer under section 42, shall be placed before the Review Committee, which shall be considered by the Review Committee within ten days after its receipt, to decide whether the order, was necessary, reasonable and justified.

(3) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in SEC. 1]

writing, either approve the order passed by the Competent Authority or may issue order disapproving the same.

(4) On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued and the intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

46. Except as otherwise specifically provided in section 38, any police officer who-

(a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;

(b) intentionally uses, endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when-

(*i*) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

(*ii*) such device transmits communications by radio, or interferes with the transmission of such communication;

(c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter;

(d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the

Interception and disclosure of wire, electronic or oral communications prohibited.

interception of a wire, electronic or oral communication in

PART II

violation of this Chapter, or (e) intentionally discloses, or endeavours to disclose, to any

other unauthorized person the contents of any wire, electronic or oral communication, intercepted by means authorized by section 38;

(f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of rejection by the Competent Authority under this Chapter.

(g) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (3) of section 45, shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine upto rupees fifty thousand.

Annual Report of Interceptions.

47. (1) The Central Government and the State Government, as the case may be, shall cause an annual report to be prepared giving a full account of,-

(i) the number of applications for authorization of interceptions received by the Competent Authority from the Police Department in which prosecutions have been launched;

(ii) the number of such applications permitted or rejected;

(*iii*) the number of interceptions carried out in emergency situations and the number of approvals granted or rejected in such matters;

(*iv*) the number of prosecutions launched based on such interceptions and convictions resulting from such interceptions, along with an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorized.

#### SEC. 1]

# THE GAZETTE OF INDIA EXTRAORDINARY

(2) An annual report shall be laid by the State Government before the State Legislature within three months of the completion of every calendar year:

Provided that, if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State or to the prevention or detection of any terrorist act, the State Government may exclude such matter from being included in such annual report.

(3) An annual report shall be laid by the Central Government before each House of Parliament within three months of the completion of every calendar year :

Provided that, if the Central Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the country or to the prevention or detection of any terrorist act, the Central Government may exclude such matter from being included in such annual report.

# CHAPTER VI

#### MISCELLÀNEOUS

**48.** (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Ordinance shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

Modified application of certain provisions of the Code.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Ordinance subject to the modification that in sub-section (2),-

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days", respectively; and

(b) after the proviso, the following provisos shall be inserted, namely :--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days:

Provided also that if the police officer making the investigation under this Ordinance, requests, for the purposes of investigation, for police custody from judicial custody of any person from judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.".

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Ordinance subject to the modification that-

(a) the reference in sub-section (1) thereof-

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(ii) to "order of the State Government" shall be

construed as a reference to "order of the Central Government or the State Government, as the case may be", and

(b) the reference in sub-section (2) thereof, to "State Government" shall be construed as a reference to "Central Government or the State Government, as the case may be".

(4) Sections 366, 367 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court subject to the modification that the reference to "Court of Session", wherever occurring therein, shall be construed as the reference to "Special Court".

(5) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Ordinance.

(6) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Ordinance shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard.

(7) Where the Public Prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Ordinance or any rule made thereunder shall be released on bail until the court is satisfied that there are grounds for believing that he is not guilty of committing such offence:

Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Ordinance, the provisions of sub-section (6) of this section shall apply.

(8) The restrictions on granting of bail specified in sub-sections (6) and (7) are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(9) Notwithstanding anything contained in sub-sections (6), (7) and (8), no bail shall, be granted to a person accused of an offence punishable under this Ordinance, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

Cognizance of offences.

**49.** No Court shall take cognizance of any offence under this Ordinance without the previous sanction of the Central Government or as the case may be, the State Government.

Officers competent to investigate offences under this Ordinance. 50. Notwithstanding anything contained in the Code, no police officer, -

(a) in the case of the Delhi Special Police Establishment, not below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, not below the rank of an Assistant Commissioner of Police;

(c) in any other case not relatable to clause (a) or clause (b), not below the rank of a Deputy Superintendent of Policé or a police officer of an equivalent rank,

shall investigate any offence punishable under this Ordinance.

51. (1) Where a police officer arrests a person, he shall prepare a Arrest.

51. (1) Where a police officer arrests a person, he shall prepare a Arrest custody memo of the person arrested.

(2) The person arrested shall be informed of his right to consult a legal practitioner as soon as he is brought to the police station.

(3) Whenever any person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or in his absence to a relative of such person by telegram, telephone or by any other means and this fact shall be recorded by the police officer under the signature of the person arrested.

(4) The person arrested shall be permitted to meet the legal practitioner representing him during the course of interrogation of the accused person:

Provided that nothing in this sub-section shall entitle the legal practitioner to remain present throughout the period of interrogation.

52. (1) In a prosecution for an offence under sub-section (1) of section 3, if it is proved –

(a) that the arms or explosives or any other substances specified in section 4 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall draw adverse inference against the accused.

Presumption as to offences under section 3.

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(2) In a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw adverse inference against the accused.

Bar of jurisdiction of courts, etc. 53. No civil court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in section 19 and section 39 of the Ordinance.

Saving.

54. (1) Nothing in this Ordinance shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a court of ordinary criminal justice.

Overriding effect.

55. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

Protection of action taken in good faith. 56. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Ordinance, for anything which is in good faith done or purported to be done in pursuance of this Ordinance:

Provided further that no suit, prosecution or other legal proceedings shall lie against any serving member or retired member of the armed forces or other para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

57. (1) Any police officer who exercises powers corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this Ordinance, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

(2) If the Special Court is of opinion that any person has been corruptly or maliciously proceeded against under this Ordinance, the court may award such compensation as it deems fit to the person, so proceeded against and it shall be paid by the officer, person, authority or Government, as may be specified in the order.

58. Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge sheeted for having committed any offence under this Ordinance, shall be deemed to have been impounded for such period as the Special Court may deem fit.

**59.** (1) The Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes of this Ordinance.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

Impounding of passport and arms licence of person charge sheeted under the Ordinance.

Review Committees.

Punishment and compensation for malicious action.

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(3) A Chairperson of the Committee shall be a person who is, or who has been, a Judge of a High Court, who shall be appointed by the Central Government, or as the case may be, the State Government, so however, that the concurrence of the Chief Justice of the High Court shall be obtained in the case of a sitting Judge:

Provided that in the case of a Union territory, the appointment of a person who is a Judge of the High Court of a State shall be made as a Chairperson with the concurrence of the Chief Justice of the concerned High Court.

Power of High Courts to make rules.

60. The High Courts may, by notifications in the Official Gazette, make such rules, if any, as they may deem necessary for carrying out the provisions of this Ordinance relating to Special Courts within their territories.

Power to make rules.

61. (1) Without prejudice to the powers of the High Courts to make rules under section 60, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance

(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) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(b) the entry into, and search of,-

(i) any vehicle, vessel or aircraft; or

(ii) any place, whatsoever,

reasonably suspected of being used for committing the offences referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence;

(c) conferring powers upon,-

(i) the Central Government;

(ii) a State Government:

(iii) an Administrator of a Union territory under article 239 of the Constitution;

(iv) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

(v) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or deal with terrorist acts;

(d) the arrest and trial of persons contravening any of the rules or any order made thereunder;

(e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to one year or fine or both.

(f) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority.

(g) determination of the price of the forfeited property under

SEC. 1]

[PART II-

sub-section (2) of section 10;

(h) the procedure of making application under sub-section (3) of section 19;

(i) the qualifications of the members of the Review Committee under sub-section (2) of section 59.

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# SCHEDULE

# (see section 18)

#### TERRORIST ORGANISATIONS

1. BABBAR KHALSA INTERNATIONAL.

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2. KHALISTAN COMMANDO FORCE.

3. KHALISTAN ZINDABAD FORCE.

4. INTERNATIONAL SIKH YOUTH FEDERATION.

5. LASHKAR-E-TAIBA/PASBAN-E-AHLE HADIS.

6. JAISH-E-MOHAMMED/TAHRIK-E-FURQAN.

7. HARKAT-UL-MUJAHIDEEN/HARKAR-UL-ANSAR/KARKAT-

UL-JEHAD-E-ISLAMI.

8. HIZB-UL-MUJAHIDEEN/HIZB-ULMUJAHIDEEN PIR

PANJAL REGIMENT.

9. AL-UMAR-MUJAHIDEEN.

10. JAMMU AND KASHMIR ISLAMIC FRONT.

11. UNITED LEBERATION FRONT OF ASSAM (ULFA).

12. NATIONAL DEMOCRATIC FRONT OF

BODOLAND (NDFB) .

13. PEOPLE'S LIBERATION ARMY (PLA).

14. UNITED NATIONAL LIBERATION FRONT (UNLF).

15. PEOPLE'S REVOLUTIONARY PARTY OF

KANGLEIPALK (PREPAK) .

16. KANLEIPAK COMMUNIST PARTY (KCP)

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 	17.	KANGLEI YAOL KANBA LUP(KYKL)
	18.	MANIPUR PEOPLE'S LIBRATION FRONT (MPLF).
	19.	ALL TRIPURA TIGER FORCE.
	20.	NATIONAL LIBERATION FRONT OF TRIPURA.
-	21.	LIBERATION TIGERS OF TAMIL EELAM(LTTE).
	22.	STUDENTS ISLAMIC MOVEMENT OF INDIA.
	23.	DEENDAR ANJUMAN.

K.R.NARAYANAN, President. Ľ

SUBHASH C. JAIN, Secy. to the Govt. of India.

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 30th December, 2001/Pausa 9, 1923 (Saka)

# THE INSTITUTES OF TECHNOLOGY (AMENDMENT) SECOND ORDINANCE, 2001

No. 10 of 2001

Promulgated by the President in the Fifty-second Year of the Republic of India.

An Ordinance further to amend the Institutes of Technology Act, 1961.

WHEREAS the Institutes of Technology (Amendment) Ordinance, 2001 further toamend the Institutes of Technology Act, 1961 was promulgated by the President on the 21st day of September, 2001;

AND WHEREAS the Institutes of Technology Bill, 2001 was introduced in the Council of States, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give further continued effect to the provisions of the said Ordinance;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Institutes of Technology (Amendment)

(2) It shall be deemed to have come into force on the 21st day of September, 2001.

[PART II-

Short title and commencement.

Amendment of section 2:

59 of 1961. 2. In section 2 of the Institutes of Technology Act, 1961 (hereinafter referred to as the principal Act), for the words "Kanpur and the Indian Institute of Technology, Madras", the words "Kanpur, the Indian Institute of Technology, Madras and the Indian Institute of Technology, Roorkee" shall be substituted.

Amendment of section 3.

3. In section 3 of the principal Act,-

(a) in clause (c),-

section shall be inserted, namely:-

Second Ordinance, 2001.

(i) the word "and" appearing at the end of sub-clause (ii) shall be omitted;

(ii) in sub-clause (iii), after the words "the Indian Institute of Technology, Madras;", the word "and" shall be inserted; and

(iii) after sub-clause (iii), the following sub-clause shall be inserted, namely:-

"(iv) in relation to the University of Roorkee, Roorkee, the Indian Institute of Technology, Roorkee;";

(b) after clause (k), the following clause shall be inserted, namely:-

'(1) "University of Roorkee" means the University of Roorkee established under the Roorkee University Act, 1947.'.

"(1C) The University of Roorkee, Roorkee shall, on such incorporation, be

4. In section 4 of the principal Act, after sub-section (1B), the following sub-

U.P. Act IX of 1948.

Amendment of section 4.

called the Indian Institute of Technology, Roorkee.". section 5A.

5. After section 5 of the principal Act, the following section shall be inserted, namely:-

"5A. On and from the commencement of the Institutes of Technology (Amendment) Second Ordinance, 2001,-

(a) any reference to the University of Roorkee in any law (other than this Ordinance) or in any contract or other instrument shall be deemed as a reference to the Indian Institute of Technology, Roorkee;

(b) all property, movable and immovable, of or belonging to the University of Roorkee, shall vest in the Indian Institute of Technology, Roorkee;

(c) all rights and liabilities of the University of Roorkee shall be transferred te, and be the rights and liabilities of, the Indian Institute of Technology, Roorkee;

(d) every person employed by the University of Roorkee, immediately before such commencement shall hold his office or service in the Indian Institute of Technology, Roorkee by the same tenure, at the same

Insertion of new

Effect of incorporation of Institute of Technology, Roorkee.

remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Ordinance had not been promulgated and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the Indian Institute of Technology, Roorkee in accordance with the terms of the contract with the employee or, if no provision is made therein in this behalf, on payment to him by the Indian Institute of Technology, Roorkee of compensation equivalent to three months' remuneration in the case of permanent employees and one month's remuneration in the case of other employees:

Provided further that any reference, by whatever form of words, to the Vice-Chancellor and Pro-Vice-Chancellor of the University of Roorkee in any law for the time being in force, or in any instrument or other document, shall be construed as a reference to the Director and the Deputy Director, respectively, of the Indian Institute of Technology, Roorkee; and

(e) on the commencement of the Institutes of Technology (Amendment) Second Ordinance, 2001, the Vice-Chancellor of the University of Roorkee, appointed under the provisions of the Roorkee University Act, 1947 shall be deemed to have been appointed as Director under the Ordinance, and shall hold office for a period of three months or till such time the Director is appointed, whichever is earlier.

Explanation.-The reference in this section to the commencement of this Ordinance shall be construed in relation to the Indian Institute of Technology, Roorkee as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Second Ordinance, 2001 come into force."

6. In section 38 of the principal Act,-

Amendment of section 38.

(a) after clause (d), the following clauses shall be inserted, namely:-

"(e) the Syndicate of the University of Roorkee functioning as such immediately before the commencement of this Ordinance shall continue to so function until a new Board is constituted for the Indian Institute of Technology, Roorkee under this Ordinance, but on the constitution of a new Board under this Ordinance, the members of the Syndicate holding office before such constitution shall cease to hold office;

() the Academic Council of the University of Roorkee functioning as such immediately before the commencement of this Ordinance shall continue to so function until a new Senate is constituted for the Indian Institute of Technology, Roorkee under this Ordinance, but on the constitution of a new Senate under this Ordinance, the members of the Academic Council holding office before such constitution shall cease to hold office;

(g) until the first Statutes and the Ordinances in relation to the Indian Institute of Technology, Roorkee are made under this Ordinance, the Statutes and Ordinances of the Indian Institute of Technology, Bombay as

U.P. Act IX of 1948.

SEC. 1]

in force immediately before the commencement of the Institutes of Technology (Amendment) Second Ordinance, 2001 shall apply to the Indian Institute of Technology, Roorkee with the necessary modifications and adaptations in so far as they are not inconsistent with the provisions of this Ordinance;

(h) notwithstanding anything contained in the Institutes of Technology (Amendment) Second Ordinance, 2001, any student who joined classes of the University of Roorkee on or after the commencement of 1994-95 academic session shall, for the purpose of clause (b) of sub-section (1) of section 6, be deemed to have pursued a course of study in the Indian Institute of Technology, Roorkee provided that such student has not already been awarded degree or diploma for the same course of study;

(i) if any difficulty arises in giving effect to the provisions of the Institutes of Technology (Amendment) Second Ordinance, 2001, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this clause after the expiry of two years from the commencement of the Institutes of Technology (Amendment) Second Ordinance, 2001:

Provided further that every order made under this clause shall be laid, as seon as may be after it is made, before each House of Parliament.".

(b) Explanation shall be numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:-

"Explanation 2.- The reference in clauses (c) and (f) of this section to the commencement of this Ordinance shall be construed in relation to the Indian Institute of Technology, Roorkee as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Second Ordinance, 2001 come into force.".

Repeal savings 7. (1) The Roorkee University Act, 1947 is hereby repealed.

U.P Act IX of 1948. 10 of 1897.

(2) The provisions of the General Clauses Act, 1897 shall apply to the repeal of the said Act as if the said Act were a Central Act.

(3) The Institutes of Technology (Amendment) Ordinance, 2001 is hereby Ord, 6 of 2001. repealed.

(4) Notwithstanding such repeal, anything done or any action taken under the repealed Ordinance shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Ordinance.

> K.R. NARAYANAN, Presiden

SUBHASH C. JAIN,

and

Repealed by Act, 17 y 2001, 5:3 (co. et. 23-10-2001)

रजिस्ट्री सं॰ डी॰एल॰-33004 / 2001

**REGISTERED NO. DL-33004/2001** 



असाधारण EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं<sup>0</sup> 70] नई दिल्ली, रविवार, दिसम्बर 30, 2001 / पौष 9, 1923 No. 70] NEW DELHI, SUNDAY, DECEMBER 30, 2001 / PAUSA 9, 1923

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 30th December, 2001/Pausa 9, 1923 (Saka) THE PASSPORTS (AMENDMENT) SECOND ORDINANCE, 2001

No. 11 of 2001

Promulgated by the President in the Fifty-second Year of the Republic of India.

An Ordinance further to amend the Passports Act, 1967.

WHEREAS the Passports (Amendment) Ordinance, 2001 was promulgated by the President on the 23<sup>rd</sup> day of October, 2001;

AND WHEREAS the Passports (Amendment) Bill, 2001 for replacing the said Ordinance was introduced in the Council of States and is pending in the Council of States;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :-

1. (1) This Ordinance may be called the Passports (Amendment) Second Ordinance, 2001.

Short title and

(2) It shall be deemed to have come into force on the 23<sup>rd</sup> day of October, 2001.

commence-

meat.

[PART II--

Insertion of new sections 10A and 10B.

Suspension of passports or travel documents in certain cases. 2. After section 10 of the Passports Act, 1967 (hereinafter referred to as the principal Act), the following sections shall be inserted, namely:-

'10A. (1) Without prejudice to the generality of the provisions contained in section 10, if the Central Government or any designated officer is satisfied that the passport or travel document is likely to be impounded or caused to be impounded or revoked under clause (c) of sub-section (3) of section 10 and it is necessary in the public interest so to do, it or he may, -

(a) by order, suspend, with immediate effect, any passport or travel document;

(b) pass such other appropriate order which may have the effect of rendering any passport or travel document invalid,

for a period not exceeding four weeks:

Provided that the Central Government or the designated officer may, if it or he considers appropriate, extend, by order and for the reasons to be recorded in writing, the said period of four weeks till the proceedings relating to variation, impounding or revocation of passport or travel document under section 10 are concluded:

Provided further that every holder of the passport or travel document, in respect of whom an order under clause (a) or clause (b) of this sub-section had been passed, shall be given an opportunity of being heard within a period of not later than eight weeks reckoned from the date of passing of such order and thereupon the Central Government may, if necessary, by order in writing, modify or revoke the order passed under this sub-section.

(2) The designated officer shall immediately communicate the orders passed under sub-section (1), to the concerned authority at an airport or any other point of embarkation or immigration, and to the passport authority.

(3) Every authority referred to in sub-section (2) shall, immediately on receipt of the order passed under sub-section (1), give effect to such order.

Validation of intimations.

10B. Every intimation given by the Central Government or the designated officer, before the commencement of the Passports (Amendment) Second Ordinance, 2001, to any immigration authority at an airport or any other point of embarkation or immigration, restricting or in any manner prohibiting the departure from India of any holder of the passport or travel document under sub-section (3) of section 10, shall be deemed to be an order under sub-section (1) of section 10A and such order shall continue to be in force for a period of three months from the date of commencement of the Passports (Amendment) Second Ordinance, 2001 or the date of giving such intimation, whichever is later.

15 of 1967.

# Sec. 1]

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# THE GAZETTE OF INDIA EXTRAORDINARY

*Explanation.*- For the purposes of sections 10A and 10B, the expression "designated officer" means such officer or authority designated, by order in writing, as such by the Central Government.'.

3. (1) The Passports (Amendment) Ordinance, 2001 is hereby repealed.

Repeal and saving.

3

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K. R. NARAYANAN, President.

SUBHASHC. JAIN, Secy. to the Govt. of India.

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# MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 30th December, 2001/Pausa 9, 1923 (Saka)

# THE PREVENTION OF TERRORISM (SECOND)

# ORDINANCE, 2001

#### No. 12 of 2001

Promulgated by the President in the Fifty-second Year of

the Republic of India.

An Ordinance to make provisions for the prevention of,

and for dealing with, terrorist activities and for matters

#### connected therewith.

WHEREAS the Prevention of Terrorism Ordinance, 2001, to provide for the aforesaid matters was promulgated by the President on the 24<sup>th</sup> day of October, 2001;

AND WHEREAS the Prevention of Terrorism Bill, 2001, to replace the said Ordinance could not be introduced in the House of the People,

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action,

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

# CHAPTER I

#### PRELIMINARY

Short title, extent, application, commencement, duration and savings. 1. (1) This Ordinance may be called the Prevention of Terrorism (Second) Ordinance, 2001.

(2) It extends to the whole of India.

(3) Every person shall be liable to punishment under this Ordinance for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(4) Any person who commits an offence beyond India which is punishable under this Ordinance shall be dealt with according to the provisions of this Ordinance in the same manner as if such act had been committed in India.

(5) The provisions of this Ordinance apply also to-

(a) citizens of India outside India;

(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in -India, wherever they may be.

(6) Save as otherwise provided in respect of entries at serial numbers 24 and 25 of the Schedule to this Ordinance, it shall be deemed to have come into force on the 24<sup>th</sup> day of October, 2001 and shall remain in force for a period of three years from the date of its

[PART II-

commencement, but its expiry under the operation of this sub-section shall not affect-

(a) the previous operation of, or anything duly done or suffered under this Ordinance, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Ordinance, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Ordinance, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Ordinance had not expired.

2. (1) In this Ordinance, unless the context otherwise requires,-

Definitions.

2 of 1974.

(a) "Code" means the Code of Criminal Procedure, 1973;

(b) "Designated Authority" shall mean such officer of the Central Government not below the rank of Joint Secretary to the Government, or such officer of the State Government not below the rank of Secretary to the Government, as the case may be, as may be specified by the Central Government or as the case may be, the State Government, by notification published in the Official Gazette;

(c) "proceeds of terrorism" shall mean all kinds of properties which have been derived or obtained

from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, and shall include cash, irrespective of person in whose name such proceeds are standing or in whose possession they are found;

(d) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets and includes bank account;

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 28 and includes any person acting under the directions of the Public Prosecutor;

(f) "Special Court" means a Special Court constituted under section 23;

(g) "terrorist act" has the meaning assigned to it in sub-section (1) of section 3, and the expression "terrorist" shall be construed accordingly;

(h) "State Government", in relation to a Union territory, means the Administrator thereof;

(i) words and expressions used but not defined in this Ordinance and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Ordinance to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area. [PART II-

#### CHAPTER II

# PUNISHMENT FOR, AND MEASURES FOR DEALING WITH,

TERRORIST ACTIVITIES

3. (1) Whoever, -

(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession

Punishment for terrorist acts

5

37 of 1967.

SEC. 1]

[PART II

of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,

commits a terrorist act.

*Explanation.*- For the purposes of this subsection, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism.

(2) Whoever commits a terrorist act, shall,-

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine,

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine:

Provided that this sub-section shall not apply to any

case in which the harbour or concealment is by the husband or wife of the offender.

(5) Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

*Explanation*.- For the purposes of this sub-section, "terrorist organisation" means an organisation which is concerned with or involved in terrorism.

(6) Whoever knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

(7) Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine.

4. Where any person is in unauthorized possession of any,-

Possession of certain unauthorized arms, etc.

7

(a) arms or ammunition specified in columns (2)
and (3) of Category I or Category III (a) of Schedule
I to the Arms Rules, 1962, in a notified area,

(b) bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not,

SEC. 1]

PART II-

he shall be guilty of terrorist act notwithstanding anything contained in any other law for the time being in force, and be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

*Explanation.*- In this section "notified area" means such area as the State Government may, by notification in the Official Gazette, specify.

Enhanced penalties.

5. (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine.

54 of 1959. 4 of 1884. 6 of 1908. 20 of 1952.

(2) For the purposes of this section, any person who attempts to contravene or abets, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years"

Holding of proceeds of terrorism illegal. 6. (1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Ordinance, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

7. (1) If an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Ordinance, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned.

(2) For the removal of doubts, it is hereby provided that where an organisation is declared as a terrorist organisation under this Ordinance and the investigating officer has reason to believe that any person has custody of any property which is being used or is intended to be used for the purpose of such terrorist organisation, he may, by an order in writing, seize or attach such property.

(3) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

Powers of investigating officers and appcal against order of Designated Authority.

PART II-

(4) It shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued:

Provided that an opportunity of making a representation by the person whose property is being attached shall be given.

(5) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(6) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that-

(a) it is intended to be used for the purposes of terrorism;

(b) it forms the whole or part of the resources of an organisation declared as terrorist organisation under this Ordinance:

Provided that the cash seized under this sub-section by the investigating officer shall be released not later than the period of forty- eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such authority passes an order allowing its retention beyond forty-eight hours.

Explanation. - For the purposes of this sub-section, "cash" means-

(a) coins and notes in any currency;

(b) postal orders;

(c) traveller's cheques;

(d) banker's drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(7) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the Special Court and the Special Court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

8. Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the Special Court is satisfied in this regard under sub-section (7) of section 7, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a Special Court for an offence under this Ordinance.

9. (1) No order forfeiting any proceeds of terrorism shall be made under section 8 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under subsection (1), if such person establishes that he is a *bona* fide transferee of such proceeds for value without

Forfeiture of proceeds of terrorism.

11

Issue of show cause notice before forfeiture of proceeds of terrorism.

SEC. 1]

knowing that they represent proceeds of terrorism.

(3) It shall be competent for the Special Court to make an order in respect of property seized or attached,-

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central or State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Special Court.

10. (1) Any person aggrieved by an order of forfeiture under section 8 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the Special Court, who passed the order appealed against, is situated.

(2) Where an order under section 8 is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Ordinance, the person against whom an order of forfeiture has been made under section 8 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

Order of forfeiture not to interfere with other

 11. The order of forfeiture made under this Ordinance by the Special Court, shall not prevent the infliction of

Appeal.

# punishments.

any other punishment to which the person affected thereby is liable under this Ordinance.

Claims by third party.

12. (1) Where any claim is preferred, or any objection is made to the seizure of any property under section 7 on the ground that such property is not liable to seizure, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection was designed to cause unnecessary delay.

(2) In case claimant or objector establishes, that the property specified in the notice issued under section 9 is not liable to be forfeited under the Ordinance, the said notice shall be withdrawn or modified accordingly.

13. The Designated Authority, acting under the provisions of this Ordinance, shall have all the powers of a Civil Court required for making a full and fair enquiry into the matter before it.

14. (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Ordinance, with prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority or a Bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, where the

Powers of Designated Authority.

Obligation to furnish information.

SEC. 1]

[PART II-

investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Ordinance.

(2) Failure to furnish the information called for under sub-section (1), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262] shall be applicable thereto.

Certain transfers to be null and void. 15. Where, after the issue of an order under section 7 or issue of a notice under section 9, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Ordinance, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

Forfeiture of property of certain persons.

16. (1) Where any person is accused of any offence under this Ordinance, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, if not already attached under this Ordinance.

(2) Where a person has been convicted of any offence punishable under this Ordinance, the Special Court may, in addition to awarding any punishment, by

order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

17. Where any shares in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Ordinance, then, the company shall on receipt of the order of the Special Court, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such shares.

CHAPTER III

# TERRORIST ORGANISATIONS

18. (1) For the purposes of this Ordinance, an organisation is a terrorist organisation if-

Declaration of an organisation as a terrorist organisation.

(a) it is listed in the Schedule, or

(b) it operates under the same name as an organisation listed in that Schedule.

(2) The Central Government may by order, in the Official Gazette,-

(a) add an organisation to the Schedule;

(b) remove an organisation from that Schedule:

(c) amend that Schedule in some other way.
(3) The Central Government may exercise its power under clause (a) of sub-section (2) in respect of an

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Company to transfer shares to Government.

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organisation only if it believes that it is involved in terrorism.

(4) For the purposes of sub-section (3), an organisation shall be deemed to be involved in terrorism if it—

(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise involved in terrorism.

Denotification of a terrorist organisation. 19. (1) An application may be made to the Central Government for the exercise of its power under clause (b) of sub-section (2) of section 18 to remove an organisation from the Schedule.

(2) An application may be made by—

(a) the organisation, or

(b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may make rules to prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been refused, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of section 60 within one month from the date of receipt of the order by the applicant.

(5) The Review Committee may allow an application for review against refusal to remove an organisation from the Schedule, if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order under this sub-section.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the list in the Schedule.

20. (1) A person commits an offence if he belongs or professes to belong to a terrorist organisation:

Offence relating to membership of a terrorist organisation.

Provided that this sub-section shall not apply where the person charged is able to prove-

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for a term not exceeding ten years or with fine or with both.

21. (1) A person commits an offence if-

Offence relating to support given to a terrorist organisation.

(a) he invites support for a terrorist organisation, and

(b) the support is not, or is not restricted to, the provision of money or other property within the meaning of section 22.

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting

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which he knows is -

(a) to support a terrorist organisation,

(b) to further the activities of a terrorist organisation, or

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(c) to be addressed by a person who belongs or professes to belong to a terrorist organisation.

(3) A person commits an offence if he addresses a meeting for the purpose of encouraging support for a terrorist organisation or to further its activities.

(4) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding ten years or with fine or with both.

*Explanation*.- For the purposes of this section, the expression "meeting" means a meeting of three or more persons whether or not the public are admitted.

22. (1) A person commits an offence if he-

Fund raising for a terrorist organisation to be an offence.

(a) invites another to provide money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism

(2) A person commits an offence if he-

(a) receives money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(3) A person commits an offence if he-

(a) provides money or other property, and

(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(4) In this section, a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

(5) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding fourteen years or with fine or with both.

# CHAPTER IV

### SPECIAL COURTS

The Central Government or a State Special Courts. 23. (/) Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where a notification constituting a Special Court for any area or areas or for any case or class or group of cases is issued by the Central Government under subsection (I), and a notification constituting a Special Court for the same area or areas or for the same case or class or group of cases has also been issued by the State Government under that sub-section, the Special Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Special Court by the State Government, shall have, and the Special Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases and all cases pending before

[PART II-

any Special Court constituted by the State Government shall stand transferred to the Special Court constituted by the Central Government.

(3) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

(4) A Special Court shall be presided over by a judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction of a Special Court.

(6) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such judge or additional judge.

(8) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of

business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

Place of sitting.

24. A Special Court may, on its own motion, or on an application made by the Public Prosecutor and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place other than its ordinary place of sitting:

Provided that nothing in this section shall be construed to change the place of sitting of a Special Court constituted by a State Government to any place outside that State.

25. (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Ordinance shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under section 23.

(2) If, having regard to the exigencies of the situation prevailing in a State,--

(1) it is not possible to have a fair, impartial or speedy trial; or

(*ii*) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and a judge of the Special Court or any of them; or

(iii) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before

# Jurisdiction of Special Courts

a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India, be supported by an affidavit or affirmation.

Power of Special Courts with respect to other offences. 26. (1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Ordinance of any offence, it is found that the accused person has committed any other offence under this Ordinance or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Ordinance or such rule or, as the case may be, under such other law.

Power to direct for samples, etc.

27. (1) When a police officer investigating a case requests the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate in writing for obtaining samples of handwriting, finger prints, foot prints, photographs, blood, saliva, semen, hair, voice of any accused person, reasonably suspected to be involved in the commission of an offence under this Ordinance, it shall be lawful for the Court of a Chief Judicial

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Magistrate or the Court of a Chief Metropolitan Magistrate to direct that such samples be given by the accused person to the police officer either through a medical practitioner or otherwise, as the case may be

(2) If any accused person refuses to give samples as provided in sub-section (1), the court shall draw adverse inference against the accused.

Public Prosecutors. 28. (1) For every Special Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

29. (1) Subject to the provisions of section 50, a

Procedure and powers of

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Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to rupees five lakh.

(3) Subject to the other provisions of this Ordinance, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and

shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Ordinance, every case transferred to a Special Court under section 25 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

Protection of witnesses.

**30.** (1) Notwithstanding anything contained in the Code, the proceedings under this Ordinance may, for reasons to be recorded in writing, be held *in camera* if the Special Court so desires,

(2) A Special Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that

sub-section may include -

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

### Trial by Special Courts to have precedence.

31. The trial under this Ordinance of any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

Certain confessions made to police officers to be taken into consideration.

**32.** (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of which sound

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or images can be reproduced, shall be admissible in the trial of such person for an offence under this Ordinance or rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1), explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or induce him to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be in the same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within forty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, if any, made by the person so produced and get his signature or thumb impression and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody.

33. Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not

Power to transfer cases to regular courts.

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triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

**34.** (1) Notwithstanding anything contained in the Appeal. Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

*Explanation.* - For the purposes of this section, "High Court" means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in subsection (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

**35.** (1) The jurisdiction conferred by this Ordinance on a Special Court, shall, until a Special Court is constituted under section 23, in the case of any offence punishable under this Ordinance, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(2) On and from the date when the Special Court is constituted under section 23, every trial under the provisions of this Ordinance, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.

### CHAPTER V

#### INTERCEPTION OF COMMUNICATION IN CERTAIN

### CASES

Definitions.

36. In this Chapter, unless the context otherwise requires,-

(a) "clectronic communication" means any transmission of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include,-

(i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit;

(ii) any wire or oral communication;

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Transitional

transfer of pending

proceedings.

provisions and

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(*iii*) any communication made through a tone only paging device; or

(iv) any communication from a tracking device;

(b) "intercept" means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device;

(c) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication;

(d) "wire communication" means any aural transmission made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication.

Appointment of Competent Authority.

37. The Central Government or the State Government, as the case may be, may appoint an officer not below the rank of Secretary to the Government in the case of State Government and not below the rank of Joint Secretary to the Government in the case of Central Government, to be the Competent Authority for the purposes of this

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Chapter.

Application for authorisation of interception of wire, electronic or oral communication,

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38. (1) A police officer not below the rank of Superintendent of Police supervising the investigation of any terrorist act under this Ordinance may submit an application in writing to the Competent Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer when he believes that such interception may provide, or has provided evidence of any offence involving a terrorist act.

(2) Each application shall include the following information:-

(a) the identity of the investigating officer making the application, and the head of the department authorising the application;

(b) a statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including-

(i) details as to the offence of terrorist act that has been, is being, or is about to be committed;

(ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communications sought to be intercepted; and

(iv) the identity of the person, if known, committing the terrorist act whose communications are to be intercepted;

(c) a statement of the period of time for which the

interception is required to be maintained, if the nature of the enquiry is such that the authorisation of interception should not automatically terminate after the described type of communication has been first obtained;

(d) a particular description of facts establishing probable believe that additional cause to communications of the same will type occur thereafter; and

(e) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

39. (1) Upon such application, the Competent Decision by Authority may reject the application, or issue an order, as requested or as modified, authorising or approving interception of wire, electronic or oral communications, if the Competent Authority determines on the basis of the facts submitted by the applicant that-

Competent Authority on application for interception.

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(a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence described, and made punishable under sections 3 and 4 of this Ordinance;

(b) there is a probable cause of belief; that particular communications concerning that offence may be obtained through such interception;

(c) there is probable cause of belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used or are about to be used, in connection with the commission of such offence, leased to, or are listed in the name of or commonly used by such person.

(2) Each order by the Competent Authority authorising or approving the interception of any wire, electronic or oral communication under this section shall specify-

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;

(d) the identity of the agency authorised to intercept the communications, and the person authorising the application; and

(e) the period of time during which such interception is authorised, including a statement as to whether or not the interception shall automatically terminate after the described communication has been first obtained.

40. (1) The Competent Authority shall immediately after passing the order under sub-section (1) of section 39, but in any case not later than seven days from the

Submission of Order of interception to Review Committee.

passing of the order, submit a copy of the same to the Review Committee constituted under section 60 along with all the relevant underlying papers, record and his own findings, in respect of the said order, for consideration and approval of the order by the Review Committee.

(2) An order authorising the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is providing to the person whose communications are to be intercepted.

41. (1) No order issued under this section may authorise or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorisation, nor in any event longer than 'sixty days and such sixty days period shall begin on the day immediately preceding the dav which on the investigation officer first begins to conduct an interception under the order or ten days after order is issued whichever is earlier.

(2) The extension of an order may be granted, but only upon an application for an extension made in accordance with sub-section (1) of section 38 and the

Duration of an order of interception, etc.

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Competent Authority making the findings required by sub-section (1) of section 39, and the period of such extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time.

(3) Every order and extension thereof shall contain a provision that the authorisation to intercept shall be executed as soon as practicable and shall be conducted in such manner as to minimise the interception of communications not otherwise subject to interception under this section and shall terminate upon attainment of the authorised objective, or in any event on the expiry of the period of said order or extension thereof.

Authority competent to carry out interception.

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42. (1) An interception under this Chapter may be conducted in whole or in part by a public servant, acting under the supervision of the investigating officer authorised to conduct the interception.

(2) Whenever an order authorising an interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorised objective and the need for continued interception and such report shall be made at such intervals as the Competent Authority may require.

43. (1) Notwithstanding anything contained in any other provision of this chapter, an officer not below the rank of Additional Director General of Police or a police

Interception of communication in emergency. officer of equivalent rank who reasonably determines that-

(a) an emergency situation exists that involves-

(i) immediate danger of death or serious physical injury to any person;

(ii) conspiratorial activities threatening the security or interest of the State; or

(*iii*) conspiratorial activities, characteristic of a terrorist act, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorising such interception can, with due diligence, be obtained, and

(b) there are grounds on which an order should be issued under this section to authorise such interception,

may authorise, in writing, the investigating officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-sections (1) and (2) of section 38 within forty-eight hours after the interception has occurred, or begins to occur.

(2) In the absence of an order approving the sub-section such interception made under (I),interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier; and in the event of an application for permitting interception being rejected under sub-section (I) of section 39 or an application under sub-section (I) of this section for approval being rejected, or in any other case

where the interception is terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.

Protection of information collected.

44. (1) The contents of any wire, electronic or oral communication intercepted by any means authorised by this chapter shall as far as possible, be recorded on tape or wire or other comparable device and shall be done in such manner as to protect the recording from editing or other alterations.

(2) Immediately upon the expiration of the period of order, or extension thereof, such recording shall be made available to the Competent Authority issuing such order and shall be sealed under his directions and kept in the custody of such person or authority as the Competent Authority orders, and such recordings shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

(3) Applications made and orders issued under this chapter shall be sealed by the Competent Authority and custody of the applications and orders shall be kept in such manner as the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.

45. Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this Chapter shall be Admissibility of cvidence collected through the interception of communications.

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admissible as evidence against the accused in the Court during the trial of a case:

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this Chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved not less than ten days before trial, hearing or proceeding:

Provided further that, the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

46. (1) The Review Committee constituted by the Central Government or the State Government, as the case may be, shall review every order passed by the Competent Authority under section 39.

(2) Every order passed by the Competent Authority under section 39, or disapproved by the officer under section 43, shall be placed before the Review Committee, which shall be considered by the Review Committee within ten days after its receipt, to decide whether the order, was necessary, reasonable and justified.

(3) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in writing, either approve the

Review of authorisation order.

order passed by the Competent Authority or may issue order disapproving the same.

(4) On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued and the intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

Interception and disclosure of wire, electronic or oral communications prohibited. 47. Except as otherwise specifically provided in section 39, any police officer who-

(a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;

(b) intentionally uses, endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when-

(1) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

(*ii*) such device transmits communications by radio, or interferes with the transmission of such communication;

(c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or

[PART II--

having reason to know that the information was obtained through the interception of 'a wire, electronic or oral communication in violation of this Chapter;

(d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter; or

(e) intentionally discloses, or endeavours to disclose, to any other unauthorised person the contents of any wire, electronic or oral communication, intercepted by means authorised by section 39;

(f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of rejection by the Competent Authority under this Chapter;

(g) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (3) of section 46,

shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine up to rupees fifty thousand.

Annual report of interceptions. **48.** (1) The Central Government and the State Government, as the case may be, shall cause an annual report to be prepared giving a full account of,-

(i) the number of applications for authorisation

of interceptions received by the Competent Authority from the Police Department in which prosecutions have been launched;

(*ii*) the number of such applications permitted or rejected;

(*iii*) the number of interceptions carried out in emergency situations and the number of approvals granted or rejected in such matters;

(*iv*) the number of prosecutions launched based on such interceptions and convictions resulting from such interceptions, alongwith an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorised.

(2) An annual report shall be laid by the State Government before the State Legislature within three months of the completion of every calendar year:

Provided that, if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State or to the prevention or detection of any terrorist act, the State Government may exclude such matter from being included in such annual report.

(3) An annual report shall be laid by the Central Government before each House of Parliament within three months of the completion of every calendar year :

Provided that, if the Central Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the country or to the prevention or detection of any terrorist act, the Central Government may exclude such matter from being included in such annual report. 42

PART II-

# CHAPTER VI MISCELLANEOUS

49. (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Ordinance shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

Modified application of certain provisions of the Code.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Ordinance subject to the modification that in sub-section (2),-

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days", respectively; and

(b) after the proviso, the following provisos shall be inserted, namely :--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days:

Provided also that if the police officer

making the investigation under this Ordinance, requests, for the purposes of investigation, for police custody from judicial custody of any person from judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Ordinance subject to the modification that-

(a) the reference in sub-section (1) thereof-

(*i*) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(*ii*) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to

"State Government" shall be construed as a reference to "Central Government or the State Government, as the case may be".

(4) Sections 366, 367 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court subject to the modification that the reference to "Court of Session", wherever occurring therein, shall be construed as the reference to "Special Court".

(5) Nothing in section 438 of the Code shall apply in

SEC. 1]

[PART II-

relation to any case involving the arrest of any person accused of having committed an offence punishable under this Ordinance.

(6) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Ordinance shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard.

(7) Where the Public Prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Ordinance or any rule made thereunder shall be released on bail until the court is satisfied that there are grounds for believing that he is not guilty of committing such offence:

Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Ordinance, the provisions of sub-section (6) of this section shall apply.

(8) The restrictions on granting of bail specified in sub-sections (6) and (7) are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(9) Notwithstanding anything contained in subsections (6), (7) and (8), no bail shall be granted to a person accused of an offence punishable under this Ordinance, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

Cognizance of offences.

50. No Court shall take cognizance of any offence

under this Ordinance without the previous sanction of the Central Government or, as the case may be, the State Government.

**51.** Notwithstanding anything contained in the Code, no police officer, -

Officers competent to investigate offences under this Ordinance.

Arrest.

(a) in the case of the Delhi Special Police Establishment, below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai,
Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section
(1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any other case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under this Ordinance.

52. (1) Where a police officer arrests a person, he shall prepare a custody memo of the person arrested.

(2) The person arrested shall be informed of his right to consult a legal practitioner as soon as he is brought to the police station.

(3) Whenever any person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or in his absence to a relative of such person by telegram, telephone or by any other means and this fact shall be recorded by the police officer under the signature of the person arrested.

[PART II-

(4) The person arrested shall be permitted to meet the legal practitioner representing him during the course of interrogation of the accused person:

Provided that nothing in this sub-section shall entitle the legal practitioner to remain present throughout the period of interrogation.

53. (1) In a prosecution for an offence under subsection (1) of section 3, if it is proved –

Presumption as to offences under section 3.

(a) that the arms or explosives or any other substances specified in section 4 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall draw adverse inference against the accused.

(2) In a prosecution for an offence under sub-section
(3) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw adverse inference against the accused.

Bar of jurisdiction of courts, etc.

54. No civil court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sections 19 and 40 of the Ordinance. Saving.

# THE GAZETTE OF INDIA EXTRAORDINARY

55. (1) Nothing in this Ordinance shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a court of ordinary criminal justice.

56. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

57. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Ordinance, for anything which is in good faith done or purported to be done in pursuance of this Ordinance:

Provided that no suit, prosecution or other legal proceedings shall lie against any serving member or retired member of the armed forces or other paramilitary forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

58. (1) Any police officer who exercises powers corruptly or maliciously, knowing that there are no

Punishment and compensation for malicious action.

Overriding effect.

Protection of action taken in good faith.

reasonable grounds for proceeding under this Ordinance, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

(2) If the Special Court is of the opinion that any person has been corruptly or maliciously proceeded against under this Ordinance, the court may award such compensation as it deems fit to the person, so proceeded against and it shall be paid by the officer, person, authority or Government, as may be specified in the order.

59. Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Ordinance, shall be deemed to have been impounded for such period as the Special Court may deem fit.

Impounding of passport and arms licence of person chargesheeted under the Ordinance.

Review Committees

[PART II

60. (1) The Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes of this Ordinance.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government, or as the case may be, the State Government, so however, that the concurrence of the Chief Justice of the High Court shall be obtained in the case of a sitting Judge:

Provided that in the case of a Union territory, the appointment of a person who is a Judge of the High Court of a State shall be made as a Chairpèrson with the concurrence of the Chief Justice of the concerned High Court.

Power of High Courts to make rules.

61. The High Court may, by notification in the Official Gazette, make such rules, if any, as they may deem necessary for carrying out the provisions of this Ordinance relating to Special Courts within their territories.

Power to make rules.

62. (1) Without prejudice to the powers of the High Courts to make rules under section 61, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely: -

(a) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(b) the entry into, and search of,-

(i) any vehicle, vessel or aircraft; or

(ii) any place, whatsoever,

reasonably suspected of being used for committing the offences referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence;

[PART II-

(c) conferring powers upon,-

(i) the Central Government;

(ii) a State Government:

(iii) an Administrator of a Union territoryunder article 239 of the Constitution;

(iv) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

 (v) an officer of a State Government not lower in rank than that of a District Magistrate, to make general or special orders to prevent or deal with terrorist acts;

(d) the arrest and trial of persons contravening any of the rules or any order made thereunder;

(e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to one year or fine or both;

(f) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority;

(g) determination of the price of the forfeited property under sub-section (2) of section 10;

(h) the procedure of making application under sub-section (3) of section 19; and

(i) the qualifications of the members of the Review

51

Committee under sub-section (2) of section 60.

Orders and rules to be laid before Houses of Parliament.

63. Every order and every rule made by the Central Government under this Ordinance 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 order or rule or both Houses agree that the order or rule should not be made, the order or 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 order or rule.

Repeal and saving.

64. (1) The Prevention of Terrorism Ordinance, 2001 is Ord. 9 of 2001. hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

SEC. 1]

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**REGISTERED NO. DL-33004/2002** 



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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 10th January, 2002/Pausa 20, 1923 (Saka)

# THE CENTRAL EXCISE TARIFF (AMENDMENT) ORDINANCE, 2002

No. 1 of 2002

Promulgated by the President in the fifty-second Year of the Republic of India.

An Ordinance further to amend the Central Excise Tariff Act, 1985.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:----

1. (7) This Ordinance may be called the Central Excise Tariff (Amendment) Ordinance, 2002.

Short title and commencement.

(2) It shall come into force at once,

# THE GAZETTE OF INDIA EXTRAORDINARY [PART II-SEC. 1]

Amendment of section 3 of Act 5 of 1986 2

2. In section 3 of the Central Excise Tariff Act, 1985, in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

"(b) in any other case, a rate of duty as it thinks necessary.".

K. R. NARAYANAN, President.

SUBHASH C. JAIN, Secy. to the Govt. of India.

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#### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

### (Legislative Department)

New Delhi, the 21st June, 2002/Jyaistha 31, 1924 (Saka)

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ORDINANCE, 2002

#### No. 2 of 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

#### CHAPTER I

#### PRELIMINARY

1. (1) This Ordinance may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002.

Short title, extent and commencement.

(2) It extends to the whole of India.

(3) It shall come into force at once.

[PART II---

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,---

(a) "Appellate Tribunal" means a Debts Recovery Appellate Tribunal established under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(b) "asset reconstruction" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance:

(c) "bank" means----

(*i*) a banking company; or

(ii) a corresponding new bank; or

(iii) the State Bank of India; or

(iv) a subsidiary bank; or

(v) such other bank which the Central Government may, by notification, specify for the purposes of this Ordinance;

(d) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949;

(e) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

(g) "Central Registry" means the registry set up or cause to be set up under subsection (1) of section 20;

(h) "corresponding new bank" shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949;

(i) "Debts Recovery Tribunal" means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(*j*) "default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor in accordance with the directions or guidelines issued by the Reserve Bank;

(k) "financial assistance" means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution;

(1) "financial asset" means debt or receivables and includes---

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(*ii*) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

10 of 1949.

15 of 1992.

51 of 1993.

10 of 1949.

51 of 1993.

(*iv*) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(vi) any financial assistance;

(m) "financial institution" means

(*i*) a public financial institution within the meaning of section 4A of the Companies Act, 1956;

(*ii*) any institution specified by the Central Government under subclause (*ii*) of clause (*h*) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(*iii*) International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958;

(*iv*) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934, which the Central Government may, by notification, specify as financial institution for the purposes of this Ordinance;

(n) "hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property;

(*o*) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or guidelines relating to asset classifications issued by the Reserve Bank;

(p) "notification" means a notification published in the Official Gazette;

(q) "obligor" means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;

(r) "originator" means the owner of a financial asset which is acquired by a securitisation company or reconstruction company for the purpose of securitisation or asset reconstruction;

(s) "prescribed" means prescribed by rules made under this Ordinance;

(t) "property" means—

(*i*) immovable property;

(*ii*) movable property;

(*iii*) any debt or any right to receive payment of money, whether secured or unsecured;

(*iv*) receivables, whether existing or future;

(v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;

1 of 1956.

51 of 1993.

42 of 1958.

2 of 1934.

[PART II---

(u) "qualified institutional buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or any other body corporate as may be specified by the Board;

(v) "reconstruction company" means a company formed and registered under the Companies Act, 1956 for the purpose of asset reconstruction;

(w) "Registrar of Companies" means the Registrar defined in clause (40) of section 2 of the Companies Act, 1956;

(x) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

(y) "scheme" means a scheme inviting subscription to security receipts proposed to be issued by a securitisation company or reconstruction company under that scheme;

(z) "securitisation" means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;

(za) "securitisation company" means any company formed and registered under the Companies Act, 1956 for the purpose of securitisation;

(*zb*) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;

(zc) "secured asset" means the property on which security interest is created;

(zd) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes----

(i) debenture trustee appointed by any bank or financial institution; or

(*ii*) securitisation company or reconstruction company; or

(*iii*) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;

(ze) "secured debt" means a debt which is secured by any security interest;

(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;

(zg) "security receipt" means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;

(*zh*) "sponsor" means any person holding not less than ten per cent. of the paidup equity capital of a securitisation company or reconstruction company;

(zi) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955;

 $(z_f)$  "subsidiary bank" shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959.

1 of 1956.

23 of 1955.

38 of 1959.

15 of 1992.

1 of 1956.

1 of 1956.

2 of 1934.

#### SEC. 1]

9 of 1872.

4 of 1882. 1 of 1956.

15 of 1992.

# THE GAZETTE OF INDIA EXTRAORDINARY

(2) Words and expressions used and not defined in this Ordinance but defined in the Indian Contract Act, 1872 or the Transfer of Property Act, 1882 or the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 shall have the same meanings respectively assigned to them in those Acts.

#### CHAPTER II

REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

3. (1) No securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without—

(a) obtaining a certificate of registration granted under this section; and

(b) having the owned fund of not less than two crore rupees or such other amount not exceeding fifteen per cent. of total financial assets acquired or to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify:

Provided that the Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of securitisation companies or reconstruction companies:

Provided further that a securitisation company or reconstruction company, existing on the commencement of this Ordinance, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.

(2) Every securitisation company or reconstruction company shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

(3) The Reserve Bank may, for the purpose of considering the application for registration of a securitisation company or reconstruction company to carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:—

(a) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years;

(b) that such securitisation company or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;

(c) that the directors of securitisation company or reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction;

(d) that the board of directors of such securitisation company or reconstruction company does not consist of more than half of its total number of directors who are either nominees of any sponsor or associated in any manner with the sponsor or any of its subsidiaries;

(e) that any of its directors has not been convicted of any offence involving moral turpitude;

(f) that a sponsor, is not a holding company of the securitisation company or reconstruction company, as the case may be, or, does not otherwise hold any controlling interest in such securitisation company or reconstruction company;

Registration of securitisation companies or reconstruction companies.

(g) that securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.

<sup>111.</sup> (4) The Reserve Bank may, after being satisfied that the conditions specified in subsection (3) are fulfilled, grant a certificate of registration to the securitisation company or the reconstruction company to carry on or commence business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

(5) The Reserve Bank may reject the application made under sub-section (2) if it is satisfied that the conditions specified in sub-section (3) are not fulfilled:

Provided that before rejecting the application, the applicant shall be given a reasonable opportunity of being heard.

(6) Every securitisation company or reconstruction company shall obtain prior approval of the Reserve Bank for any substantial change in its management or change of location of its registered office or change in its name:

Provided that the decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final.

*Explanation*—For the purposes of this section, the expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.

4. (1) The Reserve Bank may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company—

(a) ceases to carry on the business of securitisation or asset reconstruction; or

(b) ceases to receive or hold any investment from a qualified institutional buyer;

(c) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or

(d) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or

#### (e) fails to----

or

(i) comply with any direction issued by the Reserve Bank under the provisions of this Ordinance; or

(*ii*) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Ordinance; or

(*iii*) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or

(*iv*) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

Provided that before cancelling a certificate of registration on the ground that the securitisation company or reconstruction company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the securitisation company or the reconstruction company, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

Cancellation of certificate of registration.

(2) A securitisation company or reconstruction company aggrieved by the order of rejection of application for registration or concellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government:

Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

(3) A securitisation company or reconstruction company, which is holding investments of qualified institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation of certificate of registration, be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

5. (1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution—

Acquisition of rights or interest in financial assets.

7

(a) by issuing a debenture or bond or any other security in the nature of the debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(2) If the bank or financial institution is a lender in relation to any financial assets 'acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(3) Unless otherwise expressly provided by this Ordinance, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

of 1986.

Notice to obligor and discharge of obligation of such obligor. **6.** (1) The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

(2) Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

(3) Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitisation company or reconstruction company, as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

7. (1) Without prejudice to the provisions contained in the Companies Act, 1956, Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, any securitisation company or reconstruction company, may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts.

(2) A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

(3) In the event of non-realisation under sub-section (2) of financial assets, the qualified institutional buyers of a securitisation company or reconstruction company, holding security receipts of not less than seventy-five per cent. of the total value of the security receipts issued by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

(4) The qualified institutional buyers shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitisation company or reconstruction company, as the case may be.

Exemption from Re registration of security receipt.

8. Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908,—

16 of 1908

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15 of 1992.

(a) any security receipt issued by the securitisation company or reconstruction company, as the case may be, under sub-section (1) of section 7, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or

(b) any transfer of security receipts,

shall not require compulsory registration.

Measures for assets reconstruction.

9. Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:

Issue of security by raising of receipts or funds by securitisation company or reconstruction company. (a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;

(b) the sale or lease of a part or whole of the business of the borrower;

(c) rescheduling of payment of debts payable by the borrower;

(d) enforcement of security interest in accordance with the provisions of this Ordinance;

(e) settlement of dues payable by the borrower;

(1) taking possession of secured assets in accordance with the provisions of this Ordinance.

10. (1) Any securitisation company or reconstruction company registered under section 3 may---

(a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;

(b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties;

(c) act as receiver if appointed by any court or fribunal:

Provided that no securitisation company or reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability.

(2) Save as otherwise provided in sub-section (1), no securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3, shall commence or carry on, without prior approval of the Reserve Bank. any business other than that of securitisation or asset reconstruction:

Provided that a securitisation company or reconstruction company which is carrying on, on or before the commencement of this Ordinance, any business other than the business of securitisation or asset reconstruction or business referred to in sub-section (1), shall cease to carry on any such business within one year from the date of commencement of this. Ordinance.

*Explanation*— For the purposes of this section, "securitisation company" or "reconstruction company" does not include its subsidiary.

11. Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, a securitisation company or reconstruction company or qualified institutional buyers, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

12. (1) If the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any securitisation company or reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such securitisation company or reconstruction company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any securitisation company or reconstruction company in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the securitisation company or reconstruction company, as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

Resolution of disputes.

Power of Reserve Bank to

determine

policy and is-

sue directions.

functions of securitisation company or reconstruction company.

Other

Sec. 1]

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-(2) Without prejudice to the generality of the power vested under sub-section (1), the Reserve Bank may give directions to any securitisation company or reconstruction company generally or to a class of securitisation companies or reconstruction companies or to any securitisation company or reconstruction company in particular as to--

(a) the type of financial asset of a bank or financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;

(b) the aggregate value of financial assets which may be acquired by any securitisation company or reconstruction company.

#### CHAPTER III

#### ENFORCEMENT OF SECURITY INTEREST

13. (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Ordinance.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under subsection (4).

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

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

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

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

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditors shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of subsection (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the

Enforcement of security interest. absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

Provided further that in the case of a company being wound up on or after the commencement of this Ordinance, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to subsection (1) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditors the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditors and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation --- For the purposes of this sub-section, ---

(a) "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any deasures specified in clauses (a) to (d) of subsection (4) in relation to the secured assets under this Ordinance.

SEC. 1]

1 of 1956.

1 of 1956.

1 of 1956.

(12) The rights of a secured creditor under this Ordinance may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession.

14. (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Ordinance, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured assets or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such assets and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate of the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Manner and effect of takeover of s-mont.

15. (1) When the management of business of a borrower is taken over by the secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language in circulation in the place where the principal office or the Lorrower is situated, appoint as many pulsous as it thinks fit-

(a) in a case in which the borrower is a company as defined in the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that 1 of 1956. Act; or

(b) in any other case, to be the administrator of the business of the borrower.

(2) On publication of a notice under sub-section (1),—

(a) in any case where the borrower is a company as defined in the Companies Act, 1956, all persons holding office as directors of the company and in any other case, 1 of 1956. all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;

(b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;

(c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;

(d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the

[PART II-

powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

(3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,-

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

(c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

(4) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

16. (1) Notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Ordinance of any contract of management entered into by him with the borrower.

(2) Nothing contained in sub-seciton (1) shall affect the right of any such managing director or any other director or manager of any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

17. (1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent. of the amount claimed in the notice referred to in subsection (2) of section 13:

Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Ordinance, the Debts Recovery Tribunal shall. as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

18. (1) Any person aggrieved by any order made by the Debts Recovery Tribunal under section 17 may prefer an appeal to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

(2) Save as otherwise provided in this Ordinance, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

19. If the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on Prower to rean appeal filed under section 17 or section 18, holds the possession of secured assets by the secured creditor as wrongful and directs the secured creditor to return such secured assets to

No compensation to directors for loss of office

Right 10 peal.

Appeal to Appellate Tribunal.

Right of bor-

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pensation and costs in certain cases

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the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or Appellate Tribunal.

#### CHAPTER IV

#### CENTRAL REGISTRY

Central Registry.

20. (1) The Central Government may, by notification, set-up or cause to be set-up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Ordinance.

(2) The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (1), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

(3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

(4) The provisions of this Ordinance pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 1956, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988 and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

16 of 1908. 1 of 1956. 44 of 1958. 39 of 1970. 59 of 1988.

Central Registrar.

Register

actions.

securitisation,

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of

21. (1) The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.

(2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Ordinance as he may, from time to time, authorise them to discharge.

22. (1) For the purposes of this Ordinance, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to-

(a) securitisation of financial assets;

(b) reconstruction of financial assets; and

(c) creation of security interest.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Central Registrar to keep the records wholly or partly in computer floppies, diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly on computer under subsection (2), any reference in this Ordinance to entry in the Central Register shall be construed as a reference to any entry as maintained on computer or in any other electronic form.

(4) The register shall be kept under the control and management of the Central Registrar.

Filing of transactions of securitisation, reconstruction and creation of security interest.

23. The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed, within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be:

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PART II

Provided that the Central Registrar may allow the filing of the particulars of such transaction or creation of security within thirty days next following the expiry of the said period of thirty days on payment of such additional fees not exceeding ten times the amount of such fee.

24. Whenever the terms or conditions, or the extent or operation of any security interest registered under this Chapter are or is modified, it shall be the duty of the securitisation company or the reconstruction company or the secured creditors, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification of such security interest.

**25.** (1) The securitisation company or reconstruction company or the secured creditors as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the securitisation company or the reconstruction company or the secured creditors and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.

(2) The Central Registrar shall, on receipt of such intimation, cause a notice to be sent to the securitisation company or reconstruction company or the secured creditors calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.

(3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

(4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

26. (1) The particulars of securitisation or reconstruction or security interest entered in the Central Register of such transactions kept under section 22 shall be open during the business hours for inpsection by any person on payment of such fees as may be prescribed.

(2) The Central Register referred to in sub-section (1) maintained in electronic form, shall also be open during the business hours for the inspection of any person through electronic media on payment of such fees as may be prescribed.

#### CHAPTER V

#### OFFENCES AND PENALTIES

27. If a default is made---

(a) in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditors; or

(b) in sending under section 24, the particulars of the modification referred to in that section; or

(c) in giving intimation under section 25,

every company and every officer of the company or the secured creditor and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

28. If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under section 12, such company and every officer of the company who is in default, shall be punishable with fine which may extend to two lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

transactions.

securitisation, reconstruc-

registered under this Ordinance. Securitisation company or reconstruc-

Modification

of security interest

15

Securitisation company or reconstruction company or secured creditors to report satisfaction of security

interest.

Right to

inspect particulars of

tion and

security

interest

Penalties.

Penalties for noncompliance of direction of Reserve Bank.

Offences.

16

**29.** If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Cognizance of offence

**30.** No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under this Ordinance.

#### CHAPTER VI

#### MISCELLANEOUS

Provisions of this Ordinance not to apply in certain cases. 31. The provisions of this Ordinance shall not apply to—

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

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

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

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

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

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

(g) any properties not liable to attachment or sale under the first proviso to subsection (1) of section 60 of the Code of Civil Procedure, 1908;

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

(i) any security interest created in agricultural land;

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

Protection of action taken in good faith.

**32.** No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Ordinance.

Offences by companies.

**33.** (1) Where an offence under this Ordinance has been committed by 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 offence 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 Ordinance, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance 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, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

[Part II-

24 of 1934.

44 of 1958

5 of 1908.

(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.

34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or an Appellate Tribunal is empowered by or under this Ordinance to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

35. The provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

36. No secured creditor shall be entitled to take all or any of the measures under subsection (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

37. The provisions of this Ordinance or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

38. (1) The Central Government may, by notification and in the Electronic Gazette as defined in clause (s) of section 2 of the Information Technology Act, 2000, make rules for carrying out the provisions of this Ordinance.

(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 form and manner in which an application may be filed under sub-section (10) of section 13;

(b) the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13;

(c) the safeguards subject to which the records may be kept under sub-section (2) of section 22;

(d) the manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;

(e) the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section (1) of section 26;

(f) the fees for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26;

(g) any other matter which is to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.

(3) Every rule made under this Ordinance 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 rule or both Houses 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.

SEC. 1]

51 of 1993.

36 of 1963.

1 of 1956.

42 of 1956.

15 of 1992.

51 of 1993.

21 of 2000.

\* \* \* \* \* \*

Civil court not to have juris-

diction.

The provisions of this Ordinance to override other laws.

Limitation.

Application of other laws not barred.

Power of Central Government to make rules.

Certain provisions of this Ordinance to apply after registry is set up or caused to be set up. 18

Power to remove difficulties. **39**. The provisions of sub-sections (2), (3) and (4) of section 20 and sections 21, 22, 23, 24, 25, 26 and 27 shall apply after the Central Registry is set up or caused to be set up under sub-section (1) of section 20.

40. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

41. The enactments specified in the Schedule shall be amended in the manner specified therein.

Amendments of certain enactments.

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#### THE SCHEDULE

			(See section 41)	
Year	Act No.	Short title	Amendment	
1956	42	The Securities Contracts (Regulation) Act, 1956.	In section 2, in clause (h), after sub-clause (ib), insert the following:—	
			"( <i>ic</i> ) security receipt as defined in clause $(zg)$ of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Inter-	

est Ordinance, 2002.".

insert the following:-

The Sick Industrial Companies (Special Provisions) Act, 1985.

1956 1

The Companies Act, 1956.

"Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002, where financial assets have been acquired by any securitisation company or reconstruction company

under sub-section (1) of section 5 of that Ordinance:

In section 15, in sub-section (1), after the proviso,

Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than threefourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (4) of section 13 of that Ordinance.".

In section 4A, in sub-section (1), after clause (vi), insert the following: -

"(vii) the securitisation company or reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002".

> K.R.NARAYANAN, President.

SUBHASH C. JAIN, Secy. to the Govt: of India.

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Reperfente Rep. by Act, 5492002, S. 42(w. Cr. 21-6-202)

रजिस्ट्री सं॰ डी॰एल॰-33004 / 2002

**REGISTERED NO. DL-33004/2002** 



# असाधारण

EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE

#### (Legislative Department)

New Delhi, the 21st August, 2002/Sravana 30, 1924 (Saka)

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST (SECOND) ORDINANCE; 2002

#### No. 3 of 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

WHEREAS the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 to provide for the aforesaid matters was promulgated by the President on the 21st day of June, 2002;

AND WHEREAS the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Bill, 2002 was introduced in the House of the People to replace the said Ordinance but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance; NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:----

#### CHAPTER I

#### PRELIMINARY

1. (1) This Ordinance may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 21st day of June, 2002.

2. (1) In this Ordinance, unless the context otherwise requires,-

Definitions.

Short title, extent and

commencement,

> (a) "Appellate Tribunal" means a Debts Recovery Appellate Tribunal established under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

51 of 1993.

(h) "asset reconstruction" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance;

(c) "bank" means—

(i) a banking company; or

(ii) a corresponding new bank; or

(iii) the State Bank of India; or

(*iv*) a subsidiary bank; or

(v) such other bank which the Central Government may, by notification, specify for the purposes of this Ordinance;

(d) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949;

(e) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

(g) "Central Registry" means the registry set up or cause to be set up under subsection (1) of section 20,

(h) "corresponding new bank" shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949;

(*i*) "Debts Recovery Tribunal" means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993,

(*j*) "default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor in accordance with the directions or guidelines issued by the Reserve Bank;

10 of 1949.

15 of 1992.

10 of 1949.

51 of 1993.

(k) "financial assistance" means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution;

(1) "financial asset" means debt or receivables and includes-

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(*ii*) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(vi) any financial assistance;

(m) "financial institution" means —

(*i*) a public financial institution within the meaning of section 4A of the Companies Act, 1956;

(*ii*) any institution specified by the Central Government under sub-clause (*ii*) of clause (*h*) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(*iii*) International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958;

(iv) any other institution or non-banking financial company as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934, which the Central Government may, by notification, specify as financial institution for the purposes of this Ordinance;

(n) "hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property;

(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to asset classifications issued by the Reserve Bank;

(p) "notification" means a notification published in the Official Gazette;

(q) "obligor" means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;

(r) "originator" means the owner of a financial asset which is acquired by a securitisation company or reconstruction company for the purpose of securitisation or asset reconstruction;

(s) "prescribed" means prescribed by rules made under this Ordinance;

1 of 1956.

51 of 1993.

42 of 1958.

2 of 1934.

(t) "property" means-

(*i*) immovable property;

(*ii*) movable property;

(*iii*) any debt or any right to receive payment of money, whether secured or unsecured;

(*iv*) receivables, whether existing or future;

(v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;

(u) "qualified institutional buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or any other body corporate as may be specified by the Board;

(v) "reconstruction company" means a company formed and registered under the Companies Act, 1956 for the purpose of asset reconstruction;

(w) "Registrar of Companies" means the Registrar defined in clause (40) of section 2 of the Companies Act, 1956;

(x) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

(y) "scheme" means a scheme inviting subscription to security receipts proposed to be issued by a securitisation company or reconstruction company under that scheme;

(z) "securitisation" means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;

(za) "securitisation company" means any company formed and registered under the Companies Act, 1956 for the purpose of securitisation;

(*zb*) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;

(zc) "secured asset" means the property on which security interest is created;

(zd) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes---

(i) debenture trustee appointed by any bank or financial institution; or

(ii) securitisation company or reconstruction company; or

(*iii*) any other trustee holding securities on behalf of a bank or financial institution,

in whose favour security interest is created for due repayment by any borrower of any financial assistance;

(ze) "secured debt" means a debt which is secured by any security interest;

(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;

1 of 1956

15 of 1992.

1 of 1956.

1 of 1956.

2 of 1934.

[Part II---

(zg) "security receipt" means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;

(zh) "sponsor" means any person holding not less than ten per cent. of the paid-up equity capital of a securitisation company or reconstruction company;

(zi) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955;

(zj) "subsidiary bank" shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959.

(2) Words and expressions used and not defined in this Ordinance but defined in the Indian Contract Act, 1872 or the Transfer of Property Act, 1882 or the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 shall have the same meanings respectively assigned to them in those Acts.

# CHAPTER II

#### REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

3. (1) No securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without—

(a) obtaining a certificate of registration granted under this section; and

(b) having the owned fund of not less than two crore rupees or such other amount not exceeding fifteen per cent. of total financial assets acquired or to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify:

Provided that the Rescrve Bank may, by notification, specify different amounts of owned fund for different class or classes of securitisation companies or reconstruction companies:

Provided further that a securitisation company or reconstruction company, existing on the commencement of this Ordinance, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.

(2) Every securitisation company or reconstruction company shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

(3) The Reserve Bank may, for the purpose of considering the application for registration of a securitisation company or reconstruction company to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:—

(a) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years;

(b) that such securitisation company or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;

Registration of securitisation companies or

reconstruction

companies.

SEC. 1]

23 of 1955.

38 of 1959.

9 of 1872.

4 of 1882.

1 of 1956.

15 of 1992.

[PART II---

(c) that the directors of securitisation company or reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction;

(d) that the board of directors of such securitisation company or reconstruction company does not consist of more than half of its total number of directors who are either nominees of any sponsor or associated in any manner with the sponsor or any of its subsidiaries:

(e) that any of its directors has not been convicted of any offence involving moral turpitude;

(f) that a sponsor, is not a holding company of the securitisation company or reconstruction company, as the case may be, or, does not otherwise hold any controlling interest in such securitisation company or reconstruction company;

(g) that the securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.

(4) The Reserve Bank may, after being satisfied that the conditions specified in subsection (3) are fulfilled, grant a certificate of registration to the securitisation company or the reconstruction company to commence or carry on business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

(5) The Reserve Bank may reject the application made under sub-section (2) if it is satisfied that the conditions specified in sub-section (3) are not fulfilled:

Provided that before rejecting the application, the applicant shall be given a reasonable opportunity of being heard.

(6) Every securitisation company or reconstruction company, shall obtain prior approval of the Reserve Bank for any substantial change in its management or change of location of its registered office or change in its name:

Provided that the decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final.

*Explanation.*—For the purposes of this section, the expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.

4. (1) The Reserve Bank may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company—

(a) ceases to carry on the business of securitisation or asset reconstruction; or

(b) ceases to receive or hold any investment from a qualified institutional buyer;

or

Cancellation of

certificate of

registration.

(c) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or

(d) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or

(e) fails to ---

(*i*) comply with any direction issued by the Reserve Bank under the provisions of this Ordinance; or

(*ii*) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Ordinance; or

(*iii*) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or

(*iv*) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

Provided that before cancelling a certificate of registration on the ground that the securitisation company or reconstruction company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the securitisation company or the reconstruction company, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

(2) A securitisation company or reconstruction company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government:

Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

(3) A securitisation company or reconstruction company, which is holding investments of qualified institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation, be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

5. (1) Notwithstanding anything contained in any agreement or any other faw for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution—

(a) by issuing a debenture or bond or any other security in the nature of the debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(3) Unless otherwise expressly provided by this Ordinance, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of

SEC. 1]

7

Acquisition of rights or

interest in

financial assets the said bank or financial institution, the securitisation company or the reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of the securitisation company or reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985, the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

6.(1) The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority (including Registrar of Companies) in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

(2) Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

(3) Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitisation company or reconstruction company, as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

7. (1) Without prejudice to the provisions contained in the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, any securitisation company or reconstruction company, may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts.

1 of 1956. 42 of 1956. 15 of 1992.

(2) A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

(3) In the event of non-realisation under sub-section (2) of financial assets, the qualified institutional buyers of a securitisation company or reconstruction company holding security receipts of not less than seventy-five per cent. of the total value of the security receipts issued by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

(4) The qualified institutional buyers shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitisation company or reconstruction company, as the case may be.

Notice to obligor and discharge of obligation of such obligor.

Issue of security by raising of receipts or funds by securitisation company or reconstruction company. 1 of 1986.

8. Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908,—

(a) any security receipt issued by the securitisation company or reconstruction company, as the case may be, under sub-section (1) of section 7, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or

(b) any transfer of security receipts, shall not require compulsory registration.

9. Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:----

(a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;

(b) the sale or lease of a part or whole of the business of the borrower;

(c) rescheduling of payment of debts payable by the borrower;

(d) enforcement of security interest in accordance with the provisions of this Ordinance;

(e) settlement of dues payable by the borrower;

(f) taking possession of secured assets in accordance with the provisions of this Ordinance.

10. (1) Any securitisation company or reconstruction company registered under section 3 may —

(a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fee or charges as may be mutually agreed upon between the parties;

(b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties;

(c) act as receiver if appointed by any court or tribunal:

Provided that no securitisation company or reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability.

(2) Save as otherwise provided in sub-section (1), no securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3, shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction:

Provided that a securitisation company or reconstruction company which is carrying on, on or before the commencement of this Ordinance, any business other than the business of securitisation or asset reconstruction or business referred to in sub-section (1), shall cease to carry on any such business within one year from the date of commencement of this Ordinance.

*Explanation*—For the purposes of this section, "securitisation company" or "reconstruction company" does not include its subsidiary.

11. Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank or financial institution or a securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in

Resolution of disputes.

Other functions of securitisation company or reconstruction company,

receipt.

Exemption

from registra-

tion of security

Measures for assets reconstruction.

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16 of 1908.

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the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in 26 of 1996. writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

Power of Reserve Bank to determine policy and issue directions. 12. (1) If the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any securitisation company or reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such securitisation company or reconstruction company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any securitisation company or reconstruction company in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the securitisation company or reconstruction company, as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

(2) Without prejudice to the generality of the power vested under sub-section (1), the Reserve Bank may give directions to any securitisation company or reconstruction company generally or to a class of securitisation companies or reconstruction companies or to any securitisation company or reconstruction company in particular as to—

(a) the type of financial asset of a bank or financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;

(b) the aggregate value of financial assets which may be acquired by any securitisation company or reconstruction company.

#### CHAPTER III

#### ENFORCEMENT OF SECURITY INTEREST

Enforcement. of security interest. 13. (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Ordinance.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under subsection (4).

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

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

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager) to manage the secured assets the possession of which has been taken over by the secured creditor;

4 of 1882.

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

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(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditors shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of subsection (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

Provided further that in the case of a company being wound up on or after the commencement of this Ordinance, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to subsection (1) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

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1 of 1956.

### Explanation .-- For the purposes of this sub-section,--

(a) "record date" means the date agreed upon by the secured creditorsrepresenting not less than three-fourth in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(17) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of subsection (4) in relation to the secured assets under this Ordinance.

(12) The rights of a secured creditor under this Ordinance may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. 14. (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Ordinance, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (/), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Manner and effect of take over of management. 15. (1) When the management of business of a borrower is taken over by a secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit—

(a) in a case in which the borrower is a company as defined in the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that Act; or

(b) in any other case, to be the administrator of the business of the borrower.

(2) On publication of a notice under sub section (1),—

(a) in any case where the borrower is a company as defined in the Companies Act, 1956, all persons holding office as directors of the company and in any other case, 1 of 1956. all persons holding any office having power of superintendence, direction and control of the business of the borrower inimediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;

(b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;

(c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the. property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;

(d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or, as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or, as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

(3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,---

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

(c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

(4) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

16. (1) Notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Ordinance of any contract of management entered into by him with the borrower.

(2) Nothing contained in sub-section (1) shall affect the right of any such managing director or any other director or manager or any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

17. (1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent. of the amount claimed in the notice referred to in sub-section (2) of section 13:

tion to directors for loss of office.

Right to appeal.

No compensa-

1 of 1956.

Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Ordinance, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

Appeal to Appeliate Tribunal.

Right of borrower to

receive

compensation

and costs in

certain cases.

18. (1) Any person aggrieved by any order made by the Debts Recovery Tribunal under section 17 may prefer an appeal to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

(2) Save as otherwise provided in this Ordinance, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

19. If the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on an appeal filed under section 17 or section 18, holds the possession of secured assets by the secured creditor as wrongful and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or the Appellate Tribunal.

### CHAPTER IV

### CENTRAL REGISTRY

Central Registry. 20. (1) The Central Government may, by notification, set up or cause to be set up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Ordinance.

(2) The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (I), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

(3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

(4) The provisions of this Ordinance pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 1956, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988, and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

Central Registrar. 21. (1) The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.

(2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Ordinance as he may, from time to time, authorise them to discharge.

22. (1) For the purposes of this Ordinance, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to—

reconstruction and security interest transactions

Register of

securitisation,

(a) securitisation of financial assets;

(b) reconstruction of financial assets; and

(c) creation of security interest.

51 of 1993.

51 of 1993.

16 of 1908. 1 of 1956. 44 of 1958. 39 of 1970. 59 of 1988. 16 of 2000. (2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Central Registrar to keep the records wholly or partly in computer, floppies, diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly on computer, floppies, diskettes or in any other electronic form, under sub-section (2), any reference in this Ordinance to entry in the Central Register shall be construed as a reference to any entry as maintained on computer or in any other electronic form.

(4) The register shall be kept under the control and management of the Central Registrar.

23. The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed, within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be:

Provided that the Central Registrar may allow the filing of the particulars of such transaction or creation of security interest within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of such fee.

24. Whenever the terms or conditions, or the extent or operation, of any security interest registered under this Chapter, are, or is, modified, it shall be the duty of the securitisation company or the reconstruction company or the secured creditor, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification of such security interest.

25. (1) The securitisation company or the reconstruction company or the secured creditor, as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the securitisation company or the reconstruction company or the secured creditor and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.

(2) The Central Registrar shall, on receipt of such intimation, cause a notice to be sent to the securitisation company or reconstruction company or the secured creditor calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.

(3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

(4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

26. (1) The particulars of securitisation or reconstruction or security interest entered in the Central Register of such transactions kept under section 22 shall be open during the business hours for inspection by any person on payment of such fee as may be prescribed.

(2) The Central Register referred to in sub-section (1) maintained in electronic form, shall also be open during the business hours for the inspection of any person through electronic media on payment of such fee as may be prescribed.

# CHAPTER V

#### OFFENCES AND PENALTIES

27. If a default is made-

(a) in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditor; or

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Modification of security interest registered under this Ordinance.

Securitisation company or reconstruction company or secured creditor to report satisfaction of security interest.

Right to inspect particulars of securitisation, reconstruction and security interest transactions. (b) in sending under section 24, the particulars of the modification referred to in that section; or

(c) in giving intimation under section 25, every company and every officer of the company or the secured creditor and every officer of the secured creditor who is in -default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

28. If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under section 12, such company and every officer of the company who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

29. If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

**30.** No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Ordinance.

### CHAPTER VI

# MISCELLANEOUS.

Provisions of this Ordinance not to apply in certain cases.

Penalties for non-compli-

direction of

Offences.

Reserve Bank.

Cognizance of offence.

ance of

31. The provisions of this Ordinance shall not apply to-

(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force;	9 of 1872. 3 of 1930.
(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872;	9 of 1872.
(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934;	24 of 1934:
(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;	44 of 1958.
(e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;	

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

(g) any properties not liable to attachment or sale under the first proviso to subsection (1) of section 60 of the Code of Civil Procedure, 1908; 5 of 1908.

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

(i) any security interest created in agricultural land;

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

32. No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Ordinance.

33. (1) Where an offence under this Ordinance has been committed by 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 decided to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Protection of action taken in good faith.

Offences by companies.

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance 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, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the 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.

34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Ordinance to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

**35.** The provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

**36.** No secured creditor shall be entitled to take all or any of the measures under subsection (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

37. The provisions of this Ordinance or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

38. (1) The Central Government may, by notification and in the Electronic Gazette as defined in clause (s) of section 2 of the Information Technology Act, 2000, make rules for carrying out the provisions of this Ordinance.

(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 form and manner in which an application may be filed under sub-section (10) of section 13;

(b) the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13;

(c) the safeguards subject to which the records may be kept under sub-section (2) of section 22;

(d) the manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;

(e) the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section (1) of section 26;

51 of 1993.

1 of 1956.

36 of 1963.

42 of 1956. 15 of 1992. 51 of 1993.

21 of 2000.

Civil court not to have jurisdiction.

The provisions of this Ordinance to override other laws.

Limitation.

Application of other laws not, barred.

Power of Central Government to make rules.

Ord, 2 of 2002.

(1) the fee for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26;

(g) any other matter which is to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.

(3) Every rule made under this Ordinance 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 rule or both Houses 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.

**39.** The provisions of sub-sections (2), (3) and (4) of section 20 and sections 21, 22, 23, 24, 25, 26 and 27 shall apply after the Central Registry is set up or cause to be set up under sub-section (1) of section 20.

Power to remove difficulties

Certain provisions of

this Ordinance

to apply after registry is set up or caused to be set up.

**40.** (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendments to certain enactments.

Repeal and saving.

41. The enactments specified in the Schedule shall be amended in the manner specified therein.

**42.** (/) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 is hereby repealed.

(2) Notwithstanding such repeal, any thing done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

# THE SCHEDULE

### (See section 41)

#### Amendment

Year Act No. Short title 1956 1 The Companies Act, 1956.

The Securities

Contracts

(Regulation) Act, 1956.

The Sick Industrial

(Special Provisions)

Companies

Act, 1985.

In section 4A, in sub-section (1), after clause (vi), insert the following:—

"(vii) the securitisation company or the reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002."

In section 2, in clause (h), after sub-clause (ib), insert the following:—

"(*ic*) security receipt as defined in clause (*zg*) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002.".

In section 15, in sub-section (1), after the proviso, insert the following:—

"Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of that Ordinance:

Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than threefourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (4) of section 13 of that Ordinance.".

> A.P.J. ABDUL KALAM, President.

SUBHASH C. JAIN, Secy. to the Govt. of India.

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Repealed by Ad, 72 y 2002, 5-7 ( wo et 24-8-2002)

रजिस्ट्री सं॰ डी॰एल॰-33004 / 2002

**REGISTERED NO. DL-33004 / 2002** 



असाधारण EXTRAORDINARY भाग II ---- खण्ड 1 PART II --- Section 1 ्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 52]	नई दिल्ली, शनिवार, अगस्त 24, 2002 / भांद्र 2, 1924	
No. 52]	NEW DELIH, SATURDAY, AUGUST 24, 2002 / BHADRA 2, 1924	

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 24th August, 2002/Bhadra 2, 1924 (Saka)

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ORDINANCE, 2002 No. 4 of 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance further to amend the Representation of the People Act, 1951.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Representation of the People (Amendment) Ordinance, 2002.

Short title and commencement.

(2) Save as off-erwise provided in this Ordinance, the provisions of this Ordinance shall come into force at once.

Insertion of new section 33A.

Right to

information

2. After section 33 of the Representation of the People Act, 1951 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:-

"33A. (1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether—

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered."

Insertion of new section,33B.

Candidate to furnish information only under the Act and the rules.

Insertion of new Chapter VIIA.

3. After section 33A of the principal Act as so inserted, the following section shall be inserted and shall be deemed to have been inserted with effect from the  $2^{nd}$  day of May, 2002, namely:-

"33B. Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder.".

4. In Part V of the principal Act, after Chapter VII, the following Chapter shall be inserted, namely:-

### **'CHAPTER VIIA**

#### DECLARATION OF ASSETS AND LIABILITIES

Declaration of assets and liabilities.

75A. (1) Every elected candidate for a House of Parliament or the Legislature of a State shall, within ninety days from the date on which he makes and subscribes an oath or affirmation,  $\pm$  cording

43 of 1951.

[PART II-

to the form set out for the purpose in the Third Schedule to the Constitution, for taking his seat in either House of Parliament or in the Legislative Assembly of a State or the Legislative Council of a State, as the case may be, furnish the information, relating to-

(i) the movable and immovable property of which he is the owner or a beneficiary;

(ii) his liabilities to any public financial institution; and

(*iii*) his liabilities to the Central Government or the State Government,

to the Chairman of the Council of States or the Speaker of the House of the People or the Chairman of the Legislative Council of a State or the Speaker of the Legislative Assembly of a State, as the case may be.

(2) The information under sub-section (1) shall be furnished in such form and in such manner as may be prescribed in the rules made under sub-section (3).

(3) The Chairman of the Council of States or the Speaker of the House of the People or the Chairman of the Legislative Council of a State or the Speaker of the Legislative Assembly of a State, as the case may be, may make rules for the purposes of subsection (2).

(4) The rules made by the Chairman of the Council of States or the Speaker of the House of the People or, as the case may be, by the Chairman of the Legislative Council of a State or the Speaker of the Legislative Assembly of a State under sub-section (3) shall be laid, as soon as may be after they are made, before the Council of States or the House of the People or the Legislative Council or the Legislative Assembly, as the case may be, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the Council of States or the House of the People or the Legislative Council or the Legislative Assembly and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(5) The Chairman of the Council of States or the Speaker of the House of the People or, as the case may be, the Chairman of the Legislative Council of a State or the Speaker of the Legislative Assembly of a State may direct that any wilful contravention of the rules made under sub-section (3) by an elected candidate referred to in sub-section (I) may be dealt with in the same manner as a breach of privilege of the Council of States or the House of the People or the Legislative Council or the Legislative Assembly, as the case may be. Explanation -- For the purposes of this section,-

(*i*) "immovable property" means the land and includes any building or other structure attached to the land or permanently fastened to anything which is attached to the land;

(*ii*) "movable property" means any other property which is not the immovable property and includes corporeal and incorporeal property of every description;

(*iii*) "public financial institution" means a public financial institution within the meaning of section 4A of the Companies Act, 1956 and includes bank; and

(iv) "bank" referred to in clause (iii) means -

(a) "State Bank of India" constituted under section 3 of the State Bank of India Act, 1955;

(b) "subsidiary bank" having the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;

(c) "Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976;

(d) "corresponding new bank" having the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949; and

(e) "co-operative bank" having the meaning assigned to it in clause (*cci*) of section 5 of the Banking Regulation Act, 1949 as modified by subclause (*i*) of clause (*c*) of section 56 of that Act.".

5. After section 125 of the principal Act, the following section shall be inserted, namely:-

"125A. A candidate who himself or through his proposer, with intent to be elected in an election,-

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(*ii*) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the

Insertion of new section 125A.

Penalty for filing false affidavit, etc. I of 1956.

23 of 1955.

38 of 1959.

21 of 1976.

10 of 1949.

10 of 1949.

4

[PART II-

5

time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with . both.".

6. In section 169 of the principal Act, in sub-section (2), clause Am (a) shall be renumbered as clause (aa) thereof, and before clause (aa)  $\frac{1}{2}$  as so renumbered, the following clause shall be inserted, namely:-

Amendment of section 169.

"(a) the form of affidavit under sub-section (2) of section 33A;".

# · · · · ·

A.P.J. ABDUL KALAM,

President.

SUBHASH C. JAIN Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS (PLU), MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2002.

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रजिस्ट्री सं॰ डी॰एल॰-33004 / 2002

**REGISTERED NO. DL-33004 / 2002** 





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सं॰ 59] No. 59] नई दिल्ल्रे, मंगलवार, अक्टूबर 29, 2002 / कार्तिक 7, 1924 NEW DELHI, TUESDAY, OCTOBER 29, 2002 / KARTIKA 7, 1924

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 29th October, 2002/Kartika 7, 1924 (Saka)

# THE SECURITIES AND EXCHANGE BOARD OF INDIA (AMENDMENT) ORDINANCE, 2002

# No. 6 of 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance further to amend the Securities and Exchange Board of India Act, 1992.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of , the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Securities and Exchange Board of India (Amendment) Ordinance, 2002.

(2) It shall come into force at once.

2. In section 2 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the principal Act), after clause (h), the following clause shall be inserted, namely:—

ment.

Amendment of Section 2;

Short title and

commence-

15 of 1992.

(ha) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;'.

2 of 1934

Amendment of section 4,

# 3. In section 4 of the principal Act,-

# (a) in sub-section (1), --

(i) in clause (b), for the words "and Law", the words and figures "and administration of the Companies Act, 1956" shall be substituted;

(*ii*) in clause (c), for the words and figures "the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934", the 2 of 1934. words "the Reserve Bank" shall be substituted;

(iii) for clause (d), the following clause shall be substituted, namely:—

"(d) five other members of whom at least three shall be the wholetime members,";

(b) in sub-section (4), for the words "Reserve Bank of India", the words "Reserve Bank" shall be substituted.

4. In section 11 of the principal Act, ----

(a) in sub-section (2), after clause (i), the following clause shall be inserted, namely:—

"(*ia*) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation or inquiry by the Board;";

(b) after sub-section (2), the following sub-section shall be inserted, namely:---

"(2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.";

(c) in sub-section (3),—

(i) in the opening portion, for the words, brackets and figures "clause (i) of sub-section (2)", the words, brackets, figures and letters "clause (i) or clause (ia) of sub-section (2) or sub-section (2A)" shall be substituted;

(ii) after clause (iii), the following clause shall be inserted at the end, namely :---

"(iv) inspection of any book, or register, or other document or record of the company referred to in section (2A);

(v) issuing commissions for the examination of witnesses or documents.";

(d) after sub-section (3), the following sub-section shall be inserted, namely:-

"(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stockexchange;

Amendment of section 11. 1 of 1956.

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities:

(c) suspend any office-bearer of any stock exchange or selfregulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach after passing of an order on an application made for approval, by the Judicial Magistrate of first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder :

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.".

5. For section 11A of the principal Act, the following section shall be substituted, namely :-

Substitution of new section for section 11A.

1 of 1956.

"Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of

investors.-

(a) specify, by regulations ---(i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and

11A. (1) Without prejudice to the provisions of the

Companies Act, 1956, the Board may, for the protection of

- (ii) the manner in which such matters shall be disclosed by the companies;
- (b) by general or special orders-

(i) prohibit any company from issuing of prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;

(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

securities.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956, the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.".

> "Investigation. 11C. (1) Where the Board has reasonable ground to believe that---

- (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or
- (b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder,

it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced :

Provided that the Investigating Authority may call for any book, register, other document and record if they are needed again :

.

#### 1 of 1956.

42 of 1956.

[PART II-

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority; it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) If any person fails without reasonable cause or refuses—

(a) to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document and record which it is his duty under sub-section (1) or sub-section (3)to produce; or

(b) to furnish any information which it is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

. (d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

(7) Notes of any examination under sub-section (2) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial VERMONTER

Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority —

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record it considers necessary for the purposes of the investigation:

Provided that the Magistrate shall not authorise seizure of books, registers, other documents and record, of listed public company or a public company (not being the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation.

(10) The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

2 of 1974.

Cease and desist proceedings.

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11D. If the Board finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rules or regulations made thereunder, the Board may pass an order requiring such person to cease and desist from committing or causing such violation:

Provided that the Board shall not pass such order in respect of listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless the Board has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.". 7. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:---

# "Chapter VA

# PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

12A. No person shall directly or indirectly-

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

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed in a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed in a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

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

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed in a recognized stock exchange in contravention of the regulations made under this Act."

8. In section 14 of the principal Act, in sub-section (1), clause (aa) shall be omitted.

9. In section 15A of the principal Act,-

(i) in clause (a), for the words "a penalty not exceeding one lakh and fifty thousand rupees", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(*ii*) in clause (*b*), for the words "a penalty not exceeding five thousand rupees for every day during which such failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(*iii*) In clause (c), for the words "a penalty not exceeding ten thousand rupees for every day during which the failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

10. In section 15B of the principal Act, for the words "a penalty not exceeding five lakh rupees", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

Amendment of section 15B.

Ned or

Amendment of

Amendment of section 15A.

section 14.

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

Insertion of new Chapter

VÁ.

> "Penalty for failure to redress investors' grievances.

15C. If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.".

Amendment of section 15D.

# 12. In section 15D of the principal Act, —

(i) in clause (a), for the words "a penalty not exceeding ten thousand rupees for each day during which he carries on any collective investment scheme including mutual funds, or ten lakh rupees, whichever is higher", the words "a penalty of one lakh rupees for each day during which he sponsors or carries on any collective investment scheme including mutual funds or one crore rupees, whichever is less" shall be substituted;

(*ii*) in clause (b), for the words "a penalty not exceeding ten thousand rupees for each day during which such failure continues or ten lakh rupees, whichever is higher", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(*iii*) in clause (c), for the words "a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is higher", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(iv) in clause (d), for the words "a penalty not exceeding one thousand rupees for each day during which such failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(v) in clause (e), for the words "a penalty not exceeding one thousand rupees for each day during which such failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(vi) in clause (f), for the words "a penalty not exceeding five lakh rupees for each such failure", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

Amendment of section 15E

13. In section 15E of the principal Act, for the words "a penalty not exceeding five lakh rupees for each such failure", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

Amendment of section 15F.

14. In section 15F of the principal Act,---

(i) in clause (b), for the words "a penalty not exceeding five thousand rupees for each day during which such failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, which ever is less" shall be substituted.

(ii) in clause (c), for the words "a penalty not exceeding five thousand rupees", the words "a penalty of one lakh rupees" shall be substituted.

15. In section 15G of the principal Act, for the words "five lakh rupees", the words "twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher" shall be substituted.

16. In section 15H, --

(a) after clause (ii), the following clauses shall be inserted, namely:----

"(*iii*) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,";

(b) for the words "five lakh rupees", the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" shall be substituted.

17. After section 15H of the principal Act, the following sections shall be inserted, namely:---

"Penalty for fraudulent and unfair trade practices. 15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty not exceeding twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided. 15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

18. In section 15-I of the principal Act, in sub-section (1), for the word, figures and letter "and 15H", the figures, letters and word "15H, 15HA and 15HB" shall be substituted.

19. After section 15J of the principal Act, the following section shall be inserted, namely :---

20. For sections 15L and 15M of the principal Act, the following sections shall be substituted, namely:—

"Establishr	nent	
of Securitie	s	
Appellate	· · ·	
Tribunal.		•

15L. A Securities Appellate Tribunal shall consist of a Presiding Officer and two other members, to be appointed, by notification, by the Central Government :

Provided that the Securities Appellate Tribunal, consisting of one person only, established before the commencement of the Securities and Exchange Board of India (Amendment) Ordinance, 2002, shall continue to exercise the jurisdiction, powers and authority conferred on it by or under this Act or any other law for the time being in force till two other Members are appointed under this section.

Substitution of new section for sections 15L and 15M.

Amendment of section 15-I.

Insertion of a new section

15JA.

Amendment of section 15G.

Amendment of section 15H.

Insertion of new sections

15HA and 15HB.

SEC. 1]

Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal.

Substitution of new section for section 15N.

"Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal.

Amendment section 15-O.

Amendment section 15P.

Amendment section 15Q.

15M. (1) A person shall not be qualified for appointment as the Presiding Officer of a Securities Appellate Tribunal unless he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court :

Provided that the Presiding Officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

(2) A person shall not be qualified for appointment as Member of a Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy:

Provided that a member of the Board or any person holding a post at senior management level equivalent to Executive Director in the Board shall not be appointed as Presiding Officer or Member of a Securities Appellate Tribunal during his service or tenure as such with the Board or within two years from the date on which he ceases to hold office as such in the Board."

21. For section 15N of the principal Act, the following section shall be substituted, namely:—

15N. The Presiding Officer and every other Member of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment :

Provided that no person shall hold office as the Presiding Officer of the Securities Appellate Tribunal after he has attained the age of sixty-eight years:

Provided further that no person shall hold office as a Member of the Securities Appellate Tribunal after he has attained the age of sixty-two years.".

22. In section 15-O of the principal Act,—

(a) for the words "Presiding Officer of a Securities Appellate Tribunal", the words "Presiding Officer and other Members of a Securities Appellate Tribunal" shall be substituted;

(b) for the words "said Presiding Officers", the words "Presiding Officer and other Members of a Securities Appellate Tribunal" shall be substituted.

, 23. In section 15P of the principal Act, for the words "office of the Presiding Officer", the words "the office of the Presiding Officer or any other Member" shall be substituted.

24. In section 15Q of the principal Act, -

(a) in sub-section (1),—

(*i*) for the words "Presiding Officer of a Securities Appellate Tribunal", the words "the Presiding Officer or any other Member" shall be substituted;

(*ii*) in the proviso, for the words "the said Presiding Officer", the words "the Presiding Officer or any other Member" shall be substituted;

(b) in sub-section (2), for the words "Presiding Officer" at both the places where they occur, the words "Presiding Officer or any other Member" shall be substituted;

10

45 of 1860.

2 of 1974.

25. In section 15R of the principal Act, for the words "Presiding Officer", the words "Presiding Officer or a Member" shall be substituted.

26. For section 15X of the principal Act, the following section shall be substituted, namely:--

"Presiding Officer, Members and staff of Securities Appellate Tribunals to be public servants.

15X. The Presiding Officer, Members and other officers and employees of a Securities Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.".

27. For section 15Z of the principal Act, the following section shall be substituted, namely:—

"Appeal to Supreme Court. 15Z. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.".

### 28. In section 24 of the principal Act, ---

(a) in sub-section (1), for the words "one year, or with fine, or with both" the words "ten years, or with fine, which may extend to twenty-five crore rupees or with both" shall be substituted;

(b) in sub-section (2), for the words "three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both", the words "ten years or with fine, which may extend to twenty-five crore rupees or with both" shall be substituted.

29. After section 24 of the principal Act, the following sections shall be inserted, namely :---

"Composition of certain offences

Power to grant Immunity. - 24A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

24B. (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation :

Amendment of section 15R.

Substitution of new section for section 15X.

Substitution of new section for section 15Z.

Amendment of section 24.

Insertion of new sections 24A and 24B. Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that recommendation of the Board under this sub-section shall not be binding on the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.".

**30.** In section 26 of the principal Act, in sub-section (2), for the words "a Metropolitan Magistrate or a Judicial Magistrate of the first class", the words "a Court of Session" shall be substituted.

Amendment of section 29.

Amendment

of section 26.

31. In section 29 of the principal Act, in sub-section (2), —

(i) in clause (db), for the words "Presiding Officers", the words "Presiding Officers, Members" shall be substituted;

(*ii*) in clause (dc), for the words "Presiding Officers", the words "Presiding Officers, Members" shall be substituted.

A.P.J. ABDUL KALAM, President. . The state

SUBHASH C. JAIN Secy. to the Govt. of India.

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Repealed by Act, 58 f 2002, S. 25 ( 20. C+ 29-10-2002)

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**REGISTERED NO. DL-33004 / 2002** 



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इस भाग में भिन्न पुष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE

### (Legislative Department)

New Delhi, the 29th October, 2002/Kartika 7, 1924 (Saka)

# THE UNIT TRUST OF INDIA (TRANSFER OF UNDERTAKING AND REPEAL) ORDINANCE, 2002

# No. 5 of 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance to provide for the transfer and vesting of the undertaking (excluding specified undertaking) of the Unit Trust of India to the specified company to be formed and registered under the Companies Act, 1956, and vesting of the specified undertaking of the Unit Trust of India in the Administrator and for matters connected therewith or incidental thereto and also to repeal the Unit Trust of India Act, 1963.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

# CHAPTER I

#### PRELIMINARY

1. (1) This Ordinance may be called the Unit Trust of India (Transfer of Undertaking Short title and and Repeal) Ordinance, 2002.

commencement.

(2) It shall come into force at once.

### Definitions.

2. In this Ordinance, unless the context otherwise requires,-

(a) "Administrator" means a person or a body of persons appointed as Administrator under section 7;

(b) "appointed day" means such date as the Central Government may, by notification in the Official Gazette, appoint under section 4;

(c) "bank" shall have the meaning assigned to it in clause (d) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(d) "Development Bank" means the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964; 18 of 1964.

(e) "financial institution" shall have the meaning assigned to it in clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; 51 of 1993.

(1) "Life Insurance Corporation of India" means the Life Insurance Corporation of India established under sub-section (1) of section 3 of the Life Insurance Corporation Act, 1956;

(g) "Schedule" means the Schedules I and II to this Ordinance;

(h) "specified company" means a company to be formed and registered under the Companies Act, 1956 and whose entire capital is subscribed by such financial 1 of 1956. institutions or banks as may be specified by the Central Government, by notification in the Official Gazette, for the purpose of vesting of undertaking;

(i) "specified undertaking" includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes and Development Reserve Fund specified in the Schedule I;

(j) "State Bank" means the State Bank of India constituted under the State Bank of India Act, 1955;

(k) "Trust" means the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963;

(1) "undertaking" includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes specified in the Schedule II;

(m) "unit" means a unit issued under a unit scheme made under section 21 of the Unit Trust of India Act, 1963.

### CHAPTER II

TRANSFER AND VESTING OF THE UNDERTAKING OF TRUST IN SPECIFIED COMPANY

- 3. (1) On the appointed day, the initial capital of the Trust, contributed by the Development Bank, the Life Insurance Corporation, the State Bank and the subsidiary banks and other institutions under sections 4 and 4A of the Unit Trust of India Act, 1963, as it stood immediately before the commencement of this Ordinance, shall vest in the Central Government.

(2) The initial capital contributed by the Development Bank, the Life Insurance Corporation, the State Bank and the subsidiary banks and other institutions shall be refunded by the Central Government such amount as may be determined by it having regard to the book value, the assets and liabilities of the Trust.

4. (1) On such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be transferred to, and vest in,---

(a) the specified company, the undertaking (excluding the specified undertaking) of the Trust for such consideration and on such terms and conditions as may be mutually agreed upon between the Central Government and the subscribers to the capital of the specified company;

Transfer of initial capital.

Trust to vest in Administrator and specified company.

Undertaking of

23 of 1955.

51 of 1993.

31 of 1956

52 of 1963.

52 of 1963.

### (b) the Administrator, the specified undertaking of the Trust.

(2) The decision of the Central Government, as to whether any business, assets, liabilities or properties represent or relate to the undertaking or specified undertaking, shall be final:

Provided that any business, asset or property which is not represented or related to the undertaking or specified undertaking, shall vest in the Central Government.

5. (1) The undertaking of the Trust which is transferred to, and which vest in, the specified company under section 4 or the specified undertaking, which is transferred to, and vest in, the Administrator, as the case may be, shall be deemed to include all business, assets, rights, powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments, shares, bonds, debentures, security, management of any industrial concern, loans, advances and guarantees given to industrial concerns, tenancies, leases and book-debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession or power of the Trust in relation to the undertaking or the specified undertaking, as the case may be, within or without India, all books of account, registers, records and documents relating thereto and shall also be deemed to include all borrowings, liabilities, units issued and obligations of whatever kind within or without India then subsisting of the Trust in relation to such undertaking or the specified undertaking, as the case may be.

(2) All contracts, deeds, bonds, guarantees, powers-of-attorney, other instruments (including all units issued and unit schemes formulated by the Trust) and working arrangements subsisting immediately before the appointed day and affecting the Trust shall cease to have effect or to be enforceable against the Trust and shall be of as full force and effect against or in favour of the specified company or the Administrator, as the case may be, in which the undertaking or specified undertaking has vested by virtue of this Ordinance and enforceable as fully and effectually as if instead of the Trust, the specified company or the Administrator, as the case may be, had been named therein or had been a party thereto.

(3) All unit schemes taken by the Board of the Trust before the commencement of this Ordinance shall be deemed to have been taken by the specified company or the Administrator, as the case may be, and all the units issued by the Trust under such scheme shall be deemed to be the units issued by the specified company or the Administrator, as the case may be, and the income on such units shall be distributed and such units shall be redeemed or purchased in the same manner as would have been done by the Trust had the undertaking or the specified undertaking not been transferred under section 4.

(4) Any proceeding or cause of action pending or existing immediately before the appointed day by or against the Trust may, as from the appointed day, be continued and enforced by or against the specified company or the Administrator, as the case may be, in which the undertaking or specified undertaking has vested by virtue of this Ordinance as it might have been enforced by or against the Trust if this Ordinance had not been promulgated and shall cease to be enforceable by or against the Trust.

6. (1) Every officer or other employee of the Trust (except a trustee of the Board or the Chairman and executive trustee) serving in the employment immediately before the appointed day shall become, as from the appointed day, an officer or, as the case may be, other employee of the specified company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave fare concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary

Provisions in respect of officers and other employces of Trust. retirement, gratuity and other benefits as he would have held under the Trust if its undertaking had not vested in the specified company and shall continue to do so as an officer or, as the case may be, other employee of the specified company or until the expiry of a period of six months from the appointed day if such officer or other employee opts not to continue to be the officer or other employee of the specified company within such period.

(2) The Administrator, in consultation with the specified company, may requisite the services of such officers or other employees as it may deem fit on such terms and conditions which may be mutually agreed upon between the Administrator and the specified company.

(3) Where an officer or other employee of the Trust opts under sub-section (1) not to be in employment or service of the specified company, such officer or other employee shall be deemed to have resigned.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Trust to the specified company shall not entitle such officer or other employee to any compensation under this Ordinance or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(5) The officers and other employees who have retired before the appointed day from the service of the Trust and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the specified company.

(6) The trust of the provident fund or the gratuity fund of the Unit Trust of India and any other bodies created for the welfare of officers or other employees would continue to discharge their functions in the specified company as was being done hitherto in the Unit Trust of India and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the specified company.

(7) Notwithstanding anything contained in this Ordinance or in the Companies Act, 1956 or in any other law for the time being in force or in the regulations of the Unit Trust of India, the Chairman, the trustees, executive trustee or any other person entitled to manage the whole or substantial part of the business and affairs of the Trust shall not be entitled to any compensation against the Trust for the loss of office or for the premature termination of any contract of management entered into by him with the Trust.

### CHAPTER III

# Appointment of Administrator to manage the specified undertaking of the Trust

7. (1) The Central Government shall, on and from the appointed day, appoint a person or a body of persons, as the "Administrator of the specified undertaking of the Unit Trust of India" for the purpose of taking over the administration thereof and the Administrator shall carry on the management of the specified undertaking of the Trust for and on behalf of the Central Government.

(2) The Central Government may issue such directions (including directions as to initiating, defending or continuing any legal proceedings before any court, tribunal or other authority) to the Administrator as to his powers and duties as that Government may deem desirable and the Administrator may apply to the Central Government at any time for instructions as to the manner in which he shall conduct the management of the specified undertaking or in relation to any matter arising in the course of such management.

(3) Subject to the other provisions of this Ordinance and the Schemes made thereunder and the control of the Central Government, the Administrator shall be entitled, notwithstanding anything contained in any other law for the time being in force, to exercise, in relation to the management of the specified undertaking, the powers specified under section 10 including powers to dispose of any property or assets of such specified undertaking whether such powers are derived under any law for the time being in force.

Appointment of Administrator to manage specified undertaking.

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1 of 1956.

(4) Every person having possession, custody or control of any property forming part of the specified undertaking of the Trust shall deliver forthwith such property to the Administrator.

(5) Any person who, on the appointed day, has in his possession or under his control any books, papers or other documents relating to the specified undertaking, including the minutes book containing the resolutions of the persons in charge of the management of the specified undertaking before the appointed day, the current cheque books relating to the specified undertaking, any letters, memoranda, notes or other communications between him and the specified undertaking shall, notwithstanding anything contained in any other law for the time being in force, be liable to account for the books, papers and other documents (including such minutes book, letters, memoranda, notes or other communications) to the Administrator.

(6) Any person in charge of the management of the specified undertaking immediately before the appointed day shall, within ten days from that day or within such further period as the Central Government may allow in this behalf, furnish to the Administrator the complete inventory of all the properties and assets (including particulars of book-debts and investments and belongings) forming part of the specified undertaking immediately before the appointed day and of all the liabilities and obligations of such Trust, in relation to its administration, subsisting immediately before that day, and also of all agreements entered into by the specified undertaking in relation to its administration and in force immediately before that day.

(7) The Administrator shall receive from the funds of the specified undertaking such remuneration as the Central Government may fix.

8. (1) The Administrator shall, immediately on redemption of all the schemes of the specified undertaking and the payment of entire amount to investors, shall vacate his office; but nothing in this sub-section shall be construed as prohibiting his appointment as a member of the Board of Advisers after vacation of his office as such.

(2) On the vacation of his office, the Administrator shall forthwith deliver, to the Central Government or any institution or officer specified by it, possession of all assets and properties representing and relatable to the specified undertaking which are in his possession, custody and control on the date immediately preceding the date on which he vacates his office as the Administrator.

### CHAPTER IV

### POWERS AND FUNCTIONS OF BOARD OF ADVISERS

9. (1) On such date as the Central Government may, by notification in the Official Gazette, appoint a Board of Advisers to advise and assist the Administrator in carrying on the management of the specified undertaking.

(2) The composition, term of office of Advisers, the fees and allowances and other conditions of appointment, disqualifications for being an Adviser, filling of casual vacancy in the office of the Adviser, the meetings of the Board of Advisers, vacation and resignation of office of the Advisers, shall be such as may be specified in the Scheme made by the Central Government.

10. (1) Subject to the provisions of this Ordinance and the Scheme made thereunder, the Administrator may, on the advice of the Board of Advisers, transact any of the following kind of business in India in relation to the specified undertaking only, namely:—

(a) selling and purchasing units of the schemes specified in the Schedule I;

(b) investing in and acquiring, holding or disposing of securities and exercising and enforcing, all powers and rights incidental thereto including protection or realisation of such investment and the taking over of the administration of any property. offered as security for such investment;

Administrator to vacate office.

Board of Advisers.

Powers and functions of Administrator (c) granting of loans and advances upon the security of any movable or immovable property or otherwise;

(d) accepting, collecting, discounting, re-discounting, purchasing, selling or negotiating or otherwise dealing with, any bills of exchange, hundles, promissory notes, coupons, drafts, bill of lading, railway receipts, warehouse receipts, documents of title to goods, warrants, certificates, scrips and other mercantile instruments;

(e) purchasing, selling or issuing participation certificates in relation to any loan or advance granted by any public financial institution or scheduled bank or such other institution as may be specified by the Central Government;

(1) keeping money on deposit with companies or other bodies corporate, scheduled banks or such other institutions as may be specified by the Central Government;

(g) formulating in relation to any unit scheme specified in the Schedule I,-

(i) savings and life insurance plan or plans under which a person may acquire an interest in units in association with or as the agent of, the Life Insurance Corporation of India or the Central Government, but not including the life insurance business;

(*ii*) savings and insurance plan or plans under which a person may acquire an interest in units in association with, or as the agent of, the General Insurance Corporation but not including the general insurance business; or

(iii) any other plan or plans, under which a person may acquire an interest in units;

(h) acquiring immovable property or any interest therein, the development (including construction) and sale of such property and the rendering of financial and other assistance to any person for the acquisition of any immovable property or any interest therein and for the development (including construction) of such property;

(i) providing leasing and hire purchase finance to persons, to companies, and other bodies corporate;

(i) providing merchant banking and investment advisory services;

(k) extending investment or fund or port folio management services to persons resident outside India;

(1) opening of an account or the making of an agency arrangement with a bank incorporated outside India;

(m) buying or selling of or entering into such other dealings in, foreign exchange, as may be necessary for the discharge of its functions;

(n) doing any other kind of business connected with mobilisation of savings or investments which the Central Government may authorise;

 $(\rho)$  generally doing all such acts and things as may be incidental to or consequential upon the discharge of its functions under this Ordinance.

(2) The Administrator shall, on and after the appointed day, neither formulate any new scheme nor issue any new unit, whether related to the undertaking or the specified undertaking or otherwise.

Maintenance of accounts by Administrator. 11. (1) The Administrator shall maintain separate accounts of each specified asset possession whereof has been taken by him, and shall cause to be made therein entries of all receipts and expenditure in respect thereof.

(2) The separate accounts under sub-section (1) shall be maintained in such form and in such mainter as may be specified by the Central Government.

(3) The Central Government shall cause the accounts maintained under this section to be inspected and audited at such intervals and by such persons as may be specified by it.

### CHAPTER V

# MISCELLANEOUS

12. With effect from the appointed day, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the Trust in connection with the affairs and business of the specified undertaking under any law for the time being in force shall be deemed to have been granted to the specified undertaking.

43 of 1961.

13. (1) Notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax or income, profits or gains, no income-tax or any other tax shall be payable by the Administrator in relation to the specified undertaking for a period of five years computed from the appointed day in respect of any income, profits or gains derived, or any amount received by the specified undertaking.

(2) The transfer and vesting of the undertaking or the specified undertaking in terms of section 4 shall not be construed as a transfer within the meaning of the Income-tax Act, 1961 for the purposes of capital gains.

14. Notwithstanding anything contained in the Indian Stamp Act, 1899, transfer and vesting of the undertaking and the specified undertaking in terms of section 4 shall not be liable to the payment of any stamp duty under that Act.

15. Any guarantee given for or in favour of the Trust with respect to any loan, lease, finance or other assistance shall continue to be operative in relation to the specified undertaking managed by the Administrator.

16. No suit or other legal proceedings shall lie against the Central Government or the Administrator, Board of Adviscrs or any of the officers or other employees of the Central Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Ordinance.

17. Notwithstanding anything contained in any other law for the time being in force, the shares, bonds, debentures and units of the specified undertaking shall be deemed to be approved securities for the purposes of the Indian Trusts Act, 1882, the Insurance Act, 1938 and the Banking Regulation Act, 1949.

18. In every Act, rule, regulation or notification in force on the appointed day, for the words "Unit Trust of India", wherever they occur, the words, brackets and figures "specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Ordinance, 2002" or "Administrator of the specified undertaking of the Unit Trust of India (Transfer of Undertaking and Repeal) Ordinance, the Unit Trust of India (Transfer of Undertaking and Repeal) Ordinance, 2002" or "Administrator of the specified undertaking and Repeal) Ordinance, 2002", as the case may be, shall be substituted.

19. (1) The Central Government may, by notification in the Official Gazette, alter any of the provisions contained in Schedules I and II.

(2) Every alteration made by the Central Government under sub-section (1) 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 alteration, or both Houses agree that the alteration should not be made, the alteration 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 in pursuance of that alteration.

deemed to have been granted to specified undertaking.

Concession,

be

etc., to

Tax exemption or benefit to continue to have effect.

Exemption from stamp duty.

Guarantee to be operative.

Protection of action taken in good faith.

Shares, bonds, debentures and units to be deemed to be approved securities.

Substitution in Acts, rule or regulation or notification of specified company or Administrator in place of Trust.

Power of Central Government to alter Schedules I and II.

43 of 1961. . 2 of 1899.

2 of 1882. 4 of 1938. 10 of 1949. SEC, 1]

[PART II—

52 of 1963.

Power of Central Government to make Scheme. 20. (1) The Central Government may, by notification in the Official Gazette, make a Scheme for carrying out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, the said Scheme may provide for all or any of the following matters, namely :---

(a) the manner in which the specified undertaking and schemes specified in Schedule I shall be managed;

(b) the term of office of the Advisers, the fee and allowances and other conditions of appointment of Advisers, disqualifications for being an Adviser, filling of casual vacancy in the office of Adviser, the meetings of Board, vacation and resignation of office of the Advisers shall be such as may be specified in the Scheme made by the Central Government;

(c) the manner of payment of consideration for which the undertaking shall be transferred to the specified company;

(d) the assets representing and relatable to the undertaking and the specified undertaking; and

(e) such incidental, consequential and supplemental matters as may be necessary to carry out the provisions of this Ordinance.

(3) A copy of every Scheme made under sub-section (1) shall be laid 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 making of the Scheme or both Houses agree in making any modification in the Scheme, the Scheme should 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 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 in pursuance of that alteration.

21. (1) On the appointed day, the Unit Trust of India Act, 1963 shall stand repealed and 52 of 1963. the Board of trustees referred to in section 10 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

(2) On the dissolution of the said Board, the person appointed as the Chairman of the Board and every other person appointed as the trustee and executive trustee and holding office as such immediately before such date shall vacate their respective offices.

(3) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, regulation, notification, scheme, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any permission, authorisation or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Ordinance, be deemed to have been done or taken under the corresponding provisions of this Ordinance.

(4) Notwithstanding the repeal of the Unit Trust of India Act, 1963 the Administrator shall, so far as may be, comply with the provisions of Chapter VI of the Act so repealed for any of the purposes related to the annual accounts and audit of the Trust.

22. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

23. The provisions of this Ordinance shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

24. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Repeal and saving.

Application of other laws not barred. Power to remove difficult

ties.

### SCHEDULE I

### [See sections 2 (g) and 19]

# PART I SCHEMES

# The Unit Scheme, 1964 published on May 30, 1964 in the Gazette of India, Part III,

- L Section 4, dated the 30th May, 1964.
- 2 The Children's Gift Plan-1970 published on December 11, 1971 in the Gazette of India, Part III, Section 4.

The Children's Gift Growth Fund Unit Scheme 1986 published on April 19, 1986 in the 3. Gazette of India, Part III, Section 4, vide No. UT/392/DPD(P&R)3B/ Vol-I/85-86, dated the 3rd April, 1986.

- The Bhopal Gas Victims- Monthly Income Plan- 1992 (BGVMIP) published on 4. September 18, 1993, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/ 360A/SPD-174/93-94, dated the 13th August, 1993.
- The Rajlakshmi Unit Scheme (II) published on August 27, 1994, in the Gazette of India, 5. Part III, Section 4, vide No. UT/DBDM/140A/SPD55/93-94, dated the 29th July, 1994.
- The Monthly Income Plan 1997 (IV) published on November 2, 1997, in the Gazette of 6. India, Part III, Section 4, vide No. UT/DBDM/SPD-71-R/R-97-98, dated the 23rd October, 1997.
- 7. The Institutional Investors' Special Fund Unit Scheme 1997 (11) published on February 21, 1998, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-96/SPD89C/ 97-98, dated the 5th January, 1998.
- The Monthly Income Plan 1997 (V) published on February 21, 1998, in the Gazette of 8. India, Part III, Section 4, vide No. UT/DBDM/R-95/SPD71S/97-98, dated the 12th January, 1998.
- 9. The Monthly Income Plan 1998 published on April 4, 1998, in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-104/SPD71T/97-98, dated the 5th March, 1998.
- The Institutional Investors' Special Fund Unit Scheme 1998(IISFUS'98) published on 10. May 23, 1998, in the Gazette of India, Part III, section 4, vide No. UT/DBDM/SPD-89-D/ R-111/97-98, dated the 27th April, 1998.
- 11. The UTINRI Fund (UNF) published on June 13, 1998, in the Gazette of India, Part III, Section 4, vide No. UT/NRI/R-113/N-52/97-98, dated the 15th May, 1998.
- The Monthly Income Plan 1998 (II) published on August 1, 1998, in the Gazette of 12. India, Part III, Section 4, vide No. UT/DBDM/R-119/SPD-71U/97-98 dated the 29<sup>th</sup> June, 1998.
- 13. The Monthly Income Plan (111) published on September 5, 1998, in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-125/SPD-71-V/98-99 dated the 7th August, 1998.
- 14. The Monthly Income Plan (IV) published on February 27, 1999, in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-160/SPD-71W/98-99 dated the 28th January, 1999.
- Monthly Income Plan 1998 (V) published on March 6, 1999 in the Gazette of India, Part 15. III, Section 4, vide No. UT/DBDM/R-101/SPD-71X/98-99, dated the 28th January, 1999.
- 16. Children's Gift Growth Fund Unit Scheme 1999 published on May 29, 1999, in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-175/SPD-55/98-99, dated May 29, 1999.
- 17. The Institutional Investors' Special Fund Unit Scheme 1998 (11) published on May 29, 1999, in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-/SPD/98-99 vide dated the 31st March, 1999.

- The Rajlakshmi Unit Plan 1999 published on May 29, 1999, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-175/SPD-59A/98-99.
- Monthly Income Plan 1999 published on June 12, 1999, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-179/SPD-71-Y/98-99, dated the 5<sup>th</sup> May, 1999.
- 20. Special Unit Scheme 1999 formulated in pursuance of agreement between Government of India and Unit Trust of India signed on 22<sup>nd</sup> July, 1999.
- 21. Monthly Income Plan 1999 (II) published on January 22, 2000, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-224/SPD-71-Z/99-2000, dated the 30<sup>th</sup> December, 1999.
- 22. Monthly Income Plan 2000 published on April 15, 2000, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/SPD-119-A/R-235/99-2000, dated the 14<sup>th</sup> March, 2000.
- Monthly Income Plan 2000 (Second) published on September 9, 2000, in the Gazette of India, Part III, section 4, vide No. UT/DBDM/SPD-119-B/R-7/99-2000, dated the 10<sup>th</sup> August, 2000.
- 24. Monthly Income Plan 2001 published on May 12, 2001, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-69/SPD-119-D/2000-2001, dated the 9<sup>th</sup> April, 2001.
- Monthly Income Plan 2000 (Third) published on January 13, 2001, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/SPD-119-C/R15/2000-2001, dated the 14th November, 2000.

# PARTII

# ASSETS AND INVESTMENTS

26. All assets and investments made out of the Development Reserve Fund created in 1984 under sub-section (1) of section 25B of the Unit Trust of India Act, 1963.

52 of 1963.

#### SCHEDULE II

### [See section 2 (g) and 19]

### SCHEMES AND PLANS

1. The Mutual Fund (Subsidiary) Unit Scheme, 1986 published on October 25, 1986 in the Gazette of India, Part III, Section 4, vide No.158/DPD(P&R)100/Vol.1/86-87 dated the 9<sup>th</sup> October, 1986.

2. The Capital Growth Unit Scheme 1992 (Mastergain 92) published on July 4, 1992 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/1144/SPD-185/91-92 dated the 8<sup>th</sup> June, 1992.

3. The Housing Unit Scheme - 1992 published on in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/155A/SPD-184/92-93 dated August 8, 1992.

4. The Unit Scheme 1992 published on April 17, 1993 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/2044A/SPD-61/92-93.

5. The Master Equity Plan - 1993 published on July, 17, 1993 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/2454A/SPD-74A/92-93.

6. The Senior Citizens Unit Plan published on August, 28, 1993 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/ 393A/SPD-60/93-94 dated the 18<sup>th</sup> August, 1993.

7. The Equity Linked Savings Unit Scheme -1994 (ELSS 94) published on February 12, 1994 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R96A/SPD74B/93-94 dated the 11<sup>th</sup> January 1994.

8. The Growing Corpus Growing Income Scheme - 1994 (GCGI 94) published on April 2, 1994 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/1704A/SPD-78/93-94 dated the 7<sup>th</sup> March, 1994.

9. The Grihalakshmi Unit Scheme 1994 (GUS 1994) published on August 20, 1994 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/76A/SPD-68/93-94.

10. The Equity Linked Savings Unit Scheme 1995 (ELSS 95) published on February 11, 1995 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/680A/SPD/74C/94-95 dated the 10<sup>th</sup> January, 1995.

11. The Primary Equity Fund published on June 3, 1995 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/1109A/SPD-85/94-95 dated the 2<sup>nd</sup> May, 1995.

12. The Master Equity Plan 1996 published on December 23, 1995 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/431-A/SPD-74D/95-96 dated the 30<sup>th</sup> November, 1995.

13. The Grandmaster Unit Scheme - 1993 published on January, 25, 1997 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-172/SPD-77/96-97 dated the 9<sup>th</sup> December, 1996.

14. The Master Equity Plan 1997 published on January 25, 1997 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R173/SPD74-E/96-97 dated the 23<sup>rd</sup> December 1996.

15. The UTI Money Market Fund (A MONEY MARKET MUTUAL FUND) published on July 26, 1997 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/SPD-93/R-223/ 96-97 dated the 24<sup>th</sup> June, 1997.

16. The Master Equity Plan 1998 published on February 21, 1998 in the Gazette of India, Part III, Section 4, vide No.UT/BDM/ R96/SPD-74F/97-98 dated the 5<sup>th</sup> January, 1998.

17. The Unit Growth Scheme 10000 published on June 27, 1998 in the Gazette of India, Part III, Section 4.

18. The UTI - Bond Fund published on August 8, 1998 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-121/SPD-102/97-98 dated 14<sup>th</sup> July, 1998.

19. The UTI - Small Investor's Fund published on August 8, 1998 in the Gazette of India, Part III, Section 4, vide UT/DBDM/R-181/SPD-98/97-98 dated the 14<sup>th</sup> July, 1998.

20. The Master Value Unit Plan 1998 published on August 8, 1998 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/SPD-107/R-121/97-98 dated the 14<sup>th</sup> July, 1998.

21. The Master Index Fund published on August 15, 1998 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/SPD-108R-122/97-98 dated the 17<sup>th</sup> July, 1998.

22. The Mastershare Plus Unit Scheme 1991 published on April 24, 1999 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-171/SPD-172/98-99 dated the 30<sup>th</sup> March, 1999.

23. The Master Equity Plan 1999 published on May 29, 1999 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R/SPD-74G/98-99 dated the 7the April, 1999.

24. The UTI - Growth Sectors Fund (UTI – GSF) published on August 28, 1999 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/SPD-112/R-194A/98-99 dated the 27<sup>th</sup> July, 1999.

25. The UTI G-Sec Fund published on December 18, 1999 in the Gazette of India, Part III, Section 4, vide No.UT/DBM/R/SPD-114/99-2000 dated the 18<sup>th</sup> November, 1999.

26. The UTI Equity Tax Savings Plan published on March 18, 2000 in the Gazette of India, Part III, Section 4, vide No. UT/DBD/R-/SPD-117/99-2000 dated the 9<sup>th</sup> February, 2000.

27. The Mastergrowth Unit Scheme - 1993 published on May 20, 2000 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-238/SPD-118/99-2000 dated the 17<sup>th</sup> April, 2000.

28. The Nifty Index Fund (NIF) published on May 20, 2000 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-239/SPD-120/99-2000 dated the 17<sup>th</sup> April, 2000.

29. The Unit Scheme 1995 (US -95) published on June 3, 2000 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-241/SPD-84/99-2000 dated the 3<sup>rd</sup> May, 2000.

30. The Index Select Equity Fund published on March 17, 2001 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-62/SPD-96/2000-2001 dated the 12<sup>th</sup> February, 2001.

31. The Unit Scheme for Charitable and Religious Trusts and Registered Societies, 1981 published on April 28, 2001 in the Gazette of India, Part III, Section 4 vide No.UT/DBDM/R-65/SPD-53/2000-2001 dated the 20<sup>th</sup> March, 2001.

32. The Unit Linked Insurance Plan 1971 published on May 19, 2001 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-7/SD-52/2000-2001 dated the 24<sup>th</sup> April, 2001.

33. The Children's Career Plan (CCP) published on May, 12, 2001 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-69/SPD-64/2000-2001 dated the 9<sup>th</sup> April, 2001.

34. The UTI- Mahila Unit Scheme (MUS) published on June 16, 2001 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R/SPD-68-A/2000-2001 dated the 11<sup>th</sup> May, 2001.

35. The Retirement Benefit Plan (RBP) published on August 10, 2002 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-47/SPD-66/2001-2002 dated the 25<sup>th</sup> July, 2002.

36. The UTI Regular Income Scheme.

A.P.J. ABDUL KALAM, President.

SUBHASH C. JAIN, Secy. to the Govt. of India.

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रजिस्ट्री संग् डीग्एल-33004 / 2002



**REGISTERED NO. DL-33004/2002** 



असाधारण EXTRAORDINARY माग II --- खण्ड 1 PART II --- Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 60] नई दिल्ल्ज्रे, मंगल्वार, अक्तूबर 29, 2002/कार्तिक 7, 1924 No. 60] NEW DELHI, TUESDAY, OCTOBER 29, 2002 / KARTIKA 7, 1924

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 29th October, 2002/Kartika 7, 1924 (Saka)

# THE DELHI METRO RAILWAY (OPERATION AND MAINTENANCE) ORDINANCE, 2002

### No. 7 of 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance to provide for the operation and maintenance and to regulate the working of the metro railway in the metropolitan city of Delhi and for matters connected therewith and incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

### CHAPTER I Preliminary

1. (1) This Ordinance may be called the Delhi Metro Railway (Operation and Maintenance) Ordinance, 2002.

Short title, commencement and extent.

(2) It shall come into force at once.

(3) It extends to the National Capital Territory of Delhi.

2. (1) In this Ordinance, unless the context otherwise requires, —

(a) "Claims Commissioner" means a Claims Commissioner appointed under section 48;

(b) "Commissioner" means the Commissioner of the Metro Railway Safety appointed under section 7;

(c) "development" with its grammatical variations means, the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change on any building, or land, or planting of any tree on land and includes redevelopment;

(d) "electric supply-line" shall have the meaning assigned to it under clause (f) of section 2 of the Indian Electricity Act, 1910;

9 of 1910.

(e) "fare" means the charge levied for the carriage of passengers;

(f) "Government metro railway" means a metro railway owned by the Central Government;

(g) "land" includes any right or interest in any land;

(h) "metropolitan city of Delhi" means the area of the National Capital Territory of Delhi;

(*i*) "metro railway" means rail-guided mass rapid transit system having dedicated right-of-way, with steel wheel or rubber-tyred wheel coaches, but excluding tramways, for carriage of passengers, and includes,—

(A) all land within the boundary marks indicating the limits of the land appurtenant to a metro railway,

(B) all rails tracks, sidings, yards or branches worked over for the purposes of, or in connection with, a metro railway

(C) all stations, offices, ventilation shafts and ducts, warehouses, workshops, manufactories, fixed plants and machineries, sheds, depots and other works constructed for the purpose of, or in connection with a metro railway;

(*j*) "metro railway administration" in relation to, —

(i) a Government metro railway means the General Manager of that railway, or

(*ii*) a non-Government metro railway means the person who is the owner or lessee of that metro railway or the person working that metro railway under an arrangement with the owner or lessee of that metro railway;

(k) "metro railway official" means any person employed by the Central Government or by a metro railway administration in connection with the services of a metro railway;

(1) "non-Government metro railway" means a metro railway other than a Government metro railway;

(m) "notification" means a notification published in the Official Gazette of India;

(n) "pass" means an authority given by the metro railway administration or by an officer appointed by that administration in this behalf, to a person allowing him to travel as a passenger on the metro railway, but does not include a ticket;

(*o*) "prescribed" means prescribed by rules made by the Central Government under this Ordinance;

(p) "railway," shall have the meaning assigned to it in clause (31) of section 2 of the Railways Act, 1989;

24 of 1989.

Definitions.

(q) "regulation" means the regulations made by the Government metro railway administration under this Ordinance;

(r) "rolling stock" includes locomotives, engines, carriages (whether powered or not), wagons, trollies and vehicles of all kinds moving or intended to move on rails; and

(s) "telegraph line" shall have the meaning assigned to it in clause (4) of section 3 of the Indian Telegraph Act, 1885.

(2) All other words and expressions used herein and not defined but defined in the Metro Railways (Construction of Works) Act, 1978, shall have the meanings, respectively, assigned to them in that Act.

### CHAPTER II

### **GOVERNMENT METRO RAILWAY ADMINISTRATION**

3. (1) The Central Government may, for the purpose of efficient administration of a Government metro railways in the metropolitan city of Delhi, by notification, constitute such railways as it may deem fit.

(2) A Government metro railway administration may, for efficient performance of its functions under this Ordinance, appoint such officers and other employees as it considers necessary on such terms and conditions of service as may be determined by regulation.

4. (1) The Central Government shall, by notification, appoint a person to be the General Manager of a Government metro railway.

(2) The general superintendence and control of a Government metro railway shall vest in the General Manager.

### CHAPTER III

### FUNCTIONS AND POWERS OF THE METRO RAILWAY ADMINISTRATION

The functions of a metro railway administration shall be-

(a) to maintain and operate metro railway, for public carriage of passengers, constructed in, upon, across, under or over any land, building, street, road or passage in the metropolitan city of Delhi; and

(b) to engage in any such other activities or perform such other functions as may be considered necessary for the purpose of the operation and maintenance of the metro railway in the metropolitan city of Delhi.

6. (1) The metro railway administration shall have the power to do anything which may be necessary or expedient for the purpose of carrying out its functions under the Ordinance.

(2) Without prejudice to the generality of the foregoing provision, such power shall include the power to,-

(a) acquire, hold and dispose of all kinds of properties owned by it, both movable and immovable;

(b) improve, develop or alter any property or asset held by it;

(c) enter temporarily in or upon the lands adjoining the metro railway alignment in order to remove obstruction, or prevent imminent danger from any source, such as tree, post or structure, which may obstruct the movement of the rolling stock, or passengers, or the view of the signal provided for movement of the rolling stock;

(d) execute any lease or grant any licence in respect of the property held by it;

(e) enter into, assign and rescind any contract or obligation;

Functions of Metro Railway Administration.

Powers of metro railway administration.

Constitution of Government metro railway.

Appointment of General

Manager.

13 of 885.

978

33 of

(f) employ an agent or contractor for discharging its functions;

(g) obtain licence from the Central Government to establish and maintain telegraph lines;

(h) lay down or place electric supply lines for conveyance and transmission of energy and to obtain licence for that purpose; and

(i) do all incidental acts as are necessary for discharge of any function conferred, or imposed on it by this Ordinance.

### CHAPTER IV

### COMMISSIONER OF METRO RAILWAY SAFETY

7. The Central Government may appoint one or more Commissioners of Metro Railway Safety.

8. The Commissioner shall —

(a) inspect the metro railway with a view to determine whether it is fit to be opened for the public carriage of passengers and report thereon to the Central Government as required by or under this Ordinance;

(b) make such periodical or other inspections of metro railway, its rolling stock used thereon and its other installations as the Central Government may direct;

(c) make an inquiry under the provisions of this Ordinance into the cause of any accident on the metro railway; and

(d) discharge such other duties as are conferred on him by or under this Ordinance.

9. Subject to the control of the Central Government, the Commissioner, whenever it is necessary so to do for any of the purposes of this Ordinance, may—

(a) enter upon and inspect the metro railway or any rolling stock used thereon and its other installations;

(b) by order in writing addressed to the metro railway administration, require the attendance before him of metro railway official and to require answers or returns to such inquiries as he thinks fit to make from such metro railway official or from the metro railway administration; and

(c) require the production of any book, document or material object belonging to or in the possession or control of any metro railway administration which appears to him to be necessary to inspect.

10. The Commissioner shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

to be public servant. Facilities to

Commissioner

be provided to Commissioner.

Annual report of Commissioncr.

Annual report to be laid before Parliament. 11. The metro railway administration shall provide to the Commissioner all reasonable facilities for the discharge of the duties or for the exercise of the powers imposed or conferred on him by or under this Ordinance.

12. The Commissioner shall prepare, in such form and in such time, for each financial year, as may be prescribed, an annual report giving a full account of his activities during the previous financial year and forward copy thereof to the Central Government.

13. The Central Government shall cause the annual report of the Commissioner to be laid after its receipt before each House of Parliament.

Powers of Commis-

sioner.

### CHAPTER V

### OPENING OF METRO RAILWAY

14. The metro railway in the metropolitan city of Delhi shall not be opened for the public carriage of passengers except with the previous sanction of the Central Government.

Sanction of Central Government to opening of metro railway.

Formalities to be complied

the opening of metro railway.

with before

giving sanction to

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15. (1) The Central Government shall, before giving its sanction to the opening of the metro railway under section 14, obtain a report from the Commissioner that—

(a) he has made a careful inspection of the metro railway and the rolling stock that may be used thereon;

(b) the moving and fixed dimensions as laid down by the Central Government have not been infringed;

(c) the track structure, strength of bridges, standards of signalling system, traction system, general structural character of civil works and the size of, and maximum gross load upon, the axles of any rolling stock, comply with the requirements laid down by the Central Government; and

(d) in his opinion, metro railway can be opened for the public carriage of passengers without any danger to the public using it.

(2) If the Commissioner is of the opinion that the metro railway cannot be opened without any danger to the public using it, he shall, in his report, state the grounds therefor, as also the requirements which, in his opinion, are to be complied with before sanction is given by the Central Government.

(3) The Central Government, after considering the report of the Commissioner, may sanction the opening of the metro railway under section 14 as such or subject to such conditions as may be considered necessary by it for the safety of the public.

16. The provisions of sections 14 and 15 shall apply to the opening of the following works if they form part of, or are directly connected with, the metro railway used for the public carriage of passengers and have been constructed subsequent to the giving of a report by the Commissioner under section 15, namely:—

(a) opening of additional lines of metro railway;

(b) opening of stations and junctions;

(c) re-modelling of yards and re-building of bridges; and

(d) any alteration or reconstruction materially affecting the structural character of any work to which the provisions of sections 14 and 15 apply or are extended by this section.

17. When an accident has occurred on the metro railway resulting in a temporary suspension of traffic, and either the original tracks and works have been restored to their original standard or a temporary diversion has been laid for the purpose of restoring communication, the original tracks and works so restored, or the temporary diversion, as the case may be, may, without prior inspection by the Commissioner, be opened for the public carriage of passengers, subject to the following conditions, namely:—

(a) the metro railway official in charge of the works undertaken by reasons of the accident has certified in writing that the opening of the restored tracks and works, or of the temporary diversion will not in his opinion be attended with danger to the public; and

(b) a notice of the opening of the tracks and works or the diversion shall be sent immediately to the Commissioner.

Sections 14 and 15 to apply to the opening of certain works.

Temporary suspension of traffic.

SEC. 1]

Power to close metro railway opened for public carriage of passengers. 18. Where, after the inspection of the metro railway opened and used for the public carriage of passengers or any rolling stock used thereon, the Commissioner is of the opinion that the use of the metro railway or of any rolling stock will be attended with danger to the public using it, the Commissioner shall send a report to the Central Government who may thereupon direct that—

(i) the metro railway be closed for the public carriage of passengers; or

(ii) the use of the rolling stock be discontinued; or

(*iii*) the metro railway or the rolling stock may be used for the public carriage of passengers subject to such conditions as it may consider necessary for the safety of the public.

19. When the Central Government has, under section 18 directed the closure of the metro railway or the discontinuance of the use of any rolling stock—

(a) the metro railway shall not be re-opened for the public carriage of passengers until it has been inspected by the Commissioner and its re-opening is sanctioned in accordance with the provisions of this Chapter; and

(b) the rolling stock shall not be used until it has been inspected by the Commissioner and its re-use is sanctioned in accordance with the provisions of this Chapter.

20. The metro railway administration may use such rolling stock as it may consider necessary for operation and working of the metro railway:

Provided that before using any rolling stock of a design or type different from that already running on any section of the metro railway, the previous sanction of the Central Government shall be obtained for such use:

Provided further that before giving any such sanction, the Central Government shall obtain a report from the Commissioner that he has made a careful inspection of the rolling stock and, in his opinion, such rolling stock can be used.

Delegation of powers.

Power to make rules in respect of matters in this Chapter. 21. The Central Government may, by notification, direct that any of its powers or functions under this Chapter, except power to make rule under section 22, shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercised or discharged also by the Commissioner.

22. (1) The Central Government may, by notification, make rules to carry out the provisions of this Chapter.

(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 duties of a metro railway administration and the Commissioner in regard to the opening of a railway for the public carriage of passengers;

(b) the arrangements to be made for and the formalities to be complied with before opening a railway for the public carriage of passengers;

(c) for regulating the mode in which, and the speed at which rolling stock used on railways is to be moved or propelled; and

(d) the cases in which and the extent to which the procedure provided in this Chapter may be dispensed with.

Re-opening of

closed metro

railway.

Use of rolling stock.

### CHAPTER VI

### WORKING OF THE METRO RAILWAY

23. (1) The metro railway administration shall cause to be pasted in a conspicuous and accessible place at every station in Hindi and English a table of the fare chargeable for travelling from the station to every place for which tickets are issued to passengers.

(2) Any person desirous of travelling on the metro railway shall, upon payment of fare, be issued with a ticket by the metro railway administration or an agent authorised in this behalf.

(3) The ticket issued under sub-section (2) shall indicate its value, period of validity and such other particulars as may be prescribed.

24. Every passenger shall, on demand by any metro railway official authorised in this behalf, present his pass or ticket to such metro railway official for examination at the beginning, or during or at the end of the journey and surrender such ticket:—

(a) at the end of journey if the ticket is for a single journey, or

(b) if such ticket is issued for a particular amount, on the exhaustion of the amount for which the ticket was issued.

25. No person shall enter or remain in any carriage on the metro railway, for the purpose of travelling therein as a passenger, unless he has with him a proper pass or ticket.

Prohibition against travelling without pass or ticket.

Exhibition of

fare tables at station and

supply of tickets.

Carriage of goods.

26. (1) No person shall, while travelling in the metro railway, carry with him any goods other than a small baggage containing personal belongings not exceeding such volume and gweight as may be prescribed.

(2) Where any person travels on the metro railway in contravention of the provisions of sub-section (I), he shall, notwithstanding that he holds a valid pass or ticket for any travel in such railway, be liable to be removed from the train by any metro railway official authorised by the metro railway administration in this behalf or by any other person whom such metro railway official may call to his aid.

27. (1) No person suffering from infectious or contagious diseases as may be prescribed, shall travel by the metro railway.

(2) Any person travelling in contravention of any rule made under sub-section (1) shall be liable to be removed from the metro railway.

28. The metro railway administration shall provide and maintain in proper order, in any metro train, such efficient means of communication between the passengers and the metro railway official in charge of the train as may be approved by the Central Government.

29. The metro railway administration may use its premises, lands, buildings, posts, bridges, structures, vehicles, rolling stock and other property for displaying commercial advertisements and for that purpose may erect or construct or fix any hoardings, billboards, show cases, and such other things for the display of posters or other publicity materials.

Prohibition against travelling of persons suffering from infectious or contagious diseases and powers to remove them.

Communication between passengers and metro railway officials in charge of trains.

Right of the metro railway administration to display commercial advertisements on the metro railway or on the premises occupied by it.

Carriage of dangerous or offensive material.

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Power to remove persons from metro railway and its carriages.

Power to make rules.

**30.** (1) No person shall take or cause to be taken on the metro railway such dangerous or offensive material as may be prescribed.

(2) If any metro railway official has reason to believe that any person is carrying with him, in a container of any form, or otherwise, any dangerous or offensive material, he may cause such container to be opened by its carrier for the purposes of ascertaining its contents.

(3) Any metro railway official may remove from the metro railway any person taking with him any dangerous or offensive material.

31. Any person, entering upon or into any part of the metro railway without lawful authority, on being asked to leave the metro railway by any metro railway official, does not leave therefrom, may be removed from the metro railway by such metro railway official or by any other person whom such metro railway official may call to his aid.

32. (1) The Central Government may, by notification, make rules to carry out the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the particulars of the ticket such as the value, the period of validity and other particulars under sub-section (3) of section 23;

(b) the volume and weight of baggage under sub-section (1) of section 26;

(c) diseases which are infectious or contagious under sub-section (1) of section 27;

(d) material which is dangerous or offensive under sub-section (1) of section 30; and

(e) generally, for regulating the travelling upon, and the use, working and management of the railways.

(3) Every metro railway administration shall keep at every station on its metro railway a copy of all the rules made under this section and shall also allow any person to inspect it free of charge.

## CHAPTER VII

### FARE FIXATION

33. The metro railway administration shall, from time to time, on the recommendations made to it by the Fare Fixation Committee constituted under sub-section (1) of section 34, fix, for the carriage of passengers, fare for travelling from one station to another of the metro railway:

Provided that the metro railway administration may fix the fare under this section without recommendations of the Fare Fixation Committee on the initial opening of the metro railway.

Constitution of Fare Fixation Committee.

Fixation of

carriage of

passengers.

fare for

34. (1) The Central Government may, from time to time, constitute a Fare Fixation Committee for the purpose of recommending fare for the carriage of passengers by the metro railway.

(2) The Fare Fixation Committee shall consist of a Chairperson and two other members.

(3) A person shall not be qualified for appointment as the Chairperson unless he is or has been a Judge of a High Court.

(4) One member each shall be nominated by the Central Government of the National Capital Territory of Delhi respectively:

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Provided that a person who is or has been an Additional Secretary to the Government of India or holds any equivalent post in the Central Government shall be qualified to be nominated by the said Government.

(5) A sitting Judge of a High Court shall be appointed after consultation with the Chief Justice of that High Court.

35. (1) The other terms and conditions of the Fare Fixation Committee, and the procedure to be followed by that committee shall be such as may be prescribed.

(2) The metro railway administration shall provide to the Fare Fixation Committee all reasonable facility for the discharge of its duties under this Ordinance.

36. The Fare Fixation Committee shall submit its report alongwith recommendations to the metro railway administration within such period, not exceeding three months, as may be specified by order made by the Central Government.

37. The recommendations made by the Fare Fixation Committee shall be binding on the metro railway administration.

### **CHAPTER VIII** ACCIDENTS

38. (1) Where, in the course of working a metro railway,---

(a) any accident attended with loss of any human life, or with grievous hurt, as defined in the Indian Penal Code; or

(b) any collision between trains; or

(c) the derailment of any train carrying passengers, or of any part of such train; or

(d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid; or

(e) any accident of any other description which the Central Government may notify in this behalf in the Official Gazette,

occurs, the metro railway official in charge of the section of the metro railway on which the accident occurs, shall, without delay, give notice of the accident in such form and containing such particulars as may be prescribed to the Deputy Commissioner and the Deputy Commissioner of Police, within whose jurisdiction the accident occurs, the officer in charge of the police station within the local limits of which the accident occurs and to such other Magistrate or police officer as may be appointed in this behalf by the Central Government.

(2) The metro railway administration, within whose jurisdiction the accident occurs, shall, without delay, give notice of the accident to the Government of the National Capital Territory of Delhi and the Commissioner having jurisdiction over the place of the accident.

39. (1) On the receipt of a notice under section 38 of the occurrence of an accident Inquiry by resulting in loss of human life or grievous hurt causing total or partial disablement of permanent nature to a passenger, the Commissioner shall, as soon as may be, notify the metro railway administration in whose jurisdiction the accident occurred of his intention to hold an inquiry into the causes that led to the accident and shall at the same time fix and communicate the date, time and place of inquiry:

Provided that it shall be open to the Commissioner to hold an inquiry into any other accident which, in his opinion, requires the holding of such an inquiry.

Commissioner.

Notice of metro railway

accident.

Other terms and conditions and the procedure to be followed.

Period for making

tions.

recommenda-

Recommendations to be

binding on the metro railway administration.

(2) If for any reason, the Commissioner is not able to hold an inquiry as soon as may be after the occurrence of the accident, he shall notify the metro railway administration

40. Where no inquiry is held by the Commissioner under sub-section (1) of section 39

or where the Commissioner has informed the metro railway administration under sub-

section (2) of that section that he is not able to hold an inquiry, the metro railway

administration within whose jurisdiction the accident occurs, shall cause an inquiry to be

[PART II---

Inquiry by metro railway administration.

Powers of Commissioner in relation to inquiries. made in accordance with the prescribed procedure.
41. (1) For the purpose of conducting an inquiry under this Chapter into the causes of any accident, the Commissioner shall, in addition to the powers specified in section 9, have the powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

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(a) summoning and enforcing the attendance of persons and examining them on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies thereof from any court or office; and

(e) any other matter which may be prescribed.

(2) The Commissioner while conducting an inquiry under this Chapter shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

3 of 1952.

Statement made before Commissioner,

42. No statement made by a person in the course of giving evidence in an inquiry before the Commissioner shall subject him to, or be used against him, in any civil or criminal proceeding, except in a prosecution for giving false evidence by such person:

Provided that the statement is-

(a) made in reply to a question which is required by the Commissioner to answer; or

(b) relevant to the subject-matter of the inquiry.

43. The metro railway administration or the Commissioner conducting an inquiry under this Chapter may send notice of the inquiry to such persons, follow such procedure, and prepare the report in such manner as may be prescribed.

44. Notwithstanding anything contained in the foregoing provisions of this Chapter, where a Commission of Inquiry is appointed under the Commissions of Inquiry Act, 1952, to inquire into an accident, any inquiry, investigation or other proceeding pending in relation to that accident shall not be proceeded with, and all records or other documents relating to such inquiry shall be forwarded to such authority as may be specified by the Central Government in this behalf.

45. Where any accident of the nature not specified in section 38 occurs in the course of working the metro railway, the metro railway administration within whose jurisdiction the accident occurs, may cause such inquiry to be made into the causes of the accident, as may be prescribed.

46. The metro railway administration shall send to the Central Government, a return of accidents occurring on its railway, whether attended with injury to any person or not, in such form and manner and at such intervals as may be prescribed.

47. (1) The Central Government may, by notification, make rules to carry out the provisions of this Chapter and and the second statement of the second

(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:---

Procedure, etc. for

conducting

inquiry. No inquiry, investigation, etc., to be made if the Commission

of Inquiry is

appointed.

Inquiry into accident not covered by section 38.

Returns.

Power to make rules in respect of matters in this Chapter.

accordingly.

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### THE GAZETTE OF INDIA EXTRAORDINARY

(a) the forms of notice of accidents to be given under section 38 and the particulars of the accident such notices shall contain;

(b) the persons to whom notices in respect of any inquiry under this Chapter are to be sent, the procedure to be followed in such inquiry and the manner in which a report of such inquiry shall be prepared;

(c) the nature of inquiry to be made by the metro railway administration into the causes of an accident under section 40;

(d) for conducting an inquiry under clause (e) of sub-section (1) of section 41;

(e) the procedure of conducting inquiry and preparation of the report under section 43;

(f) the making of an inquiry into the causes of the accident under section 45; and

(g) the form and manner of sending a return of accidents by the metro railway administration ur der section 46.

### CHAPTER IX

### CLAIMS COMMISSIONER

**48.** The Central Government may, by notification in the Official Gazette, appoint a Claims Commissioner for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to person, or damage to any property arising out of the working of the metro railway.

49. A person shall not be qualified for appointment as Claims Commissioner unless he-

(a) is or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a Member of the Indian Legal Service and has held a post in Grade I of that Service; or

(c) has, for at least three years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

50. The Claims Commissioner shall hold office as such for a term as may be specified by the Central Government.

51. (1) The Claims Commissioner may, by notice in writing under his hand addressed to the Central Government, resign his office.

(2) The Claims Commissioner may be removed from his office by an order of the Central Government on the ground of proved misbehavior or incapacity after an inquiry in which he had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The procedure for the investigation of misbehavior or incapacity of the Claims Commissioner referred to in sub-section (2) be such as may be prescribed.

52. The salary and allowances payable to, and the other terms and conditions of service of the Claims Commissioner shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Claims Commissioner shall be varied to his disadvantage after his appointment.

53. (1) The Claims Commissioner shall have all the powers of a civil court for the purpose of taking evidence on oath, enforcing attendance of witnesses and compelling the discovery or production of documents and material objects.

(2) The Claims Commissioner shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Methods and a grade which have a

Qualifications for appoint-

Commissioner.

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Claims Commissioner.

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Term of office.

Resignation and removal.

Salaries and allowances and other conditions of service of the Claims Commissioner.

Procedure and powers of the Claims Commissioner.

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! of 1974.

[PART II-

(3) In enquiring into and determining any claims for payment of compensation, the Claims Commissioner may, subject to any rules that may be made in this behalf, follow such summary procedure as he may deem fit.

(4) Subject to any rules that may be made in this behalf, the Claims Commissioner may, for the purpose of determining any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the enquiry, to assist him in holding the enquiry.

(5) The Claims Commissioner shall have powers to pass such interim and final order as the circumstance may require, including orders for payment of costs.

54. (1) Any question as to the liability of the metro railway administration to pay compensation or as to the person to whom such compensation is payable, shall be determined by an order of the Claims Commissioner.

(2) Every order made under sub-section (1) shall be final.

55. (1) Notwithstanding anything contained in any other law for the time being in force, where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Ordinance and also under any other law in force, the person entitled to compensation may claim such compensation only once either under this Ordinance or under any other law in force.

(2) Nothing in sub-section (1) shall affect the right of any person to claim compensation payable under any contract or scheme providing for compensation for death or personal injury or for damage to property or any sum payable under any policy of insurance.

56. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for:-

(i) the procedure for investigation of misbehaviour or incapacity of the Claims Commissioner under sub-section (3) of section 51;

(*ii*) the salary and allowances and other conditions of service of the Claims Commissioner under section 52; and

(iii) any other purpose incidental to or connected with the objects of this Chapter.

### CHAPTER X

LIABILITY OF METRO RAILWAY ADMINISTRATION DUE TO ACCIDENTS

57. The metro railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation for loss occasioned by the death of, or bodily injury to any person to such extent as may be prescribed.

58. An application for compensation arising out of an accident may be made to the Claims Commissioner by,---

(a) the person who has sustained the injury or suffered any loss; or

(b) all or any of the dependants of the deceased where death has resulted from the accident; or

(c) an agent duly authorised by the person injured or all or any of the dependants of the deceased, as the case may be:

Provided that where all the dependants of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the dependants of the deceased and the dependants who have not so joined, shall be impleaded as respondents to the application.

Decision of the Claims Commissioner.

Savings as to certain rights.

Power to make rules.

liability.

Extent of

Application for compensation. A2562(2) I

Explanation:- For the purpose of this section the word "dependant" shall have the me meaning as given to it in clause (b) of section 123 of the Railway Act, 1989.

### CHAPTÈR XI

OFFENCES AND PENALTIES

59. (1) If any person,-

(a) is in a state of intoxication; or

(b) commits any nuisance or vandalism or act of indecency, or uses obscene or abusive language; or

(c) wilfully or without excuse interferes in any way with the comfort of any passenger,

in any carriage or upon any part of the metro railway, he shall be punishable with fine which may extend to five hundred rupees and shall also be liable to forfeiture of the fare which he may have paid or any pass or ticket which he may have obtained or purchased, or be removed from such carriage or part by any metro railway official authorised by the metro railway administration in this behalf.

(2) If any metro railway official is in a state of intoxication while on duty, he shall be punishable with fine which may extend to two hundred and fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any passenger travelling or being upon the metro railway, with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

60. (1) If, in contravention of sub-section (1) of section 30, a person takes or causes to be taken any offensive material upon the metro railway, he shall be punishable with fine which may extend to five hundred rupees.

(2) In addition to the penalties specified in sub-section (1), a person taking or causes to be taken any offensive material upon the metro railway shall be responsible also for any loss, injury or damage which may be caused by reason of such material having been so brought upon the metro railway.

61. (1) If, in contravention of sub-section (1) of section 30, a person takes or causes to be taken any dangerous material upon the metro railway, he shall be punishable with imprisonment for a term which may extend to four years and with fine which may extend to five thousand rupees.

(2) In addition to the penalties specified in sub-section (1), a person taking or causes to be taken any dangerous material upon the metro railway shall be responsible also for any loss, injury or damage which may be caused by reason of such material having been so brought upon the metro railway.

62. (1) No demonstration of any kind whatsoever shall be held on any part of the metro railway or other premises thereof and it shall be open to the metro railway administration to exclude from such premises any person attending such demonstrations whether or not he is in possession of a pass or ticket entitling him to be in the said premises.

(2) No person shall paste or put up any poster or write or draw anything or matter in any compartment or carriage of the metro railway, or any premises thereof, without any lawful authority and any person found engaged in doing any such act may be removed from the compartment, carriage or premises by any metro railway official authorised by the metro railway administration in this behalf.

(3) Wheever contravenes any of the provisions of sub-section (1) or sub-section (2), or being asked by any metro railway official to leave any compartment, carriage of premises refuses to do so, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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Penalty for taking or causing to take offensive material upon the metro railway.

Penalty for taking or causing to take dangerous material upon the metro railway.

Prohibition of demonstrations upon the metro railway.

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[PART II---

Penalty for travelling on roof, etc., of a train. 14

Penalty for unlawfully entering or remaining upon the metro railway or walking on the metro track.

Endangering the safety of passengers by metro railway official.

Abandoning train, etc., without authority.

Obstructing running of trains, etc.

Obstructing metro railway official in his duties.

Travelling without proper pass or proper ticket or beyond authorised distance. 63. If any passenger travels on the roof of a train or persists in travelling in any part of a train not intended for the use of passengers or projects any part of his body out of a train after being warned by any metro railway official to desist, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both, and shall also be liable to be removed from the train by any metro railway official authorised by the metro railway administration in this behalf.

64.(1) If a person enters into or upon the metro railway without any lawful authority or having entered with lawful authority remains there unlawfully and refuses to leave on being requested to do so by any metro railway official, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

(2) If any person walks on the metro track without any lawful authority, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

65. If any metro railway official, when on duty endangers the safety of any passenger,-

(a) by any rash or negligent act or omission; or

(b) by disobeying any rule, regulation or order which such official was bound by the terms of his employment to obey, and of which he had notice,

he shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to six thousand rupees, or with both.

66. If any metro railway official, when on duty, is entrusted with any responsibility connected with the running of a train, or any other rolling stock from one station or place to another station or place, and he abandons his duty before reaching such station or place, without authority or without properly handing over such train or rolling stock to another authorised metro railway official, he shall be punishable with imprisonment for a term which may extend to four years, or with fine which may extend to five thousand rupees, or with both.

67. If any person obstructs or causes to be obstructed or attempts to obstruct any train or rolling stock upon the metro railway by squatting, picketing, or keeping without authority any rolling stock on the metro railway or tampering with any signalling installations or by interfering with the working mechanism thereof, or otherwise, he shall be liable to be removed by any metro railway official, authorised by the metro railway administration in this behalf and shall also be punishable with imprisonment for a term which may extend to four years, or with fine which may extend to five thousand rupees, or with both.

68. If any person wilfully obstructs or prevents any metro railway official in the discharge of his duties, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

69. (1) If any passenger-

(a) travels in a train without having a proper pass or ticket with him; or

(b) being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 24, or travels in a train in contravention of the provisions of section 25; he shall be liable to pay, on the demand of any metro railway official appointed by the metro railway administration in this behalf, the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started. (2) If any passenger travels or attempts to travel in a carriage or by a train or travels in or on a carriage beyond the place authorised by his pass or ticket, he shall be liable to pay, on demand of any person appointed by the metro railway administration in this behalf, the excess charge mentioned in sub-section (3) in addition to any difference between any fare paid by him and the fare payable in respect of the journey he has made.

(3) The excess charge referred to in sub-sections (1) and (2) shall be fifty rupees.

(4) If any passenger liable to pay the excess charge and fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on a demand being made therefor, any metro railway official authorised by the metro railway administration in this behalf may apply to any Metropolitan Magistrate for the recovery of the sum payable as if it were a fine, and the Magistrate if satisfied that the sum is payable shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment for a term which may extend to one month.

(5) Any sum recovered under sub-section (4) shall, as and when it is recovered, be paid to the Consolidated Fund of India.

70. If any passenger or any other person without reasonable and sufficient cause, makes use of, or interferes with, any means provided by the metro railway administration in a train for communication between passengers and metro railway official in charge of the train, or misuses alarm bell of the train, he shall be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

71. If any person willfully breaks the security code of any pass or ticket, or defaces or alters or counterfeits or duplicates it or acts in any way to cause revenue loss to metro railway, he shall be punishable with imprisonment for a term which may extend to six months.

72. If any person without lawful authority -

(a) in this behalf pulls down or wilfully damages any board or documents set up or posted by the order of the metro railway administration on the metro railway, or any rolling stock, or

(b) obliterates or alters any letters or figures upon any such board or document or upon any rolling stock,

he shall be punishable with imprisonment which may extend to two months or with fine up to two hundred and fifty rupees, or with both.

73. If any person sells or exposes for sale, any article whatsoever in any metro railway carriage or upon any part of the metro premises not authorised by metro railway administration for such purpose, he shall be punishable with fine which may extend to five hundred rupees, and in default of payment of fine, he shall be punishable with imprisonment which may extend to six months:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such fine shall not be less than one hundred rupees.

74. (1) If any person -

(a) loosens or displaces any rail or any other matter or thing belonging to the metro railway; or

(b) turns, moves, unlocks or diverts any point or other machinery belonging to the metro railway; or

(c) does or causes to be done any act of sabotage in relation to the metro railway with intent or with knowledge that it is likely to endanger safety of any person upon the metro railway,

Altering or defacing or counterfeiting pass or ticket.

Defacing public 'notices.

Any sale of articles on the

metro railway.

Maliciously wrecking a

train or

causing sabotage.

SEC. 1]

he shall be punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, where a person is punished with rigorous imprisonment, such imprisonment shall not be less than-

(i) three years in the case of a first conviction; and

(*ii*) seven years in the case of conviction for the second or subsequent offence.

(2) If a person unlawfully does any act of sabotage or any other act referred to in subsection (1) with intent to cause the death of any person, or with knowledge that such act is so imminently dangerous that it must in all probability cause the death of any person or such bodily injury to any person as is likely to cause the death of any person, he shall be punishable with death or imprisonment for life.

75. If any person not being a metro railway official, or an agent authorised in this behalf under sub-section (2) of section 23 sells or attempts to sell any ticket in order to enable any other person to travel therewith, he shall be punishable for a term which may extend to three months, or fine which may extend to five hundred rupees, or with both, and shall also forfeit the ticket which he sells or attempts to sell.

76. If any person unlawfully throws or causes to fall or strike at against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that it is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life, or with imprisonment for a term which may extend to ten years.

77. If any person in a rash and negligent manner does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon the metro railway, he shall be punishable with imprisonment for them which may extend to one year, or with fine, or with both.

78. (1) Whoever, with intent to cause or knowing that he is likely to cause damage or destruction to any of the properties of the metro railway referred to in sub-section (2), causes by fire, explosive substance or otherwise causes damage to such property, he shall be punishable with imprisonment for a term which may extend to ten years.

(2) The properties of the metro railway referred to in sub-section (1) are the metro railway track, tunnels, sub-way, box-structures, station buildings and installations, carriage and wagons, rolling stock, signalling, telecommunication, air-conditioning and ventilation equipments, electrical sub-station, drainage pump, escalators, lifts, lighting installations, ticket vending machine, ticket barriers, electric traction and block equipments, and such other properties as the Central Government may, by notification, specify.

Endangering the safety of persons travelling by the metro railway by wilful act or omission. 79. If any person by unlawful act or by any wilful omission or neglect or by tampering with safety devices, endangers or causes to be endangered the safety of any person travelling on or being upon any metro railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any metro railway, he shall be punishable with imprisonment for a term which may extend to seven years:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall be not less than—

(i) six months in the case of first conviction; and

Penalty for unauthorised sale of tickets.

Maliciously hurting or attempting to hurt persons travelling by metro railway.

Endangering safety of persons travelling by metro railway by rash or negligent act or omission.

Damage to or destruction of certain metro railway properties.

16

(ii) two years in the case disconviction for the second or subsequent offence.

80. If any person requiring compensation from the metro railway administration under Penalty for Chapter X makes a claim which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

81. (1) Where an offence under this Ordinance has been committed by 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 offence 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, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, on is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be uity of that offence and shall be liable to be proceeded against and punished accordingly.

### Explanation.-For the purpose of this section -.

(a) "company" means any body corrected and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

82. (1) If a person commits any offence mentioned in sections 59, 61, 65 to 79, he may be arrested without warrant or other written authority by any metro railway official or by a police officer not below the rank of a head constable or by any other person whom such metro railway official or police officer may call to his aid:

Provided that where a person has been arested, by any person other than the police officer, he shall be made over to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in customy to the nearest police station.

(2) A person so arrested under this section shall be produced before the nearest Magistrate, having authority to try him or commit him for trial, as early as possible but within a period not exceeding twenty-four hours of such arrest exclusive of the time necessary for the journey from the place of arrest to the court of the Magistrate.

83. (1) If any person commits any offence under this Ordinance, other than an offence mentioned in section 82 or fails or refuses to pay any excess charge or other sum demanded under section 69 and there is reason to believe that he may abscond, or his name and address are unknown and he refuses on demand to give his name and address, or there is reason to believe that name and address given by him is incorrect, any metro railway official or police officer not below the rank of head constable, of any other person whom such metro railway official may call to his aid, may without warrant or written authority, arrest him.

(2) A person so arrested shall be produced before the nearest Magistrate, having " authority to try him or commit him for trial, as early as possible but within a period not exceeding twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the court of the Magistrate.

84. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate shall try an offence under this Ordinance.

Arrest of

unknown.

person likely to abscond or

Magistrate having jurisdiction under the Ordinance.

2 of 1974.

Power of arrest without warrant.

making a false claim for compensation.

Offences by companies.

Place of trial.

85. (1) Any prison committing an offence under this Ordinance, or any rule or regulation made thereinder, shall be triable for such offence in any place in which he may be, or which the Government of the National Capital Territory of Delhi may notify in this behalf, as well as any other place in which he is liable to be tried under any law for the time being in force.

(2) Every notification under sub-section (1), shall be published by the Government of the National Capital Ferritory of Delhi in the Delhi Gazette and a copy thereof shall be exhibited for the information of the public in some conspicuous place at such metro railway stations as that Government may direct.

### CHAPTER XII Miscellaneous

86. Without prejudice to the foregoing provisions of this Ordinance, the metro railway administration in case of the non Government metro railway shall, in the discharge of its duties and functions under this Ordinance, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the metro railway administration shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

87. No non-Government metro railway shall work without obtaining permission from the Central Government.

88. No suit, posecution or other legal proceedings shall lie against the Central Government, any mero railway administration, a metro railway official or against any other person, for any thing which is in good faith done or intended to be done in pursuance of this Ordinance or any rules, regulations or orders made thereunder.

89. (1) No rolling stock, metro railway tracks, machinery, plant, tools, fittings, materials or effects used or provided by a metro railway administration for the purpose of traffic on its railway, or its statices or workshops, or offices shall be liable to be taken in execution of any decree or order of any court or of any local authority or person having by law the power to attach or distrain property or otherwise to cause the property to be taken in execution, without the previous sanction of the Central Government.

(2) Nothing in sub-section (1) is to be construed as affecting the authority of any court to attach the entrings of the metro railway administration in execution of a decree or order.

90. All persons in the employment of the metro railway administration shall, when acting or purporting to act in pursuance of the provisions of this Ordinance, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Procedure for delivery to the metro railway administration of property detained by a metro railway official.

Officials of metro railway

administration

to be public servants.

91. If a metro railway official is discharged from service or is suspended, or dies or absconds or absents himself, and he or his spouse or widow or any member of his family or his representative, refuses or neglects, after notice in writing for that purpose, to deliver up to the metro railway administration or to a person appointed by the metro railway administration, in this behalf, any station, dwelling house, office or other building with its appurtenances, or any books, papers, keys, equipments or other matters, belonging to the metro railway administration and in the possession or custody of such metro railway official on the occurrence of any such event as aforesaid, any Metropolitan Magistrate may, on application made by or on behalf of the metro railway administration, order any police officer, with proper assistance, to enter upon the station, office or other building and remove any person found therein and take possession thereof, or to take possession of the books, papers and other matters, and to deliver the same to the metro railway administration or to a person appointed by the metro railway administration in that behalf.

Power of the Central Government to issue directions.

Prohibition to work as Non-Government

metro railway.

Protection of action taken in good faith.

Restriction on execution against metro railway property.

18

SEC. 1]

2 of 1974.

92. (1) Englies made in the records or other documents of the metro railway administration shall be admitted in evidence in all proceedings by or against the metro railway administration is a role administration in evidence in an proceedings by of against the metro railway administration, and all such entries may be proved either by the production of the records or other comments of the metro railway administration containing such entries or by the production of copy of the entries certified by the officer having custody of the records or other documers under his signature and stating that it is a true copy of the original entries and that such or that entries are contained in the records or other documents of the metro railway administration in his possession.

(2) Notwinstanding anything contained in any other law, a court shall presume that the entries in the scords of the metro railway administration admitted in evidence under sub-section (1) are the unless there is evidence to the contrary.

93. Any potice or other document required or authorised by this Ordinance to be served on a meterrailway administration may be served-

> leaving it at the office of the metro railway administration; or (a)

(b)registered post to the office address of the metro railway administration.

Any notice or other document required or authorised by this Ordinance to be 94. served on any son by the metro railway administration may be served by :-

> (a) elivering it to the person; or

eaving it at the usual or the last known place of abode of the person; or (b)

(c)) egistered post addressed to the person at his usual or the last known place of abode

95. While a notice or other document is served by registered post, it shall be deemed to have been prived at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service, it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

96. (1) The metro railway administration may, by order in writing, authorise any of its official or other person to act for, or represent it, as the case may be, in any proceeding before any civil, criminal or other court.

(2) A person authorised under sub-section (1) to conduct prosecution on its behalf shall, notwith randing anything in section 302 of the Code of Criminal Procedure, 1973, beentitled to conduct such prosecutions without the permission of the Magistrate.

97. The netro railway administration may constitute and maintain security staff for its railway, and powers, duties and functions of such staff shall be such as may be prescribed.

98. (1) the Central Government may, by notification in the Official Gazette, direct that all or any of the powers under this Ordinance or rules made thereunder, except sections 22, 32, 47, 56, 9 and 100, exercisable by it, shall, in relation to such matters and subject to such conditions, it may, as may be specified in the notification, be exercisable also by such officer or authority abordinate to the Central Government or by such officer of the metro railway powers. administratio

(2) The metro railway administration may, by general or special order in writing, delegate to any of its fificial subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Ordinance, except its power under section 101

99. (If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, not inconsistent with the provisions of this Ordinance, remove the lifficulty:

d that no such order shall be made after the expiry of a period of two years from Provi the commercement of this Ordinance.

ery order made under this section shall be laid before each House of Parliament. (2)

Proof of en-

tries in records.

and documents.

Service of notice, etc., on metro railway administration.

Service of notice, etc., by metro railway administration.

Presumption where notice is served by registered post.

Representation of the metro railway administration.

Appointment of security staff. Delegation of

Power to remove difficulties.

19

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Power of the Central Government to make rules. 20

100. (1) The Central Government may, by potification, make rules for carrying out the purposes of this Ordinance.

(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 form and time for preparing ind sending annual report under section 12;

(b) the terms and conditions of the three Fixation Committee under section 35;

(c) the procedure to be followed by the Fare Fixation Committee under section 35;

(d) the extent of compensation payable under section 57;

(e) the powers, duties and functions of the security staff of the Government metro railway under section 97; and

(f) without prejudice to any power to make rules contained elsewhere in this Ordinance, generally to carry-out the purposes of this Ordinance.

101. The Government metro railway administration may, with the previous approval of the Central Government, make regulations no inconsistent with this Ordinance and the rules made thereunder, to provide for all matters for which provisions are necessary or expedient for the purpose of giving effect to the provisions of this Ordinance.

102. Every rule made by the Central Go ernment and every regulation made by a Government metro railway administration under dis Ordinance shall be laid, as soon as may be after it is made, before each House of Parliam and, 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 rule and regulation or both Houses agree that the rule or the regulation should not be made, the rule or regulation shall thereafter have effect only in sur 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 or regulation.

103. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

104. Save as otherwise provided in this **G** dinance, the provisions of this Ordinance shall be in addition to and not in derogation of the Metro Railways (Construction of Works) Act, 1978.

33 of 1978.

A.P.J. ABDUL KALAM, President.

SUBHASH C. JAIN Secy. to the Govt. of India

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Power of the metro railway administration to make regulations.

Rules and regulations to be laid before Parliament.

Effect of the Ordinance inconsistent with other enactments. Application of other Acts. रजिस्ट्री सं॰ डो॰एल॰-33004 / 2003

REGISTERED NO. DL-33004/2003

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### असाधारण

EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 49] नई दिल्ली, सोमवार, सितम्बर 8, 2003/ भाद्र 17, 1925 (शक) No. 49] NEW DELHI, MONDAY, SEPTEMBER 8, 2003/ BHADRA 17, 1925 (Saka)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

### MINISTRY OF LAW AND JUSTICE

### (Legislative Department)

New Delhi, dated the 8th September, 2003/Bhadra 17, 1925 (Saka)

## THE TAXATION LAWS (AMENDMENT) ORDINANCE, 2003

No. 2 of 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Expenditure-tax Act, 1987.

WHEAREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

### CHAPTERI

PRELIMINARY

1. (1) This Ordinance may be called the Taxation Laws (Amendment) Ordinance, 2003.

(2) Save as otherwise provided in this Ordinance, it shall come into force at once.

### CHAPTER II

### Amendments to the Income-tax Act, 1961

Short title and commencement.

43 of 1961

2. In section 10 of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in clause (15),---

Amendment of section 10. (A) after sub-clause (*iiia*), the following sub-clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2001, namely:----

"(*iiib*) interest payable to the Nordic Investment Bank, being a multilateral financial institution constituted by the Governments of Denmark, Finland, Iceland, Norway and Sweden, on a loan advanced by it to a project approved by the Central Government in terms of the Memorandum of Understanding entered into by the Central Government with that Bank on the 25th day of November, 1986;";

### (B) in sub-clause (iv),---

(a) in item (c), the existing *Explanation* shall be numbered as *Explanation* 1 thereof and after *Explanation* 1 as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1962, namely:—

"*Explanation* 2.—For the removal of doubts, it is hereby declared that the usance interest payable outside India by an undertaking engaged in the business of ship-breaking in respect of purchase of a ship from outside India shall be deemed to be the interest payable on a debt incurred in a foreign country in respect of the purchase outside India;";

(b) in the Explanation 1 occurring below item (i), after clause (d), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1991, namely:---

### "(da) the business of ship-breaking; or".

3. After section 10B of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2004, namely:—

'10BA. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export out of India of eligible articles or things, shall be allowed from the total income of the assessee:

Provided that where in computing the total income of the undertaking for any assessment year, deduction under section 10A or section 10B has been claimed, the undertaking shall not be entitled to the deduction under this section:

Provided further that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

(2) This section applies to any undertaking which fulfils the following conditions, namely:---

(a) it manufactures or produces the eligible articles or things without the use of imported raw materials;

(b) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(c) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

*Explanation*—The provisions of Explanation 1 and Explanation 2 to subsection (2) of section 80-1 shall apply for the purposes of this clause as they apply for the purposes of clause (*ii*) of sub-section (2) of that section;

new section 10BA. Special provisions in

Insertion of

respect of export of certain articles or things. (d) ninety per cent. or more of its sales during the previous year relevant to the assessment year are by way of exports of the eligible articles or things;

(e) it employs twenty or more workers during the previous year in the process of manufacture or production.

(3) This section applies to the undertaking, if the sale proceeds of the eligible articles or things exported out of India are received in or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

*Explanation*.—For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

(4) For the purposes of sub-section (1), the profits derived from export out of India of the eligible articles or things shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things bears to the total turnover of the business carried on by the undertaking.

(5) The deduction under sub-section (1) shall not be admissible, unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, where a deduction is allowed under this section in computing the total income of the assessee, no deduction shall be allowed under any other section in respect of its export profits.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-1A shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

Explanation.—For the purposes of this section,—

(a) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999, and any rules made thereunder or any other corresponding law for the time being in force;

(b) "eligible articles or things" means all hand-made articles or things, which are of artistic value and which requires the use of wood as the main raw material.

(c) "export turnover" means the consideration in respect of export by the undertaking of eligible articles or things received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India;

(d) "export out of India" shall not include any transcation by way of sale or otherwise, in a shop, emporium or any other establishment situate in India, not involving clearance of any customs station as defined in the Customs Act, 1962.

4. In section 115P of the Income-tax Act, for the words "one and one-fourth per cent.", the words " one per cent." shall be substituted.

Amendment of section 115P

### 52 of 1962.

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42 of 1999.

3

### [Part II-

nendment of ction 115S.

of 5. In section 115S of the Income-tax Act, for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

nendment of ction 132B.

mendment

section

58BFA.

6. In section 132B of the Income-tax Act, in sub-section (4), in clause (a), for the words "eight per cent.", the words "six per cent." shall be substituted.

7. In section 158BFA of the Income-tax Act, in sub-section (1), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

mendment of **8.** In section 201 of the Income-tax Act, in sub-section (*IA*), for the words "fifteen per cent.", the words "twelve per cent." shall be substituted.

mendment of certification 206C.

9. In section 206C of the Income-tax Act,—

(a) in sub-section (1),--

(i) for the Table, the following Table shall be substituted, namely:----

Sl.No.	Nature of goods	Percentage
(1)	(2)	(3)
(i)	Alcoholic Liquor for human consumption	One per cent.
( <i>ii</i> )	Tendu leaves	Five per cent.
(iii)	Timber obtained under a forest lease	Two and one-half per cent.
( <i>i</i> v)	Timber obtained by any mode other than under a forest lease	Two and one-half per cent.
(v)	Any other forest produce not being timber or tendu leaves	Two and one-half per cent
(vi)	Scrap	One per cent. : ";

(ii) for the proviso below the Table, the following proviso shall be substituted, namely:---

"Provided that every person, being a seller shall at the time, during the period beginning on the 1st day of June, 2003 and ending on the day immediately preceding the date on which the Taxation Laws (Amendment) Ordinance, 2003 comes into force, of debiting of the amount payable by the buyer to the account of the buyer or of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table as it stood immediately before the 1st day of June, 2003, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax in accordance with the provisions of this section as they stood immediately before the 1st day of June, 2003.";

(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things and not for trading purposes.

(1B) The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Chief Commissioner or Commissioner one copy of the declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him.";

(c) in sub-section (3), for the words "seven days", the words "the prescribed time" shall be substituted;

(d) in sub-section (5), for the words "ten days from the date of debit", the words "such period as may be prescribed from the time of debit" shall be substituted;

(e) in sub-section (7), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted;

(f) in the *Emplanation* occurring at the end, in clause (a), for sub-clauses (i) and (ii), the following sub-clauses shall be substituted, namely:—

"(*i*) a public sector company, the Central Government, a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State and a club, or

(*ii*) a buyer in the retail sale of such goods purchased by him for personal consumption;".

10. In section 220 of the Income-tax Act, in sub-section (2), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

11. In section 230 of the Income-tax Act, in sub-section (2), after the words, brackets and figure "sub-section (1)", the words, brackets, figure and letter 'or the first proviso to sub-section (1A)" shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 2003.

12. In section 234A of the Income-tax Act, in sub-sections (1) and (3), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

13. In section 234B of the Income-tax Act, in sub-sections (1) and (3), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

14. In section 234C of the Income-tax Act, in sub-section (1),—

(*i*) in clause (*a*), in sub-clauses (*i*) and (*ii*), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted;

(*ii*) in clause (*b*), in sub-clauses (*i*) and (*ii*), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

15. In section 234D of the Income-tax Act, in sub-section (1), for the words "two-third per cent.", the words "one-half per cent." shall be substituted.

16. In section 244A of the Income-tax Act, in sub-section (1), in clauses (a) and (b), for the words "two-third per cent.", the words "one-half per cent." shall be substituted.

17. In section 272A of the Income-tax Act, in sub-section (2), after clause (i), the following clause shall be inserted, namely:—

"(j) to deliver or cause to be delivered in due time a copy of the declaration referred to in sub-section (1A) of section 206C;".

18. In the Second Schedule to the Income-tax Act, in rule 68A, in sub-rule (3), for the words "eight per cent.", the words "six per cent." shall be substituted.

### CHAPTER III

### Amendments to the Wealth-tax Act, 1957

19. In section 17B of the Wealth-tax Act, 1957 (hereinafter referred to as the Wealth-tax Act), in sub-sections (1) and (3), for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

Amendment of section 220.

5

Amendment of section 230.

Amendment of section 234A.

Amendment of section 234B.

Amendment of section 234C

Amendment of section 234D.

Amendment of section 244A.

Amendment of section 272A.

Amendment of Second Schedule.

Amendment of section 17B.

27 of 1957.

6

### THE GAZETTE OF INDIA EXTRAORDINARY.

Amendment of section 31.

20. In section 31 of the Wealth-tax Act, in sub-section (2),—

(a) for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted;

(b) in the second proviso, for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

Amendment of section 34A.

Amendment of section 14

of Act 35 of 1987.

21. In section 34A of the Wealth-tax Act,---

(a) in sub-section (3) for the words "eight per cent.", the words "six per cent." shall be substituted;

(b) in sub-section (4B), in clause (a), for the words "two-third per cent.", the words "one-half per cent." shall be substituted.

### CHAPTER IV

### Amendment to the Expenditure-tax Act, 1987

22. In section 14 of the Expenditure-tax Act, 1987, for the words "one and one-fourth per cent.", the words "one per cent." shall be substituted.

A.P.J. ABDUL KALAM, President.

SUBHASH C. JAIN, Secy. to the Govt. of India.

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PUBLISHED BY AUTHORITY

सं<sup>57</sup>] नई दिल्ली, गुरुवार, अक्टूबर 16, 2003/ अस्विन 24, 1925 No. 57] NEW DELHI, THURSDAY, OCTOBER 16, 2003/ ASVINA 25, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

### MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 16th October, 2003/Asvina 24, 1925 (Saka)

### **THE NATIONAL TAX TRIBUNAL ORDINANCE, 2003**

No. 3 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance to provide for the adjudication by the National Tax Tribunal of disputes with respect to levy, assessment, collection and enforcement of direct taxes and also to provide for the adjudication by that Tribunal of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323B of the Constitution and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

### **CHAPTER I**

### PRELIMINARY

1. (1) This Ordinance may be called the National Tax Tribunal Ordinance, 2003.

(2) It extends to the whole of India.

Short title, extent and commencement.

(3) It shall come into force at once.

2. In this Ordinance, unless the context otherwise requires,-

Definitions.

(a) "appointed date" means the date on which the National Tax Tribunal is established under section 3;

18 of 1958.

43 of 1961.

45 of 1974.

(b) "Bench" means a Bench of the National Tax Tribunal;

(c) "Board of Direct Taxes" means the Central Board of Direct Taxes 54 of 1963. constituted under the Central Boards of Revenue Act, 1963;

(d) "Board of Excise and Customs" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963; 54 of 1963.

(e) "Central Excise Act" means the Central Excise Act, 1944; 1 of 1944.

(f) "Central Excise Tariff Act" means the Central Excise Tariff Act, 1985; 5 of 1986.

(g) "Chairperson" means the Chairperson of the National Tax Tribunal;

(h) "Companies (Profits) Surtax Act" means the Companies (Profits) Surtax Act, 1964; 7 of 1964.

(i) "Customs Act" means the Customs Act, 1962; 52 of 1962.

(j) "Customs, Excise and Service Tax Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962; 52 of 1962.

(k) "Customs Tariff Act" means the Customs Tariff Act, 1975; 51 of 1975.

(1) "Expenditure-tax Act" means the Expenditure-tax Act, 1987; 35 of 1987.

(m) "Gift-tax Act" means the Gift-tax Act, 1958;

(n) "Income-tax Act" means the Income-tax Act, 1961;

(o) "Income-tax Appellate Tribunal" means the Income Tax Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961; 43 of 1961.

(p) "Interest-tax Act" means the Interest-tax Act, 1974;

(q) "Judicial Member" means a Member of the National Tax Tribunal and includes the Chairperson;

(r) "law officer" means the Attorney-General for India, the Solicitor General of India or the Additional Solicitor General of India;

(s) "Member" means a Member (whether Judicial or Technical) of the National Tax Tribunal and includes the Chairperson;

(t) "National Tax Tribunal" means the National Tax Tribunal established under section 3;

(u) "notification" means a notification published in the Official Gazette;

(v) "prescribed" means prescribed by rules made under this Ordinance;

(w) "Supreme Court" means the Supreme Court of India;

(x) "Technical Member" means a Member of the National Tax Tribunal who is not a Judicial Member within the meaning of clause (q);

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32 of 1994.

(y) "Wealth-tax Act" means the Wealth-tax Act, 1957;

(z) words and expressions used in this Ordinance but not defined herein and defined in the Central Excise Act, Central Excise Tariff Act, Customs Act, Customs Tariff Act (hereinafter referred to as indirect taxes) or the rules made thereunder or in chapter V of the Finance Act, 1994 shall have the meanings respectively assigned to them by such Acts or the rules made thereunder;

(za) words and expressions used in this Ordinance but not defined herein and defined in the Income-tax Act, Wealth-tax Act, Gift-tax Act, Expenditure-tax Act, Interest-tax Act or the Companies (Profits) Surtax Act (hereinafter referred to as direct taxes) or the rules made thereunder shall have the meanings respectively assigned to them in the said Acts or the rules made thereunder.

### CHAPTER II

### ESTABLISHMENT OF THE NATIONAL TAX TRIBUNAL

3. The Central Government shall, by notification in the Official Gazette, establish with effect from such date as may be specified therein, a Tax Tribunal to be known as the National Tax Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Ordinance.

4. The National Tax Tribunal shall consist of a Chairperson and such number of Judicial and Technical Members as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.

5. (1) The jurisdiction of the National Tax Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson.

(2) In case of an appeal filed against an order passed by the Income-tax Appellate Tribunal, a Bench shall consist of a Judicial Member and a Technical Member (Direct Tax).

(3) In case of an appeal filed against an order of the Customs, Central Excise and Service Tax Appellate Tribunal, a Bench shall consist of a Judicial Member and a Technical Member (Indirect Tax).

(4) The Benches of the National Tax Tribunal shall ordinarily sit at any place in the National Capital Territory of Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify:

Provided that the Chairperson may for adequate reasons permit a Bench to hold its temporary sitting for a period not exceeding fifteen days at a place other than its ordinary place of seat.

(5) The Central Government shall notify the areas in relation to which each Bench of the National Tax Tribunal may exercise its jurisdiction.

(6) The Central Government shall determine the number of Benches required for Direct Taxes or Indirect Taxes in consultation with the Chairperson.

(7) The Central Government may in consultation with the Chairperson transfer a Member from headquarters of one Bench in one State to the headquarters of another Bench in another State or to the headquarters of any other Bench within a State.

Establishment of the National Tax Tribunal.

Composition of National Tax Tribunal.

Constitution and jurisdiction of Benches. 6. (1) The Chairperson of the National Tax Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) A person shall not be qualified for appointment as Judicial Member unless he -

- (i) is, or has been, a Judge of a High Court; or
- (ii) has, for at least twenty years, been an Advocate of a High Court or has partly held a Judicial Office or has partly been in practice as an Advocate for a total period of twenty years; or
- (iii) is, or has been, a Member of the Indian Legal Service and has held the post of Additional Secretary or above for at least one year;
- (iv) is, or has been, a Judicial Member of the Income-tax Appellate Tribunal and has held the post of either President or Senior Vice- President or has held the post of Vice-President for at least two years or has held the post of Judicial Member for at least seven years;
- (v) is, or has been, a Judicial Member of the Customs, Excise and Service Tax Appellate Tribunal and has held the post of either President or has held the post of Vice-President for at least two years or has held the post of Judicial Member for at least seven years.

(3) A person shall not be qualified for appointment as Technical Member (Direct Tax), unless he -

- (i) is, or has been, an Accountant Member of the Income-tax Appellate Tribunal and has held the post of either President or Senior Vice- President or has held the post of Vice-President for at least two years or has held the post of Accountant Member for at least seven years;
- (ii) is, or has been, a Chairman or a Member of the Board of Direct Taxes or has held the post of Chief Commissioner or equivalent post for at least one year;
- (iii) is, or has been, a Chairman, Vice-Chairman or a Member of the Income Tax Settlement Commission; or
- (iv) has been for at least twenty years in practice as a Chartered Accountant under the Chartered Accountants Act, 1949 and is a person of ability, integrity and standing having special knowledge and professional experience in the field of direct taxes.

38 of 1949.

(4) A person shall not be qualified for appointment as Technical Member (Indirect Taxes) unless he-

- (i) is, or has been, a Technical Member of the Customs, Excise and Service Tax Appellate Tribunal and has held the post of Vice-President for at least two years or has held the post of Technical Member for at least seven years; or
- (ii) is, or has been, a Chairman, Vice-Chairman or a Member of the Customs and Central Excise Settlement Commission; or
- (iii) is, or has been, a Chairman or a Member of the Board of Excise and Customs; or
- (iv) is, or has been, a Member of the Indian Customs and Central Excise Service (Group 'A') and has held the post of Chief Commissioner of Customs or Chief Commissioner of Central Excise or an equivalent post for at least one year.

7. (1) Subject to the provisions of sub-section (2), the Chairperson and every Member shall be appointed by the Central Government.

Appointment of Chairperson and Members. (2) The Chairperson and Members shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of –

- (a) the Chief Justice of India or his nominee;
- (b) the Chairperson of the National Tax Tribunal;
- (c) the Secretary in the Ministry of Law and Justice (Department of Legal Affairs);
- (d) the Secretary in the Ministry of Finance (Department of Revenue).

(3) No appointment of the Chairperson or of a Member shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

8. The Chairperson and every Member of the National Tax Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office but shall be eligible for re-appointment:

Provided that no Chairperson or Member shall hold office as such after he has attained -

(a) in the case of Chairperson, the age of sixty-eight years; and

(b) in the case of any other Member, the age of sixty-five years.

9. The Chairperson or a Member of the National Tax Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office.

10. (1) Subject to the provisions of this Ordinance, the salary and allowances and other terms and conditions of the Chairperson shall be the same as applicable to a sitting Judge of the Supreme Court, but no vacation shall be allowed:

Provided that if a person who, immediately before the date of assuming the office as the Chairperson was in receipt of or being eligible so to do, had elected to draw, a pension in respect of any previous service or office held by such person under the Government of the Union or of a State, his salary in respect of service as Chairperson shall be reduced by the amount of that pension.

(2) A Member shall draw salary of a High Court Judge and other allowances and the terms and conditions of his service shall be the same as applicable to a Secretary to the Government of India:

Provided that if a person who, immediately before the date of assuming the office as Member was in receipt of or being eligible so to do, had elected to draw, a pension in respect of any previous service held by such person in connection with the affairs of the Union or of a State, his salary in respect of service as Member shall be reduced to the extent of that pension.

(3) The salary and allowances and other terms and conditions of service of Chairperson or a Member of the Tribunal shall not be varied to his disadvantage after appointment.

11. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member who –

Removal and suspension of Chairperson and other Members.

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence, which in the opinion of the Central

Resignation of Chairperson and other Members.

Term of office of

Chairperson and

Members.

Salary and allowances.

Government, involves moral turpitude; or

- (c) has become physically or mentally incapable of acting as such Chairperson or Member of the National Tax Tribunal; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Chairperson or Member of the National Tax Tribunal; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or a Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehavlour or incapacity of the Chairperson or a Member referred to in sub-section (2).

12. (1) The Central Government shall provide the National Tax Tribunal with such officers and employees as it may deem fit.

(2) The salaries and allowances and other conditions of service of officers and employees of the National Tax Tribunal shall be such as may be prescribed.

(3) The officers and employees of the National Tax Tribunal shall discharge their functions under the general superintendence of the Chairperson!

(4) The officers and the other employees shall be appointed on the recommendations of a Selection Committee constituted by the Central Government.

13. (1) A party to an appeal other than Government may either appear in person or authorise one or more chartered accountants or legal practitioners or any person duly authorized by him or it to present his or its case before the National Tax Tribunal.

(2) The Government may authorise one or more legal practitioners or any of its officers to present its case before the National Tax Tribunal.

Explanation - For the purposes of this section,-

- (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who 38 of 1949. has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) "legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice.

Member to act as Chairperson or to discharge his functions in certain circumstances.

14. (1) In the event of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Central Government may designate the seniormost Member to act as the Chairperson until the day on which a Chairperson or a new Chairperson, appointed in accordance with the provisions of this Ordinance to fill such vacancy, enters upon his office.

Officers and employees of National Tax Tribunal

Appearance before

the National Tax

Tribunal.

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(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Central Government may authorize the senior-most Member to discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

(3) The senior-most member designated to act or to discharge functions of the Chairperson under sub-sections (1) and (2) shall continue to draw salary and allowance of a Member.

### CHAPTER III

### JURISDICTION, POWERS AND FUNCTIONS OF THE NATIONAL TAX TRIBUNAL

15. (1) An appeal shall lie to the National Tax Tribunal from every order passed in appeal by the Income-tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal, if the National Tax Tribunal is satisfied that the case involves a substantial question of law.

(2) The Chief Commissioner or the Commissioner of Income-tax or the Chief Commissioner or Commissioner of Customs and Central Excise, as the case may be, or an assessee aggrieved by any order passed by the Income-tax Appellate Tribunal or any person aggrieved by any order passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as aggrieved person), may file an appeal to the National Tax Tribunal and such appeal under this sub-section shall –

- (a) be filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the aggrieved person or the Chief Commissioner or Commissioner, as the case may be;
- (b) be in the form of a memorandum of appeal precisely stating therein the substantial question of law involved; and
- (c) be accompanied by such fees as may be prescribed:

Provided that separate form of memorandum of appeal shall be filed for matters involving direct and indirect taxes:

Provided further that the National Tax Tribunal may entertain the appeal within sixty days after the expiry of the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal in time.

- (3) Where an appeal is admitted under sub-section (1), the National Tax Tribunal-
- (a) shall formulate the question of law for hearing the appeal; and
- (b) may also determine any relevant issue in connection with the question so formulated-
- (i) which has not been so determined by the Income-tax Appellate Tribunal; or by the Customs, Excise and Service Tax Appellate Tribunal; or
- (ii) which has been wrongly determined by the Income-tax Appellate Tribunal or by the Customs, Excise and Service Tax Appellate Tribunal,

and shall decide the question of law so formulated and the other relevant issue so determined and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(4) Where in any appeal under this section, the decision of the Income-tax Appellate Tribunal or the Customs, Excise and Service Tax Appellate Tribunal involves the payment of any tax or duties, the assessee or the aggrieved person, as the case may be, shall not be allowed to prefer such appeal unless he deposits at least twenty-five per cent. of such tax or duty payable on the basis of the order appealed against:

Appeal to the National Tax Tribunal.

Provided that where in a particular case the National Tax Tribunal is of the opinion that the deposit of tax or duty under this sub-section would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the interest of revenue.

Procedure and powers of National Tax Tribunal.

16. (1) The National Tax Tribunal shall not be bound by the procedure laid down by 5 of 1908. the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

(2) Subject to the other provisions of this Ordinance, the National Tax Tribunal shall have powers to regulate its own procedure.

(3) The National Tax Tribunal shall have, for the purposes of discharging its functions under this Ordinance, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:-

- (a) requiring the discovery and production of books of account and other documents:
- (b) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1 of 1872. 1872, requisitioning any public record or document or a copy of such record or document, from any office;
- (c) dismissing an appeal for default or deciding it, ex parte;
- (d) setting aside any order of dismissal of any appeal for default or any order passed by it, ex parte;
- (e) rectifying any mistake or error apparent on the face of record; and
- (f) any other matter which may be prescribed.

(4) All proceedings before the National Tax Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196, of the Indian Penal Code and the National Tax Tribunal shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17. Any order passed by the National Tax Tribunal shall be final and shall be given effect to accordingly and no civil court shall have or be entitled to exercise any jurisdiction, power or authority with respect to any of the matters falling within the jurisdiction of the National Tax Tribunal.

18. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson, who shall hear the point or points himself or nominate any other Member for such hearing and such point or points shall be decided according to the opinion of the majority, who have beard the case including those who first heard it.

19. Where a judgment pronounced on a question of law by a Bench subsequently comes up for hearing before any Bench, it shall make a reference to the Chairperson of the Tribunal to constitute a special Bench consisting of three Judicial Members and two Technical Members to hear and decide such question of law.

20. Notwithstanding anything contained in any other provisions of this Ordinance or any other law for the time being in force, no interim order (whether by way of injunction or stay or otherwise) shall be made in relation to any appeal under this Ordinance, unless-

(a) copies of such appeal and all documents in support of the plea for such interim order are furnished to the party against whom the appeal is preferred; and (b) opportunity is given to such party to be heard in the matter.

Finality of order of National Tax Tribunal.

Decision by majority.

Special Bench.

Interim order.

5 of 1908.

45 of 1860.

2 of 1974.

21. The National Tax Tribunal shall have and exercise the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise such power or authority, for this purpose under the provisions of the Contempt of Courts Act, 1971, which shall have effect subject to the modification that-

- (a) any reference therein to a High Court shall be construed as including a reference to the National Tax Tribunal;
- (b) any reference to the Advocate General in section 15 of the said Act shall be construed as a reference to such law officer as the Central Government may specify in this behalf:

Provided that such matters shall be heard by a Special Bench consisting of three Judicial and two Technical Members constituted by the Chairperson.

22. The National Tax Tribunal may, after giving the parties to any proceedings before it, an opportunity of being heard, pass such orders thereon as it thinks fit.

23. (1) On and from the appointed date, all matters and proceedings including appeals Transfer of and references under the direct taxes and indirect taxes pending before any High Court immediately before that date shall stand transferred to the National Tax Tribunal.

(2) Where any matter or proceeding including appeals and references stand transferred from the High Court to the National Tax Tribunal under sub-section (1),-

- (a) the High Court shall, as soon as may be after such transfer, forward the records pertaining to such matter or proceeding to the National Tax Tribunal;
- (b) the National Tax Tribunal shall, on receipt of such records, proceed to deal with such matter or proceeding from the stage at which it is transferred or from an earlier stage or *de novo* as it may deem fit;
- (c) the Chairperson shall constitute a Bench consisting of such number of Judicial and Technical Members as he deems fit for hearing cases transferred under this section.

24. Any person aggrieved by any decision or order of the National Tax Tribunal may Appeal to Supreme file an appeal to the Supreme Court within sixty days from the date of communication Court. of the decision or order of the National Tax Tribunal to him:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within such time as it may deem fit.

### CHAPTER IV

### **MISCELLANEOUS**

25. The Chairperson, Members and other officers and employees of the National Tax Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

26. No suit, prosecution or other legal proceedings shall lie against the National Tax

Tribunal or its Chairperson, Member, officer or other employee in the discharge of any function for any loss or damage caused or likely to be caused by any act which is, in good faith, done or intended to be done in the discharge of any function under this

Members, etc to be public servants.

Protection of action taken in good faith.

Power to remove

difficulties.

27. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such

National Tax Tribunal.

Order of the

pending cases from High Court.

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Ordinance.

SEC. 1]

Power to punish for contempt.

[PART II---

provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before each House of Parliament.

Power to make rules.

28. (1) The Central Government may, by notification, make rules to carry out the provisions of this Ordinance.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the procedure under sub-section (4) of section 11 for the investigation of charges of misbehaviour or incapacity against the Chairperson or other Members;
- the salaries and allowances and other conditions of service of officers and other **(b)** employees of the National Tax Tribunal under sub-section (2) of section 12;
- (c) the amount of fees payable under sub-section (2) of section 15;
- (d) the subject matter in respect of which the National Tax Tribunal may exercise the powers of a Civil Court under clause (f) of sub-section (3) of section 16;
- any other matter which may be prescribed or in respect of which rules are (e) required to be made by the Central Government.

Laying of rules before Parliament.

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29. Every rule made under this Ordinance by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a 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 rule or both Houses 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.

Consequential amendments.

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30. On and from the appointed date, the enactments mentioned in the Schedule shall stand amended in the manner specified therein.

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

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditors shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of subsection (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

Provided further that in the case of a company being wound up on or after the commencement of this Ordinance, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to subsection (1) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

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SEC. 1]

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# THE GAZETTE OF INDIA EXTRAORDINARY

Explanation .--- For the purposes of this sub-section,---

(a) "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;

[PART I]-

1 of 1956.

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of subsection (4) in relation to the secured assets under this Ordinance.

(12) The rights of a secured creditor under this Ordinance may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. 14. (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Ordinance, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Manner and effect of take over of management 15. (1) When the management of business of a borrower is taken over by a secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit—

(a) in a case in which the borrower is a company as defined in the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that Act; or

(b) in any other case, to be the administrator of the business of the borrower.

(2) On publication of a notice under sub section (1),---

(a) in any case where the borrower is a company as defined in the Companies Act, 1956, all persons holding office as directors of the company and in any other case, 1 of 1956.

SEC. 1] THE GAZETTE OF INDIA EXTRAORDINARY

5. In section 28AB, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

M 2,004, S. 3 ( w. Rt 27-10-2003)

13

- 6. In section 28B, in sub-section (1), after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.
- 7. Sections 130,130A, 130B, 130C, 130D, 130E and 130F shall be omitted.

1

- 8. In section 131, after the words "an appeal has been preferred to the Supreme Court", the words and figure "under this Act before the commencement of the National Tax Tribunal Ordinance, 2003" shall be inserted.
- 9. In section 131C, clause (b) shall be omitted.

#### PART VII

#### AMENDMENTS TO THE CENTRAL EXCISE ACT, 1944 (1 OF 1944)

1. In section 2, after clause (f), the following clause shall be inserted, namely:-

'(ff). "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Ordinance, 2003;'.

- 2. In section 11AA, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.
- 3. In section 11AB, in *Explanations* 1 and 2, after the words, "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.
- 4. In section 11BB, in the *Explanation*, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.
- 5. In section 35C, in sub-section (4), for the words, figures and letters "Save as provided in section 35G or section 35L", the words and figures "Save as provided in the National Tax Tribunal Ordinance, 2003" shall be substituted.
- 6. Sections 35G, 35H, 35-1 and 35J shall be omitted.
- 7. In section 35K,-

9.

(i) in sub-section (1), the words "High Court or the" shall be omitted;

(ii) in sub-section (2), the words "the High Court or" shall be omitted.

- 8. Sections 35L and 35M shall be omitted.
  - In section 35N, after the words "an appeal has been preferred to the Supreme Court", the words and figures "under this Act before the commencement of the National Tax Tribunal Ordinance, 2003" shall be inserted.

A. P. J. ABDUL KALAM, President,

T. K. VISWANATHAN, Secy. to the Govt. of India. पंजीकरण सं॰ डी॰एल॰(एन॰) 04/0007/2003---05

REGISTERED NO. DL(N) 04/0007/2003---05



असाधारण EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं° 58] नई दिल्ली, सोमवार, अक्तूबर 27, 2003/ कार्तिक 5, 1925 (शक) No. 58] NEW DELHI, MONDAY, OCTOBER 27, 2003/ KARTIKA 5, 1925(Saka)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# **MINISTRY OF LAW AND JUSTICE**

#### (Legislative Department)

New Delhi, the 27<sup>th</sup> October, 2003/ Kartika 5, 1925 (Saka)

# THE PREVENTION OF TERRORISM (AMENDMENT) ORDINANCE, 2003 NO. 4 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance to amend the Prevention of Terrorism Act, 2002.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Prevention of Terrorism Short title and (Amendment) Ordinance, 2003.

commencement.

(2) It shall come into force at once.

Amendment of section 60.

2. In section 60 of the Prevention of Terrorism Act, 2002, after sub- 15 of 2002. section (3), the following sub-sections shall be inserted, namely:-

"(4) Without prejudice to the other provisions of this Act, any Review Committee constituted under sub-section (1) shall, on an application by any aggrieved person, review whether there is a *prima* facie case for proceeding against the accused under this Act and issue directions accordingly.

(5) Any direction issued under sub-section (4),-

(i) by the Review Committee constituted by the Central Government shall be binding on the Central Government, the State Government and the police officer investigating the offence; and

(*ii*) by the Review Committee constituted by the State Government shall be binding on the State Government and the police officer investigating the offence.

(6) Where the reviews under sub-section (4) relating to the same offence under this Act, have been made by a Review Committee constituted by the Central Government and a Review Committee constituted by the State Government, under sub-section (1), any direction issued by the Review Committee constituted by the Central Government shall prevail."

# A.P.J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

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MGIPMRND-3190GI-27-10-2003.

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EXTRAORDINARY भाग II --- खण्ड 1 PART II - Section 1 प्राधिकार से प्रकाशित

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सं॰ 59] No. 59]

नई दिल्ली, बुधवार, अक्टूबर 29, 2003/ कार्तिक 7, 1925 NEW DELHI, WEDNESDAY, OCTOBER 29, 2003/ KARTIKA 7, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 29th October, 2003/Kartika 7, 1925 (Saka)

# THE REPRESENTATION OF THE PEOPLE (AMENDMENT) **ORDINANCE**, 2003

#### NO. 5 OF 2003

# Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951.

WHEREAS Parliament is not in session and the President 'is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

#### CHAPTER I PRELIMINARY

1. (1) This Ordinance may be called the Representation of Short title and the People (Amendment) Ordinance, 2003.

commencement.

(2) It shall come into force at once.

# THE GAZETTE OF INDIA EXTRAORDINARY

# CHAPTER II

AMENDMENT OF THE REPRESENTATION OF THE PROPLE ACT, 1950

2. In section 13AA of the Representation of the People Act, 1950, in sub-section (1), the words "other than a Union territory," shall be omitted.

# CHAPTER III

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

Amendment of Act 43 of 1951.

Amendment of section

13AA of Act 43 of

1950.

2

3. In the Representation of the People Act, 1951,-

(a) in section 26, sub-section (5) shall be omitted ;

(b) in section 78, sub-section (2) shall be omitted.

A.P.J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2003. (एन) 04/0007/2003 -05

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**EXTRAORDINARY** भाग ी ---- खण्ड 1 PART II --- Section 1 प्राधिकार से प्रकाशित

The Gazette of India

PUBLISHEL BY AUTHORITY नई दिल्ली, शुक्रवार, अक्टूबर 31, 2003/ कार्तिक 9, 1925

सं॰ 60] NEW DELHI, FRIDAY, OCTOBER 31, 2003/ KARTIKA 9, 1925 No. 60]

इस भाग में भिन्न पुष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE

#### (Legislative Department)

New Delhi, the 31st October, 2003/Kartika 9, 1925 (Saka)

# THE DELIMITATION (AMENDMENT) ORDINANCE, 2003

## No. 6 of 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance to amend the Delimitation Act, 2002.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:----

1. (1) This Ordinance may be called the Delimitation (Amendment) Ordinance, 2003.

(2) It shall come into force at onc

and

Short title

33 of 2002.

2. In section 3 of the Delimitation act, 2002 (hereinafter referred to as the principal Act), for the Explanation, the following Explanation shall be substituted, namely:-

"Explanation. — For the purposes of clause (c), the State Election Commissioner of concerned State

(i) in respect of the duties of the Commission relating to a State (other than the States of Meghalaya, Mizoram and Nagaland), means the State Election Commissioner appointed by the Governor of that State under clause (1) of article 243K; and

commencement.

Amendment of section 3.

## THE GAZETTE OF INDIA EXTRAORDINARY [PART II—Sec. 1]

(*ii*) in respect of the duties of the Commission relating to the State of Meghalaya or the State of Mizoram or the State of Nagaland, as the case may be, means a person nominated by the Governor of that State for such purposes."

3. In section 4 of the principal Act, in sub-section (2), for the figures "1991", the

Amendment of section 4.

Amendment of section 8.

#### 4. In section 8 of the principal Act,-

figures "2001" shall be substituted.

(i) in clause (a), for the figures "1991", the figures "2001" shall be substituted;

(*ii*) in clause (b), for the figures "1991", the figures "2001" shall be substituted.

Amendment of section 9. 5. In section 9 of the principal Act, in sub-section (1), for the figures "1991", the figures "2001" shall be substituted.

# A.P.J. ABDUL KALAM, *President*.

# T.K. VISWANATHAN,

Secy. to the Govt. of India.

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MGIPMRND-3206GI-1-11-2003.

जिस्ट्री सं॰ डी॰एल॰-(एन)04/0007/2003---05

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EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं<sup>°</sup> 61] नई दिल्ली, बुधवार, नवम्बर 5, 2003/ कार्तिक 14, 1925 No. 61] NEW DELHI, WEDNESDAY, NOVEMBER 5, 2003/ KARTIKA 14, 1925

इस भाग में भित्र पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 5th November, 2003/Kartika 14, 1925 (Saka)

# THE INDIAN TELEGRAPH (AMENDMENT) ORDINANCE, 2003

# NO. 7 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance further to amend the Indian Telegraph Act, 1885.

WHEREAS the Indian Telegraph (Amendment) Bill, 2003 was introduced in the House of the People, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: -

1. (1) This Ordinance may be called the Indian Telegraph (Amendment) Ordinance, 2003.

Short title and commencement

(2) It shall be deemed to have come into force on the 1<sup>st</sup> day of April, 2002.

Amendment of section 3.

2. In section 3 of the Indian Telegraph Act, 1885 (hereinafter referred to as 13 of 1885 the principal Act), clause (1) shall be renumbered as clause (1AA) and before clause (1AA) as so renumbered, the following clauses shall be inserted, namely:-

'(1) "Fund" means the Universal Service Obligation Fund established under sub-section (1) of section 9A;

(1A) "Universal Service Obligation" means the obligation to provide access to basic telegraph services to people in the rural and remote areas at affordable and reasonable prices;".

Amendment of section 4. 3. In section 4 of the principal Act, in sub-section (1), the following *Explanation* shall be inserted at the end, namely:-

"Explanation.-The payments made for the grant of a license under this sub-section shall include such sum attributable to the Universal Service Obligation as may be determined by the Central Government after considering the recommendation made in this behalf by the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997."

24 of 1997.

Amendment of section 7.

4. In section 7 of the principal Act, in sub-section (2), after clause (ee), the following clauses shall be inserted, namely:-

"(eea) the manner in which the Fund may be administered;

(eeb) the criteria based on which sums may be released.".

Insertion of new Part IIA.

Establishment of Universal

Service

Fund.

Obligation

5. After Part II of the principal Act, the following Part shall be inserted, namely:-

# **"PART IIA**

#### **UNIVERSAL SERVICE OBLIGATION FUND**

9A. (1) On and from the commencement of the Indian Telegraph (Amendment) Ordinance, 2003, there shall be deemed to have been established, for the purposes of this Act, a Fund to be called the Universal Service Obligation Fund.

(2) The Fund shall be under the control of the Central Government and there shall be credited thereto-

(a) any sums of money paid under section 9B;

(b) any grants and loans made by the Central Government under section 9C.

(3) The balance to the credit of the Fund shall not lapse at the end of the financial year.

9B. The sums of money received towards the Universal Service Obligation under section 4 shall first be credited to the Consolidated Fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit such proceeds to the Fund from time to time for being utilised exclusively for meeting the Universal Service Obligation.

Crediting of sum to Consolidated Fund of India. 9C. The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants and loans such sums of money as that Government may consider necessary in the Fund.

9D. (1) The Central Government shall have the power to administer the Fund in such manner as may be prescribed by rules made under this Act.

(2) The Fund shall be utilised exclusively for meeting the Universal Service Obligation.

(3) The Central Government shall be responsible for the coordination and ensuring timely utilisation and release of sums in accordance with the criteria as may be prescribed by rules made under this Act.".

#### A.P.J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

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MGIPMRND-3227GI-5-11-2003.

Grants and loans by the Central Government.

Administration and utilisation of Fund.

Repealed by Act, 58 9 2003, J. 4 (co. et. 7-11-2003)

रजिस्ट्री सं डीएल-(एन)04/0007/2003-05

REGISTERED NO. DL-(N)04/0007/2003---05



असाधारण EXTRAORDINARY भाग II --- खण्ड 1 PART II --- Section 1 प्राधिकार से प्रकाशित

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नई दिल्ली, शुक्रवार, नवम्बर 7, 2003/ कार्तिक 16, 1925 62]

NEW DELHI, FRIDAY, NOVEMBER 7, 2003/ KARTIKA 16, 1925 No. 62]

इस माग में मिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 7th November, 2003/Kartika 16, 1925 (Saka)

THE INDIAN MEDICINE CENTRAL COUNCIL (AMENDMENT) ORDINANCE, 003

# NO. 8 OF 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

An Ordinance further to amend the Indian Medicine Central Council Act, 1970.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: –

1. (1) This Ordinance may be called the Indian Medicine Central Council Short tille and comme (Amendment) Ordinance, 2003.

cement.

Amendment of section

(2) It shall come into force at once.

48 of 1970

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2. In the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the principal Act), in section 2, after clause (e), the following clause shall be inserted, namely:-

'(ea) "medical college" means a college of Indian medicine, whether known as such or by any other name, in which a person may undergo a course of study or training including any post-graduate course of study or training which will qualify him for the award of a recognized medical qualification;'.

Substitution of new Chapter for Chapter IIA.

Permission for establishment of new medical college, new course of study, etc. 3. For Chapter IIA of the principal Act, the following Chapter shall be substituted, namely:-

#### CHAPTER IIA

PERMISSION FOR NEW MEDICAL COLLEGE. COURSE, ETC

13A. (1) Notwithstanding anything contained in this Act  $\mathbf{c}$  any other law for the time being in force, -

(a) no person shall establish a medical college; or

(b) no medical college shall -

(i) open a new or higher course of study or training, including a postgraduate course of study or training, which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(*ii*) increase its admission capacity in any course of **study** or training including a post-graduate course of study or training,

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

*Explanation* 1. – For the purposes of this section, "person" includes any University or a trust, but does not include the Central Government.

*Explanation* 2. – For the purposes of this section, "admission capacity", in relation to any course of study or training, including post-graduate course of study or training, in a medical college, means the maximum number of students as may be fixed by the Central Government from time to time for being admitted to such course or training.

(2) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of sub-section (3) and the Central Government shall refer the scheme to the Central Gouncil for its recommendations.

(3) The scheme referred to in sub-section (2), shall be in such form and contain such particulars and be preferred in such manner and accompanied with such fee, as may be prescribed.

(4) On receipt of a scheme from the Central Government under subsection (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may, -

(a) if the scheme is defective and does not contain necessary particulars, give a reasonable opportunity to the person or medical college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Central Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (8) and submit it to the Central Government rogether with its recommendations thereon within a period not exceeding six months from the date of receipt of the reference from the Central Government.

(5) The Central Government may, after considering the scheme and recommendation of the Central Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical college concerned and having regard to the factors referred to in sub-section (8), either approve the scheme

2

with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under subsection (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2).

(6) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order is communicated by the Central Government to the person or medical college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted, and, accordingly, the permission of the Central Government required under subsection (1) shall also be deemed to have been granted.

(7) In computing the time-limit specified in sub-section (6), the time taken by the person or medical college concerned submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government, shall be excluded.

(8) The Central Council while making its recommendations under clause (b) of sub-section (4) and the Central Government while passing an order, either approving or disapproving the scheme under sub-section (5), shall have due regard to the following factors, namely: --

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under section 22;

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital or other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or the course of study or training by persons having recognised medical qualifications;

(f) the requirement of manpower in the field of practice of Indian medicine in the medical college;

(g) any other factors as may be prescribed.

Non-recognition of medical qualifications in certain cases.

Time for seeking permission for certain existing medical colleges. (9) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical college concerned.

13B. (1) Where any medical college is established without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical college shall not be deemed to be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training including a post-graduate course of study or training without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any study of such medical college on the basis of such study or training shall not be deemed to be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with the provisions of section 13A, medical qualification granted to any student of such medical eollege on the basis of the increase in its admission capacity shall not be deemed to be a recognised medical qualification for the purposes of this Act.

13C. (1) If any person has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission capacity on or before the commencement of the Indian Medicine Central Council (Amendment) Ordinance, 2003, such person or medical college, as the case may be, shall seek, within a period of three years from the said commencement, permission of the Central Government in accordance with the provisions of section 13A.

(2) If any person or medical college, as the case may be, fails to seek permission under sub-section (1), the provisions of section 13B shall apply, so far as may be, as if, permission of the Central Government under section 13A has been refused.'

A.P.J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

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असाधारण EXTRAORDINARY भाग II खण्ड 1 PART II --- Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 30] नई दिल्ली, मंगलवार, सितम्बर 21, 2004 / भाद्र 30, 1926 No. 30] NEW DELHI, TUESDAY, SEPTEMBER 21, 2004 / BHADRA 30, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, dated the 21<sup>st</sup> September, 2004/Bhadra 30, 1926 (Saka)

THE PREVENTION OF TERRORISM (REPEAL) ORDINANCE, 2004

# NO. 1 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance to repeal the Prevention of Terrorism Act, 2002.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Prevention of Terrorism (Repeal) Ordinance, 2004.

Short title and commencement.

(2) It shall come into force at once.

15 of 2002.

2. (1) The Prevention of Terrorism Act, 2002 is hereby repealed.

Repeal and saving, etc.

(2) The repeal of the said Act shall not affect-

(a) the previous operation of, or anything duly done or suffered under, the said Act, or

(b) any right, privilege or obligation or liability acquired, accrued or incurred under the said Act, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under the said Act, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the said Act had not been repealed:

Provided that notwithstanding anything contained in this sub-section or in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act after the expiry of the period of one year from the commencement of this Ordinance.

(3) Notwithstanding the repeal of section 60 of the said Act, the Review Committee constituted by the Central Government under sub-section (1) of that section, whether or not an application under sub-section (4) of that section has been made, shall review all cases registered under that Act as to whether there is a *prime facie* case for proceeding against the accused thereunder and such review shall be completed within a period of one year from the commencement of this Ordinance and where the Review Committee is of the opinion that there is no *prima facie* case for proceeding against the accused, then,-

(a) in cases in which cognizance has been taken by the court, the cases shall be deemed to have been withdrawn; and

(b) in cases in which investigations are pending, the investigations shall be closed forthwith.

with effect from the date of issuance of the direction by such Review Committee in this regard.

(4) The Review Committee constituted by the Central Government under subsection (I) of section 60 of the said Act shall, while reviewing cases, have powers of a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

5 of 1908.

(a) discovery and production of any document;

(b) requisitioning any public record or copy thereof from any court or office.

[PART II--

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(5) The Central Government may constitute more Review Committees, as it may consider necessary, for completing the review within the period specified in sub-section (3).

A.P.J. ABDUL KALAM, President. 3

T.K. VISWANATHAN, Secy. to the Govt. of India. रजिस्ट्री सं॰ डी॰ एल॰---(एन)04/0007/2003---05

REGISTERED NO. DL---(N)04/0007/2003---05





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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, dated the 21<sup>st</sup> September, 2004/Bhadra 30, 1926 (Saka)

THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ORDINANCE, 2004

#### NO. 2 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Unlawful Activities (Prevention) Act, 1967.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Unlawful Activities Short title and (Prevention) Amendment Ordinance, 2004.

(2) It shall come into force at once.

37 of 1967.

2. In the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the principal Act), in the long title, after the word "associations", the words ", and for dealing with terrorist activities," shall be inserted.

- 3. In the principal Act, for the words and figures "Code of Criminal Procedure, 1898", wherever they occur, the word "Code" shall be substituted.

Substitution of word "Code" for "Code of Criminal Procedure, 1898".

4. In Chapter I of the principal Act, for sections 1, 2 and 2A, the following sections shall be substituted, namely:-

Amendment of long title.

Amendment of Chapter I. Short title, extent and application.

1. (1) This Act may be called the Unlawful Activities (Prevention) Act, 1967.

(2) It extends to the whole of India.

(3) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(4) Any person, who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(5) The provisions of this Act apply also to-

(a) citizens of India outside India;

(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in India, wherever they may be.

Definitions.

2. (1) In this Act, unless the context otherwise requires,-

(a) "association" means any combination or body of individuals;

(b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part;

(c) "Code" means the Code of Criminal Procedure, 1973;

(d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act;

(e) "Designated Authority" means such officer of the Central Government not below the rank of Joint Secretary to that Government, or such officer of the State Government not below the rank of Secretary to that Government, as the case may be, as may be specified by the Central Government or the State Government, by a notification published in the Official Gazette;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "proceeds of terrorism" means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organisation;

2 of 1974.

[Part ÌI----

#### THE GAZETTE OF INDIA EXTRAORDINARY

(*h*) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, and includes cash and bank account;

(*i*) "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India;

(*j*) "State Government", in relation to a Union territory, means the Administrator thereof;

(k) "terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

(1) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

(m) "terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;

(n) "Tribunal" means the Tribunal constituted under section 5;

(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

> (*i*) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

> (*ii*) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

(p) "unlawful association" means any association,-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

# THE GAZETTE OF INDIA EXTRAORDINARY

(*ii*) which has for its object any activity which is 4 punishable under section 153A or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (*ii*) shall apply to the State of Jammu and Kashmir;

(q) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.'

5. In section 5 of the principal Act, in sub-section (7), for the word and figures "Chapter XXXV", the word and figures "Chapter XXVI" shall be substituted.

6. For section 10 of the principal Act, the following section shall be substituted, namely:-

"10. Where an association is declared unlawful by a notification issued under section 3 which has become effective under subsection (3) of that section,-

(a) a person, who-

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(*iii*) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(*iv*) in any way assists the operations of such association,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association; or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property.

Amendment of section 5.

Substitution of new section for section 10.

Penalty for being member of an unlawful association, etc. [PART II-

45 of 1860.

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(*ii*) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

7. For Chapter IV of the principal Act, the following Chapters and the Schedule shall be substituted, namely:-

Substitution of new Chapters and Schedule fo. Chapter IV.

Terrorist act.

#### CHAPTER IV

#### PUNISHMENT FOR TERRORIST ACTIVITIES

15. Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

16. (1) Whoever commits a terrorist act shall,—

Punishment for terrorist act.

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

17. Whoever raises fund for the purpose of committing a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18. Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a

Punishment for raising fund for terrorist act.

Punishment for conspiracy, etc.

SEC. 1]

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terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for harbouring, etc. 19. Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine:

Provided that this section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

Punishment for being member of terrorist gang or organisation. 20. Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

21. Whoever knowingly holds any property derived or obtained

from commission of any terrorist act or acquired through the terrorist

fund shall be punishable with imprisonment for a term which may

extend to imprisonment for life, and shall also be liable to fine.

Punishment for holding proceeds of terrorism.

Punishment for threatening witness. 22. Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

Enhanced penalties.

23. (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under the Explosives Act, 1884 or the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 or the Arms Act, 1959, or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Any person who, with intent to aid any terrorist, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (I), shall be deemed to have contravened that provision under sub-section (I) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".

4 of 1884. 6 of 1908. 20 of 1952. 54 of 1959.

# CHAPTER V

#### FORFEITURE OF PROCEEDS OF TERRORISM

24. (1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

25. (1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purposes of terrorism; or

(b) it forms the whole or part of the resources of a terrorist organisation:

Forfeiture of proceeds of terrorism.

Powers of investigating officer and Designated Authority and appeal against order of Designated Authority. Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, "cash" means—

- (a) coins or notes in any currency;
- (b) postal orders;
- (c) traveller's cheques;
- (d) banker's drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

-26. Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

27. (1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a *bona fide* transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the court to make an order in respect of the property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the administrator of such property subject to such conditions as may be specified by the court.

Court to order forfeiture of proceeds of terrorism.

Issue of show cause notice before forfeiture of proceeds of terrorism.

8

28. (1) Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated.

(2) Where an order under section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under section 26 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

29. The order of forfeiture made under this Chapter by the court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under Chapter IV or Chapter VI.

30. (1) Where any claim is preferred or any objection is made to the seizure or attachment of any property under section 25 on the ground that such property is not liable to seizure or attachment, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.

(2) Where an appeal has been preferred under sub-section (6) of section 25 and any claimant or objector establishes that the property specified in the notice issued under section 27 is not liable to be forfeited under this Chapter, the said notice shall be withdrawn or modified accordingly.

31. The Designated Authority, acting under the provisions of this Chapter, shall have all the powers of a civil court required for making a full and fair inquiry into the matter before it.

32. Where, after the issue of an order under section 25 or issue of a notice under section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

33. (1) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, if not already attached under this Chapter.

Powers of Designated Authority.

Certain transfers to be null and void.

> ane Adapati Nga Period

Forfeiture of property of certain persons.

forfeiture not to interfere with other punishments.

Order of

Claims by third party.

Appeal.

(2) Where a person has been convicted of any offence punishable under Chapter IV or Chapter VI, the court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

Company to transfer shares to Government. 34. Where any share in a company stands forfeited to the Central Government or the State Government, as the case may be, under this Chapter, then, the company shall, on receipt of the order of the courn notwithstanding anything contained in the Companies Act, 1956, of the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such share.

#### 1 of 1956.

#### CHAPTER VI

#### **TERRORIST ORGANISATIONS**

Amendment of Schedule, etc.

35. (1) The Central Government may, by order, in the Official Gazette,---

(a) add an organisation in the Schedule;

(b) add also an organisation in the Schedule, which is identified as a terrorist organisation in a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations, to combat international terrorism;

(c) remove an organisation from the Schedule;

(d) amend the Schedule in some other way.

(2) The Central Government shall exercise its power under clause (a) of sub-section (1) in respect of an organisation only if it believes that it is involved in terrorism.

(3) For the purposes of sub-section (2), an organisation shall be deemed to be involved in terrorism if it—

(a) commits or participates in acts of terrorism, or

(b) prepares for terrorism, or

(c) promotes or encourages terrorism, or

(d) is otherwise involved in terrorism.

Denotification of a terrorist organisation.

36. (1) An application may be made to the Central Government for the exercise of its power under clause (c) of sub-section (1) of section 35 to remove an organisation from the Schedule.

(2) An application under sub-section (1) may be made by-

(a) the organisation, or

(b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been rejected, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of section 37, within one month from the date of receipt of the order of such rejection by the applicant.

(5) The Review Committee may allow an application for review against rejection to remove an organisation from the Schedule, if it considers that the decision to reject was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order to such effect.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the Schedule.

37. (1) The Central Government shall constitute one or more Review Committees for the purposes of section 36.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government and in the case of appointment of a sitting Judge, the concurrence of the Chief Justice of the concerned High Court shall be obtained.

38. (1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove---

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member, and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

Offence relating to membership of a terrorist organisation.

11

SEC. 1]

Review Committees. 39. (1) A person commits the offence relating to support given to a terrorist organisation,-

Offence relating to support given to a terrorist organisation.

(a) who, with intention to further the activity of a terrorist organisation,-

(i) invites support for the terrorist organisation, and

(*ii*) the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is-

(i) to support the terrorist organisation, or

(ii) to further the activity of the terrorist organisation, or

(*iii*) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

Offence of raising fund for a terrorist organisation. 40. (1) A person commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation,-

(a) invites another person to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(b) receives moncy or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism.

*Explanation.*- For the purposes of this sub-section, a reference to provide money or other property includes of its being given, lent or otherwise made available, whether or not for consideration.

(2) A person, who commits the offence of raising fund for a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding fourteen years, or with fine, or with both.

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#### CHAPTER VII

#### MISCELLANEOUS

41. An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

42. The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under section 7, or section 8, or both, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing, direct that any power which has been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.

43. Notwithstanding anything contained in the Code, no police officer,-

(a) in the case of the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946, below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under Chapter IV or Chapter VI.

44. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held *in camera*, if the court so desires.

(2) A court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

Continuance of association.

Power to delegate.

Officers competent to investigate offences under Chapters IV and VI

Protection of

witnesses

SEC. 1]

25 of 1946.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the court:

(b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witness are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person, who contravenes any decision or direction issued under sub-section (3), shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

45. No court shall take cognizance of any offence-

(*i*) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(*ii*) under Chapter IV or Chapter VI without the previous sanction of the Central Government or, as the case may be; the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

46. Notwithstanding anything contained in the Indian Evidence Act, 1872 or any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 or the Information Technology Act, 2000 or any other law for the time being in force, shall be admissible as evidence against the accused in the court during the trial of a case:

Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:

Provided further that the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

1 of 1872.

13 of 1885. 21 of 2000.

offences.

Cognizance of

Admissibility of evidence collected through the interception of communications. Bar of jurisdiction.

47. (1) Save as otherwise expressly provided in this Act, no proceeding taken under this Act by the Central Government or the District Magistrate or any officer authorised in this behalf by the Central Government or the District Magistrate, shall be called in question in any civil court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any civil court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(2) Notwithstanding anything contained in sub-section (1), no civil court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters referred to in section 36.

48. The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

49. No suit, prosecution or other legal proceeding shall lie against-

(a) the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorised in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder; and

(b) any serving or retired member of the armed forces or paramilitary forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

50. Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the navy, army or air force or other armed forces of the Union.

51. Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the court may deem fit.

52. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association; Effect of Act and rules, etc., inconsistent with other enactments.

Protection of action taken in good faith.

Saving.

Impounding of passport and arms licence of person chargesheeted under the Act.

Power to make rules.

(b) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Act.

(c) determination of the price of the forfeited property under sub-section (2) of section 28;

(d) the procedure for admission and disposal of an application under sub-section (3) of section 36;

(e) the qualifications of the members of the Review Committee under sub-section (2) of section 37; and

(f) any other matter which is required to be, or may be, prescribed.

53. Every order and every rule made by the Central Government under this Act 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 order or rule or both Houses agree that the order or rule should not be made, the order or 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 order or rule.

Orders and rules to be laid before both Houses of Parliament.

#### [See sections 2(1)(m) and 35]

#### TERRORIST ORGANISATIONS

1. BABBAR KHALSA INTERNATIONAL. 2. KHALISTAN COMMANDO FORCE. 3. KHALISTAN ZINDABAD FORCE. 4. INTERNATIONAL SIKH YOUTH FEDERATION. 5. LASHKAR-E-TAIBA/PASBAN-E-AHLE HADIS. 6. JAISH-E-MOHAMMED/TAHRIK-E-FUROAN. 7. HARKAT-UL-MUJAHIDEEN/HARKAT-UL-ANSAR/HARKAT-UL-JEHAD-E-ISLAMI. 8. HIZB-UL-MUJAHIDEEN/HIZB-UL-MUJAHIDEEN PIR PANJAL REGIMENT. 9 AL-UMAR-MUJAHIDEEN. 10. JAMMU AND KASHMIR ISLAMIC FRONT, 11. UNITED LIBERATION FRONT OF ASSAM (ULFA). 12. NATIONAL DEMOCRATIC FRONT OF BODOLAND (NDFB). 13. PEOPLE'S LIBERATION ARMY (PLA). UNITED NATIONAL LIBERATION FRONT (UNLF). 14. 15. PEOPLE'S REVOLUTIONARY PARTY OF KANGLEIPAK (PREPAK). KANGLEIPAK COMMUNIST PARTY (KCP). 16. 17. KANGLEI YAOL KANBA LUP (KYKL). 18. MANIPUR PEOPLE'S LIBERATION FRONT (MPLF). 19. ALL TRIPURA TIGER FORCE. 20. NATIONAL LIBERATION FRONT OF TRIPURA. 21. LIBERATION TIGERS OF TAMIL EELAM (LTTE). 22. STUDENTS ISLAMIC MOVEMENT OF INDIA. 23. DEENDAR ANJUMAN. 24. COMMUNIST PARTY OF INDIA (MARXIST-LENINIST)-PEOPLE'S WAR, ALL ITS FORMATIONS AND FRONT ORGANISATIONS. 25. MAOIST COMMUNIST CENTRE (MCC), ALL ITS FORMATIONS AND FRONT ORGANISATIONS. 26. AL BADR. 27. JAMIAT-UL-MUJAHIDDEN. 28. AL-QAIDA. 29. DUKHTARAN-E-MILLAT (DEM). 30. TAMIL NADU LIBERATION ARMY (TNLA). 31. TAMIL NATIONAL RETRIEVAL TROOPS (TNRT). 32. AKHIL BHARAT NEPALI EKTA SAMAJ (ABNES).'.

> A.P.J. ABDUL KALAM, President.

रजिस्ट्री सं॰ डी॰ एल॰---(एन)04/0007/2003---05 REGISTERED NO. DL---(N)04/0007/2003---05



असाधारण EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं॰ 32] नई दिल्ली, शुक्रवार, सितम्बर 24, 2004 / आश्विन 2, 1926 No. 32] NEW DELHI, FRIDAY, SEPTEMBER 24, 2004 / ASVINA 2, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, dated the 24th September, 2004/Asving 2, 1926 (Saka)

# THE BANKING REGULATION (AMENDMENT) AND MISCELLANEOUS PROVISIONS ORDINANCE, 2004 NO. 3 OF 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Banking Regulation Act, 1949 and the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

#### CHAPTER I PRELIMINARY

1. (1) This Ordinance may be called the Banking Regulation Short title and (Amendment) and Miscellaneous Provisions Ordinance, 2004.

(2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall come into force at once.

#### **CHAPTER II**

#### **AMENDMENTS TO THE BANKING REGULATION ACT, 1949**

Amendment of section 56 of Act 10 of 1949 2. In Part V of the Banking Regulation Act, 1949 (hereafter referred to as the principal Act), in the provisions of the principal Act as applied to, or in relation to, co-operative societies, by section 56,--

(1) in section 5 of the principal Act, as amended by sub-clause (i) of clause (c) of the said section 56,-

(A) after clause (*ccii*), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1<sup>st</sup> day of March, 1966, namely:-

'(*cciia*) "co-operative society" means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;';

(B) after clause (*cciii*), the following clauses shall be inserted and shall be deemed to have been inserted with effect from the  $1^{st}$  day of March, 1966, namely:-

(*cciiia*) "multi-State co-operative bank" means a multi-State co-operative society which is a primary co-operative bank;

(*cciiib*) "multi-State co-operative society" means a multi-State cooperative society registered as such under any Central Act for the time being in force relating to the multi-State co-operative societies but does not include a national co-operative society and a federal co-operative;";

(C) in clause (*ccvii*), the words "co-operative society" shall be omitted and shall be deemed to have been omitted with effect from the  $1^{st}$  day of March, 1966;

(11) after section 22 of the principal Act, as amended by clause (o) of said section 56, the following section shall be inserted, namely:-

"22A. Notwithstanding anything contained in any law or, judgment delivered or decree or order of any court made,--

(a) no licence, granted to a multi-State co-operative society by the Reserve Bank under section 22, which was subsisting on the date of commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Ordinance, 2004, shall be invalid or be deemed ever to have been invalid merely by the reason of such judgment, decree or order;

(b) every licence, granted to a multi-State co-operative society by the Reserve Bank under section 22, which was subsisting on the date of commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Ordinance, 2004, shall be valid and be deemed always to have been validly granted in accordance with law;

(c) a multi-State co-operative society whose application for grant of licence for carrying on banking business was pending with the Reserve Bank on the date of commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Ordinance, 2004 shall be eligible to carry on banking business until it is granted a licence in pursuance of section 22 or is, by a notice in writing notified by the Reserve Bank that the licence cannot be granted to it;";

Validation of licences granted by Reserve Bank to multi-State cooperative societies. [PART II-

(111) for clause (zaa) of the said section 56, the following clauses shall be substituted, namely:-

'(zaa) after section 36AA of the principal Act, the following sections shall be inserted, namely:-

"36AAA. (1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a multi-State co-operative bank being conducted in a manner detrimental to the interest of the depositors or of the multi-State co-operative bank or for securing the proper management of the multi-State co-operative bank, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing,  $by_k$  order, supersede the Board of directors of such multi-State co-operative bank for a period not exceeding five years as may be specified in the order, which may be extended from time to time, so, however, that total period shall not exceed five years.

(2) The Reserve Bank may, on supersession of the Board of directors of the multi-State co-operative bank under sub-section (1) appoint an Administrator for such period as it may determine.

(3) The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(4) Upon making the order of supersession of the Board of directors of a multi-State co-operative bank,--

(a) the chairman, managing director and other directors as from the date of supersession of the Board shall vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of the Multi-State Co-operative Societies Act, 2002 or this Act or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of directors of such a multi-State co-operative bank or by a resolution passed in general meeting of such co-operative bank, shall, until the Board of directors of such co-operative bank is reconstituted, be exercised and discharged by the Administrator appointed by the Reserve Bank under sub-section (2):

Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is exercisable by a resolution passed in the general meeting of such multi-State co-operative bank.

(5) (a) The Reserve Bank may constitute a committee of three or more persons who have experience in law, finance, banking, administration or accountancy to assist the Administrator in discharge of his duties.

(b) The committee shall meet at such times and places and observe such rules of procedure as may be specified by the Reserve Bank.

(6) The salary and allowances to the Administrator and the members of the committee constituted by the Reserve Bank shall be such as may be specified by the Reserve Bank and be payable by the concerned multi-State co-operative bank.

(7) On and before expiration of period of supersession of the Board of directors as specified in the order issued under sub-section (1), the

39 of 2002.

SEC. 1]

Supersession of Board of directors of a multi-State

co-operative

bank.

Administrator of the multi-State co-operative bank shall call the general meeting of the society to elect new directors.

(8) Notwithstanding anything contained in any other law or in an contract, or bye-laws of a multi-State co-operative bank, no person shall be entitled to claim any compensation for the loss or termination of his office.

(9) The Administrator appointed under sub-section (2) shall vacate office immediately after the Board of directors of the multi-State co-operative society has been constituted.

36AAB. Where a multi-State co-operative bank, being an eligible cooperative bank, has been registered under section 13A of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, as an insured bank, and subsequently -

(a) in pursuance of a scheme prepared with the previous approval of the Reserve Bank under section 18 of the Multi-State Co-operative Societies Act, 2002, an order sanctioning a scheme of compromise and arrangement or reorganisation or reconstruction has been made; or

(b) on requisition by the Reserve Bank, an order for winding up of the multi-State co-operative bank has been made under section 87 of the Multi-State Co-operative Societies Act, 2002; or

(c) an order for the supersession of the Board and the appointment of an Administrator therefor has been made under section 36AAA,

such order for sanctioning the scheme of compromise and arrangement or reorganisation or reconstruction under clause (a) or the winding up of the multi-State co-operative bank under clause (b) or an order of the supersession of the Board and the appointment of an Administrator under clause (c) shall not be liable to be called in question in any manner.

36AAC. Where a multi-State co-operative bank, being an insured bank within the meaning of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, is wound up and the Deposit Insurance Corporation has become liable to the depositors of the insured bank under sub-section (1) or sub-section (2) of section 16 of that Act, the Deposit Insurance Corporation shall be reimbursed by the liquidator or such other person in the circumstances, to the extent and in the manner provided in section 2 of that Act,"

(zab) in section 36AD, sub-section (3) shall be omitted;",

(1V) in clause (zb) of the said section 56, for the word, figures and letter "Part IIA", the words, figures and letters "Part IIA except sections 36AAA, 36AAB and 36AAC", shall be substituted.

#### CHAPTER III

### AMENDMENT TO THE DEPOSIT INSURANCE AND CREDIT GUARANTEE CORPORATION ACT, 1961

Amendment of section 2 of Act 47 of 1961. 3. In the Deposit Insurance and Credit Guarantee Corporation Act, 1961, in section 2,-

(a) in clause (q), the words "co-operative society" shall be omitted and shall be deemed to have been omitted with effect from the  $1^{st}$  day of March,

Reimbursement to the Deposit Insurance Corporation by liquidator or transferee bank.

Order of winding up multi-State cooperative bank to be final in certain cases.

47 of 1961.

39 of 2002.

39 of 2002.

47 of 1961.

# 1966;

(b) in clause (r), for the words "primary co-operative bank", the words "co-operative society", "primary co-operative bank" shall be substituted and shall be deemed to have been substituted with effect from the  $1^{st}$  day of March, 1966.

## A.P.J. ABDUL KALAM, President.

5

V.K. BHASIN Joint Secretary to the Govt. of India.

# CORRIGENDUM

In the Unlawful Activities (Prevention) Amendment Ordinance, 2004 (Ord. 2 of 2004), published in the Gazette of India, Extraordinary, Part II, Section 1 (Issue No. 31), dated the 21<sup>st</sup> September, 2004, -

At page 17, at the top insert "THE SCHEDULE"

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REGISTERED NO. DL-(N)04/0007/2003-05



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असाधारण EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, 12th October, 2004/Asvina 20, 1926 (Saka)

## THE SECURITIES LAWS (AMENDMENT) ORDINANCE, 2004

### No. 4 of 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

#### CHAPTER I Preliminary

\*

1.(1) This Ordinance may be called the Securities Laws (Amendment) Ordinance, 2004.

Short title and commencement.

(2) It shall come into force at once.

### CHAPTER II

#### AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

Amendment of section 2.

2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (hereafter in this 42 of 1956. Chapter referred to as the principal Act),-

(*i*) clause (*aa*) shall be re-lettered as clause (*ac*) thereof and before the clause (*ac*) as so re-lettered, the following clauses shall be inserted, namely: -

'(aa) "corporatisation" means the succession of a recognised stock exchange, being a body of individuals or a society registered under the Societies Registration Act, 1860, by another stock exchange, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities carried on by such individuals or society;

(ab) "demutualisation" means the segregation of ownership and management from the trading rights of the members of a recognised stock exchange in accordance with a scheme approved by the Securities and Exchange Board of India;

(*ii*) clause (ga) shall be re-lettered as clause (gb) thereof and before the clause (gb) as so re-lettered, the following clause shall be inserted, namely:-

(ga) "scheme" means a scheme for corporatisation or demutualisation of a recognised stock exchange which may provide for-

(*i*) the issue of shares for a lawful consideration and provision of trading rights in lieu of membership cards of members of a recognised stock exchange;

(*ii*) the restrictions on voting rights;

(*iii*) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised stock exchange, legal proceedings by, or against, the recognised stock exchange, whether in the name of the recognised stock exchange or any trustee or otherwise and any permission given to, or by, the recognised stock exchange;

(*iv*) the transfer of employees of a recognised stock exchange to another recognised stock exchange;

(v) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised stock exchange;';

(*iii*) in clause (*h*), after sub-clause (*ic*), the following sub-clause shall be inserted, namely:-

"(*id*) units or any other such instrument issued to the investors under any mutual fund scheme;";

(iv) for clause (i), the following clause shall be substituted, namely:-

(j) "stock exchange" means-

21 of 1860.

[PART II

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

1 of 1956.

(b) a body corporate incorporated under the Companies Act, 1956 whether under a scheme of corporatisation and demutualisation or otherwise,

for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities;'.

3. After section 4 of the principal Act, the following sections shall be inserted, namely:-

<sup>4</sup>4A. On and from the appointed date, all recognised stock exchanges (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 4B:

Provided that the Securities and Exchange Board of India may, if it is satisfied that any recognised stock exchange was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, specify another appointed date in respect of that recognised stock exchange and such recognised stock exchange may continue as such before such appointed date.

*Explanation.*-For the purposes of this section, "appointed date" means the date which the Securities and Exchange Board of India may, by notification in the Official Gazette, appoint and different appointed dates may be appointed for different recognised stock exchanges.

4B. (1) All recognised stock exchanges referred to in section 4A shall, within such time as may be specified by the Securities and Exchange Board of India, submit a scheme for corporatisation and demutualisation for its approval:

Provided that the Securities and Exchange Board of India, may, by notification in the Official Gazette, specify name of the recognised stock exchange, which had already been corporatised and demutualised, and such stock exchange shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Securities and Exchange Board of India may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification.

(3) No scheme under sub-section (2) shall be approved by the Securities and Exchange Board of India if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised stock exchange or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.

(4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by-

(a) the Securities and Exchange Board of India in the Official Gazette;
(a) the Securities and Exchange Board of India in the Official Gazette;

(b) the recognised stock exchange in such two daily newspapers circulating in India, as may be specified by the Securities and Exchange Board of India,

and upon such publication, notwithstanding anything to the contrary contained in this Act or any other law for the time being in force or any agreement, award, judgment, 3

Insertion of new sections 4A and

Corporatisation and demutualisation of

stock exchanges.

Procedure for corporatisation and

demutualisation.

4B.

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decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised stock exchange or its members.

(5) Where the Securities and Exchange Board of India is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Securities and Exchange Board of India shall give a reasonable opportunity of being heard to all the persons concerned and the recognised stock exchange concerned before passing an order rejecting the scheme.

(6) The Securities and Exchange Board of India may, while approving the scheme under sub-section (2), by an order in writing, restrict-

(a) the voting rights of the shareholders who are also stock brokers of the recognised stock exchange;

(b) the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the stock exchange;

(c) the maximum number of representatives of the stock brokers of the recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed one-fourth of the total strength of the governing board.

(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time 1 of 1956. being in force, have full effect.

(8) Every recognised stock exchange, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2), shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Securities and Exchange Board of India, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights:

Provided that the Securities and Exchange Board of India may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.'.

Amendment section 5.

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4. Section 5 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

"(2) Where the recognised stock exchange has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 4B within the specified time therefor or the scheme has been rejected by the Securities and Exchange Board of India under sub-section (5) of section 4B, the recognition granted to such stock exchange under section 4, shall, notwithstanding anything to the contrary contained in this Act, stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition:

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Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Securities and Exchange Board of India may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 4B.".

5. After section 8 of the principal Act, the following section shall be inserted, namely:-

"8A. (1) A recognised stock exchange may, with the prior approval of the Securities and Exchange Board of India, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956, for the purpose of—

(a) the periodical settlement of contracts and differences thereunder;

(b) the delivery of, and payment for, securities ;

(c) any other matter incidental to, or connected with, such transfer.

(2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Securities and Exchange Board of India for its approval.

(3) The Securities and Exchange Board of India may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the byelaws submitted to it under sub-section (2) and approve transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1).

(4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognised stock exchange."

6. After section 12 of the principal Act, the following section shall be inserted, namely:-

"12A. If, after making or causing to be made an inquiry, the Securities and Exchange Board of India is satisfied that it is necessary-

(a) in the interest of investors, or orderly development of securities market; or

(b) to prevent the affairs of any recognised stock exchange, or, clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or

(c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

it may issue such directions,-

(i) to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or

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Insertion of new section 8A.

Clearing corporation.

Insertion of new section 12A.

Power to issue directions.

(*ii*) to any company whose securities are listed or proposed to be listed in a recognised stock exchange,

as may be appropriate in the interests of investors in securities and the securities market.".

Amendment section 13.

7. In section 13 of the principal Act,-

(a) for the words "between members of a recognised stock exchange", the words "between members of a recognised stock exchange or recognised stock exchanges" shall be substituted;

(b) for the words "State or area" wherever they occur, the words "State or States or area" shall be substituted;

(c) the following proviso shall be inserted, namely:-

"Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall-

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(*ii*) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.".

Insertion of new section 21A.

8. After section 21 of the principal Act, the following section shall be inserted, namely:-

Delisting of securities. "21A. (1) A recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act:

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals:

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.".

Substitution of new section for section 22F.

Appeal to Supreme Court.

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9. For section 22F of the principal Act, the following section shall be substituted, namely:-

"22F. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.". 10. In section 23 of the principal Act,-

(a) in sub-section (1), after clause (i), for the words "shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine or with both", the words "shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both" shall be substituted;

(b) in sub-section (2),-

(*i*) for the word and figures "section 21," the words, figures and letter "section 21 or section 21A" shall be substituted.

(*ii*) for the words "shall, on conviction, be punishable with fine which may extend to one thousand rupees", the words "shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both" shall be substituted.

11. After section 23 of the principal Act, the following sections shall be inserted, namely:-

"23A. Any person, who is required under this Act or any rules made thereunder,-

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

(b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

23B. If any person, who is required under this Act or any bye-laws of a recognised stock exchange made thereunder, to enter into an agreement with his client, fails to enter into such an agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for every such failure.

23C. If any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or it shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees.

Insertion of new sections 23A to 23-O.

Penalty for failure to furnish information, return, etc.

Penalty for failure by any person to enter into an agreement with clients.

Penalty for failure to redress Investors' grievances,

Penalty for failure to segregate securities or moneys of client or clients.

Amendment of

section 23.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

Penalty for excess dematerialisation or delivery of unlisted securities.

Penalty for failure to furnish periodical returns, etc.

Penalty for contravention where no separate penalty has been provided.

Power to adjudicate.

Factors to be taken into account by the adjudicating officer. 23E. If a company of any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

23F. If any person dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognised stock exchange, he shall be liable to a penalty not exceeding twenty-five crore rupees.

23G. If a recognised stock exchange fails or neglects to furnish periodical returns to the Securities and Exchange Board of India or fails or neglects to make or amend its rules or bye-laws as directed by the Securities and Exchange Board of India or fails to comply with directions issued by the Securities and Exchange Board of India, such recognised stock exchange shall be liable to a penalty which may extend to twenty-five crore rupees.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

23-I. (1) For the purpose of adjudgir g under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H, the Securities and Exchange Board of India shall appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in subsection (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

23J. While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

23K. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Crediting sum realised by way of penalties to Consolidated Fund of India. 5.

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23L. (1) Any person aggrieved, by the order or decision of the recognised stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under section 4B, may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.

(2) Every appeal under sub-section (1) shall be filed within a period of fortyfive days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed.

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

23M. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, for which no punishment is provided elsewhere in this Act, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

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

23N. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

23-O. (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Offences.

Composition of certain offences.

Power to grant immunity.

Appeal to Securities

Appellate Tribunal.

Provided further that the recommendation of the Securities Exchange Board of India under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted."

Amendment of section 25.

12. In section 25 of the principal Act, the words, brackets and figure "sub-section (1) of" shall be omitted.

Substitution of new section for section 26. 13. For section 26 of the principal Act, the following section shall be substituted, namely:-

Cognizance of offences by courts.

"26. (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations or bye-laws made thereunder, save on a complaint made by the Central Government or State Government or the Securities and Exchange Board of India or a recognised stock exchange or by any person.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act.".

Insertion of new section 27B.

14. After section 27A of the principal Act, the following section shall be inserted, namely:-

Right to receive income from mutual fund.

"27B. (1) It shall be lawful for the holder of any securities, being units or other instruments issued by any mutual fund, whose name appears on the books of the mutual fund issuing the said security to receive and retain any income in respect of units or other instruments issued by the mutual fund declared by the mutual fund in respect thereof for any year, notwithstanding that the said security, being units or other instruments issued by the mutual fund, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the mutual fund from the transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the mutual fund from the transfer has lodged the security and all other documents relating to the transfer which may be required by the mutual fund with the mutual fund for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the mutual fund became due.

Explanation.-The period specified in this section shall be extended-

(i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instrument issued by the mutual fund;

(*ii*) in case of loss of the transfer deed by theft or any other cause beyond the control of transferee, by the actual period taken for the replacement thereof; and

(*iii*) in case of delay in the lodging of any security, being units or other instruments issued by the mutual fund, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

(2) Nothing contained in sub-section (1) shall affect-

(a) the right of a mutual fund to pay any income from units or other instruments issued by the mutual fund which has become due to any person whose

name is for the time being registered in the books of the mutual fund as the holder of the security being units or other instruments issued by the mutual fund in respect of which the income in respect of units or other instruments issued by mutual fund has become due; or

(b) the right of transferee of any security, being units or other instruments issued by the mutual fund, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the mutual fund has refused to register the transfer of the security being units or other instruments issued by the mutual fund in the name of the transferee.".

15. In section 30 of the principal Act, in sub-section (2), for the existing clause (ha), the following clauses shall be substituted, namely:-

"(*ha*) the grounds on which the securities of a company may be delisted from, any recognised stock exchange under sub-section (1) of section 21A;

(*hb*) the form in which an appeal may be filed before the Securities Appellate Tribunal under sub-section (2) of section 21A and the fees payable in respect of such appeal;

(hc) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal;

(hd) the manner of inquiry under sub-section (1) of section 23-I;

(*he*) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23L and the fees payable in respect of such appeal;".

#### CHAPTER III

#### AMENDMENTS TO THE DEPOSITORIES ACT, 1996

16. After section 19 of the Depositories Act, 1996 (hereafter in this Chapter referred to as the principal Act), the following sections shall be inserted, namely:-

"19A. Any person, who is required under this Act or any rules or regulations or bye-laws made thereunder,-

(a) to furnish any information, document, books, returns or report to the Board, fails to furnish the same within the time specified therefor, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or the bye-laws, fails to file return or furnish the same within the time specified therefor, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19B. If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, and is required under this Act or any rules or

Penalty for failure to enter into an agreement.

Insertion of new sections 19A, 19B, 19C, 19D, 19E, 19F, 19G, 19H, 19-I and 19J.

Penalty for failure to furnish information, return, etc.

Amendment of section 30.

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regulations made thereunder, to enter into an agreement, fails to enter into such agreement, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for every such failure.

Penalty for failure to redress Investors' grievances.

Penalty for delay in dematerialisation or issue of certificate of securities.

Penalty for failure to reconcile records.

Penalty for failure to comply with directions issued by Board under section 19.

Penalty for contravention where no separate penalty has been provided.

Power to adjudicate.

Factors to be taken into account by adjudicating officer. 19-I. While adjudging the quantum of penalty under section 19H, the adjudicating officer shall have due regard to the following factors, namely:-

19C. If any depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, after having been called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19D. If any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, fails to dematerialise or issue the certificate of securities on opting out of a depository by the investors, within the time specified under this Act or regulations or bye-laws made thereunder or abets in delaying the process of dematerialisation or issue the certificate of securities on opting out of a depository of securities, such issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19E. If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, fails to reconcile the records of dematerilaised securities with all the securities issued by the issuer as specified in the regulations, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19F. If any person fails to comply with the directions issued by the Board under section 19, within the time specified by it, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19G. Whoever fails to comply with any provision of this Act, the rules or regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

19H. (1) For the purpose of adjudging under sections 19A, 19B, 19C, 19D, 19E, 19F and 19G, the Board shall appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

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(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

19J. All sums realised by way of penaltics under this Act shall be credited to the Consolidated Fund of India.".

17. For section 20 of the principal Act, the following section shall be substituted, namely:-

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

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

18. For section 22 of the principal Act, the following sections shall be substituted, namely:-

"22. (1) No court shall take cognizance of any offence punishable under this Act or any rules or any regulations or bye-laws made thereunder, save on a complaint made by the Central Government or State Government or the Securities and Exchange Board of India or by any person.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act.

22A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securitics Appellate Tribunal or a court before which such proceedings are pending.

22B. (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Crediting sum realised by way of penalties to Consolidated Fund of India.

Substitution of new section for section 20.

Offences.

Substitution of new sections for section 22.

Cognizance of offences by courts.

Composition of certain offences.

Power to grant immunity.

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Provided further that recommendation of the Board under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.".

19. In section 23A of the principal Act, in sub-section (1), after the words, brackets and figures "Save as provided in sub-section (2), any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the regulations made thereunder," and before the words "may prefer an appeal to a Securities Appellate Tribunal having a jurisdiction in the matter," the words "or by an order made by an adjudicating officer under this Act" shall be inserted.

20. For section 23F of the principal Act, the following shall be substituted, namely:-

"23F. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.".

**21.** In section 24 of the principal Act, in sub-section (2), for clause (a), the following clauses shall be substituted, namely:-

"(a) the manner of inquiry under sub-section (1) of section 19H;

(aa) the time within which an appeal may be preferred under sub-section (1) of section 23;".

A.P.J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

Amendment section 23A.

of

Substitution of new section for section 23F.

Appeal to Supreme Court.

Amendment of section 24.



EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 34]नई दिल्ली, वृहस्पतिवार, नवम्बर 11, 2004 / कार्तिक 20, 1926No. 34]NEW DELHI, THURSDAY, NOVEMBER 11, 2004 / KARTIKA 20, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE

### (Legislative Department)

New Delhi, the 11th November, 2004/Kartika 20, 1926 (Saka)

# THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS (AMENDMENT) ORDINANCE, 2004

### No. 5 of 2004

### Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and further to amend the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Companies Act, 1956.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

#### CHAPTER I

#### PRELIMINARY

1. (1) This Ordinance may be called the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004.

Short title and commencement.

(2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall come into force at once.

PART II-

#### CHAPTER II

### AMENDMENTS TO THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND **ENFORCEMENT OF SECURITY INTEREST ACT, 2002**

Amendment of section 2.

2. In section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter in this Chapter referred to as the principal Act), in sub-section (1),---

(i) after clause (h), the following clause shall be inserted, namely:---

'(ha) "debt" shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;';

(ii) in clause (j), the words "in accordance with the directions or guidelines issued by the Reserve Bank" shall be omitted;

(iii) in clause (o), for the words "doubtful or loss asset, in accordance with the directions or under guidelines relating to assets classifications issued by the Reserve Bank". the following shall be substituted, namely:----

"doubtful or loss asset,---

(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;

(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank";

(iv) in clause (u), for the words "trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund", the words, brackets and figures "trustee or securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3 or any asset management company making investment on behalf of mutual fund" shall be substituted;

(v) in clause (zd), for sub-clause (ii), the following sub-clause shall be substituted,

"(ii) securitisation company or reconstruction company, whether acting as such or managing a trust set up by such securitisation company or reconstruction company for the securitisation or reconstruction, as the case may be; or".

Amendment

In section 3 of the principal Act, in sub-section (3), after clause (g), the following clause shall be inserted at the end, namely:---

"(h) that securitisation company or reconstruction company has complied with ne or more conditions specified in the guidelines issued by the Reserve Bank for the ud purpose.".

section 4 of the principal Act, in sub-section (2),—

(a) the words "rejection of application for registration or" shall be omitted;

(b) for the words "such order of rejection or cancellation", the words "such order of cancellation" shall be substituted.

of section 3.

Amendment of section 4.

54 of 2002.

51 of 1993.

#### SEC. 1]

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#### THE GAZETTE OF INDIA EXTRAORDINARY

5. After section 5 of the principal Act, the following section shall be inserted, namely:---

"5A. (1) If any financial asset, of a borrower acquired by a securitisation company or reconstruction company, comprise of secured debts of more than one bank or financial institution for recovery of which such banks or financial institutions has filed applications before two or more Debts Recovery Tribunals, the securitisation company or reconstruction company may file an application to the Appellate Tribunal having jurisdiction over any of such Tribunals in which such applications are pending for transfer of all pending applications to any one of the Debts Recovery Tribunals as it deems fit.

(2) On receipt of such application for transfer of all pending applications under sub-section (1), the Appellate Tribunal may, after giving the parties to the application an opportunity of being heard, pass an order for transfer of the pending applications to any one of the Debts Recovery Tribunals.

(3) Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, any order passed by the Appellate Tribunal under sub-section (2) shall be binding on all the Debts Recovery Tribunals referred to in subsection (1) as if such order had been passed by the Appellate Tribunal having jurisidiction on each such Debts Recovery Tribunal.

(4) Any recovery certificate, issued by the Debts Recovery Tribunal to which all the pending applications are transferred under sub-section (2), shall be executed in accordance with the provisions contained in sub-section (23) of section 19 and other provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 shall, accordingly, apply to such execution."

6. In section 7 of the principal Act,----

(i) after sub-section (2), the following sub-section shall be inserted, namely:----

"(2A) (a) The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the securitisation company or reconstruction company, and the securitisation company or reconstruction company shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the qualified institutional buyers holding the security receipts or from whom the funds are raised.

(b) The provisions of the Indian Trusts Act, 1882 shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (a) above.";

(*ii*) in sub-section (3), for the words "security receipts issued by such company", the words "security receipts issued under a scheme by such company" shall be substituted.

7. After section 12 of the principal Act, the following section shall be inserted, namely:---

"12A. The Reserve Bank may at any time direct a securitisation company or reconstruction company to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of such securitisation company or reconstruction company (including any business or affairs with which such company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act.".

8. In section 13 of the principal Act,---

(i) after sub-section (3), the following sub-section shall be inserted, namely:

Amendment of section 7:

new section 5A. Transfer of pending applications to any one of Debts Recovery Tribunals in certain cases.

Insertion of

.

Insertion of new section 12A. Power of Reserve Bank to call for statements and information.

Amendment of section 13

"(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

PART II-

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.";

(*ii*) in sub-section (4), for clause (b), the following clause shall be substituted, namely:---

"(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt;".

9. In section 15 of the principal Act, in sub-section (1), for the words "When the management of business of a borrower is taken over by a secured creditor", the words, brackets, letters and figures "When the management of business of a borrower is taken over by a securitisation company or reconstruction company under clause (a) of section 9 or, as the case may be, by a secured creditor under clause (b) of sub-section (4) of section 13" shall be substituted.

# 10. In section 17 of the principal Act,---

(a) in sub-section (1),—

(*i*) for the words "may prefer an appeal", the words "may make an application along with such fee, as may be prescribed," shall be substituted and shall be deemed to have been substituted with effect from the 21st day of June, 2002;

(*ii*) after sub-section (1), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 21st day of June, 2002, namely.—

"Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.";

(*iii*) after the proviso as so inserted, the following *Explanation* shall be inserted, namely:—

"Explanation—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.";

(b) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:--

"(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

Amendment of section 15.

Amendment of section 17.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under subsection (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pedning application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder."

11. After section 17 of the principal Act, the following section shall be inserted, namely:---

"17A. In the case of a borrower residing in the State of Jammu and Kashmir, the application under section 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.

*Explanation:*—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons shall not entitle the person (including borrower) to make an application to the Court of District Judge under this section.".

12. In section 18 of the principal Act,-

(a) in sub-section (1),---

new section 17A. Making of application to Court of District Judge

in certain

cases.

Insertion of

Amendment of section 18

#### 51 of 1993.

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PART II-

(i) for the words and figures "under section 17, may prefer an appeal", the words and figures "under section 17, may prefer an appeal along with such fee," as may be prescribed" shall be substituted and shall be deemed to have been substituted with effect from the 21st day of June, 2002;

(ii) after sub-section (1), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 21st day of June, 2002, namely:—

"Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:";

(iii) after the proviso as so inserted, the following provisos shall be inserted, namely:----

"Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.".

13. After section 18 of the principal Act, the following sections shall be inserted, namely:---

Insertion of new sections 18A and 18B.

Validation of fees levied.

Appeal to High Court in certain cases. "18A. Any fee levied and collected for preferring, before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if amendments made to sections 17 and 18 of this Act by sections 11 and 12 of the said Ordinance were in force at all material times.

18B. Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge under section 17A may prefer an appeal, to the High Court having jurisdiction over such Court, within thirty days from the date of receipt of the order of the Court of District Judge:

Provided that no appeal shall be preferred unless the borrower has diposited, with the Jammu and Kashmir High Court, fifty per cent. of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less:

Provided further that the High Court may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of the debt referred to in the first proviso."

14. For section 19 of the principal Act, the following section shall be substituted, namely:—

Right of borrower to receive compensation and costs in certain cases.

Substitution of new

section for section 19.

"19. If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made thereunder and directs the secured creditors to return such secured assets to the concerned borrowers, such borrower shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18B."

15. In section 25 of the principal Act,-

(a) after sub-section (1), the following sub-section shall be inserted, namely:---

"(1A) On receipt of intimation under sub-section (1), the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.";

(b) in sub-section (2), for the words "The Central Registrar shall, on receipt of such intimation", the words, brackets and figures "If the concerned borrower gives an intimation to the Central Registrar for not recording the payment or satisfaction referred to in sub-section (1), the Central Registrar shall on receipt of such intimation" shall be substituted.

16. In section 28 of the principal Act, for the words and figures "under section 12", the words, figures and letter "under section 12 or section 12A" shall be substituted.

17. In section 31 of the principal Act, in clause (g), for the words "any properties not liable to attachment", the words and brackets "any properties (including the properties specifically charged with the debt recoverable under this Act)" shall be substituted.

18. In section 38 of the principal Act, in sub-section (2), after clause (b), the following clauses shall be inserted, namely:—

"(ba) the fee for making an application to the Debts Recovery Tribunal under sub-section (1) of section 17;

(bb) the form of making an application to the Appellate Tribunal under subsection (6) of section 17;

(bc) the fee for preferring an appeal to the Appellate Tribunal under sub-section (1) of section 18;".

#### CHAPTER III

Amendments to the Recovery of Debts due to Banks and Financial Institutions Act, 1993

 19. In section 2 of the Recovery of Debts Due to Banks and Financial Institutions
 Act, 1993 (hereafter in this Chapter referred to as the principal Act), in clause (h), after subclause (i), the following sub-clause shall be inserted, namely:—

> "(ia) the securitisation company ro reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;".

20. In section 19 of the principal Act, after sub-section (1), the following provisos shall be inserted, namely:---

"Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, if no such action had been taken earlier under that Act:

Provided further that any application made under the first provise for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (I) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.".

Amendment of section 2.

Amendment of section 19.

Amendment of section 28.

Amendment of section 25.

Amendment of section 31.

Amendment of section 38.

SEC. 1]

2002.

[PART II-SEC. 1]

## **CHAPTER IV**

#### Amendments to the Companies Act, 1956

Amendment of section 4A. Amendment of section 424A. **21.** In section 4A of the Companies Act, 1956 (hereafter in this Chapter referred to as 1 of 1956. the principal Act), in sub-section (1), clause (vii) shall be omitted.

22. In section 424A of the principal Act, in sub-section (1), after the second proviso, the following provisos shall be inserted, namely:—

"Provided also that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004, such reference shall abate if the secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

54 of 2002.

Provided also that no reference shall be made under this section if the secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002.".

54 of 2002.

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# A. P. J. ABDUL KALAM, President.

## T. K. VISWANATHAN, Secy. to the Govt. of India.

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EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

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# **MINISTRY OF LAW AND JUSTICE**

## (Legislative Department)

New Delhi, the 11th November, 2004/Kartika 20, 1926 (Saka)

# THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS ORDINANCE, 2004

# No. 6 of 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance to constitute a National Commission for Minority Educational Institutions and to provide for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

### CHAPTER I

#### PRELIMINARY

1. (1) This Ordinance may be called the National Commission for Minority Educational Institutions Ordinance, 2004.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once.

Short title, extent and commencement.

Definitions.

2. In this Ordinance, unless the context otherwise requires,-

(a) "affiliation" together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a Scheduled University;

(b) "college" means a college or teaching institution (other than a University) established or maintained by a person or group of persons from amongst a minority community;

(c) "Commission" means the National Commission for Minority Educational Institutions constituted under section 3;

(d) "degree" means any such degree as may, with previous approval of the Central Government, be specified in this behalf by the University Grants Commission, by notification in the Official Gazette;

(e) "Member" means a member of the Commission and includes the Chairperson;

(f) "minority", for the purpose of this Ordinance, means a community notified as such by the Central Government;

(g) "Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities;

(h) "prescribed" means prescribed by rules made under this Ordinance;

(i) "qualification" means a degree or any other qualification awarded by a University;

(i) "Scheduled University" means a University specified in the Schedule;

(k) "technical education" has the meaning assinged to it in clause (g) of section 2 of the All India Council for Technical Education Act, 1987;

52 of 1987

(1) "University" means a university defined under clause (f) of section 2 of the University Grants Commision Act, 1956, and includes an institution deemed to be a 3 of 1956. University under section 3 of that Act, or an institution specifically empowered by an Act of Parliament to confer or grant degrees.

#### CHAPTER II

# THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS

3. (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the National Commission for Minority Educational Institutions to exercise the powers conferred on, and to perform the functions assigned to it, under this Ordinance.

(2) The Commission shall consist of a Chairperson and two members to be nominated by the Central Government.

Qualifications for appointment as Chairperson or other Member.

Constitution of National

Commission

for Minority

Educational Institutions.

4. (1) A person shall not be qualified for appointment as the Chairperson unless he,---

(a) is a member of a minority community; and

(b) has been a Judge of a High Court.

(2) A person shall not be qualified for appointment as a Member unless he,-

(a) is a member of a minority community; and

(b) is a person of eminence, ability and integrity;

.

5. (1) Every Member shall hold office for a term of five years from the date on which Term of office and conditions

(2) A Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.

(3) The Central Government shall remove a person from the office of Member if that person-

(a) becomes an undischarged insolvent;

(b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;

(c) becomes of unsound mind and stands so declared by a competent court.

(d) refuses to act or becomes incapable of acting;

(e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or

(f) in the opinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest:

Provided that no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination and a person as nominated shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed;

6. (1) The Central Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Ordinance.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the Secretary, officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

7. The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, officers and other employees referred to in section 6, shall be paid out of the grants referred to in sub-section (1) of section 14.

8. No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

9. (1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.

(2) the Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorised by the Secretary in this behalf.

Officers and other employees of Commission.

Salaries and allowances to be paid out of grants.

Vacancies, etc., not to invalidate proceedings of Commission.

Procedure to be regulated by Commission.

Term of office and conditions of service of Chairperson and Members.

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[PART II-

#### CHAPTER III

#### RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

Right of a Minority Educational Institution to seek affiliation to a Scheduled University. 10. Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice.

#### CHAPTER IV

#### FUNCTIONS AND POWERS OF THE COMMISSION

Functions of the Commission. 11. Notwithstanding anything contained in any other law for the time being in force, the Commission shall—

(a) advice the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating affiliation to a Scheduled University and report its findings to the Central Government for its implementation; and

(c) to do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

Powers of Commission.

12. (1) If any dispute arises between a minority educational institution and a Scheduled University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

(2) The Commission shall, for the purposes of discharging its functions under this Ordinance, have all the powers of a civil court while trying a suit and in particular, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act 1872 requisitioning any public record or document or copy of such record or document 1 of 1872. from any office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

Financial and administrative powers of the Chairperson. 13. The Chairperson shall exercise such financial and administrative powers as may be vested in him by the rules made under this section:

Provided that the Chairperson shall have authority to delegate such of the financial and administrative powers as he may thinks fit to any Member or Secretary or any other officer of the Commission subject to the condition that such Member or Secretary or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

#### CHAPTER V

#### FINANCE, ACCOUNTS AND AUDIT

14. (1) The Central Government shall, after due appropriation made by Parliament by w in this behalf, pay to the Commission by way of grants such sums of money as the entral Government may think fit for being utilised for the purposes of this Ordinance.

(2) The Commission may spend such sums of money as it thinks fit for performing the inctions under this Ordinance, and such sums shall be treated as expenditure payable out of it grants referred to in sub-section (1).

15. (1) The Commission shall maintain proper accounts and other relevant records ind prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Ordinance shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

16. The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

17. The Central Government shall cause the annual report, together with a memorandum of action taken on the advice tendered by the Commission under section 11 and the reasons for the non-acceptance, if any, of any such advice, and the audit report to be laid as soon as may be after they are received before each House of Parliament.

### CHAPTER VI

#### MISCELLANEOUS

18. The Central Government if deems fit may, by notification in the Official Gazette, add any other University to the Schedule or omit any University therefrom.

19. The Chairperson, Members, the Secretary, officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

20. (1) In the discharge of its functions under this Ordinance, the Commission shall be guided by such direction on questions of policy relating to national purposes, as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

Grants by the Central Government.

Accounts and audit.

Annual report.

Annual report and audit report to be laid before Parliament.

Power to amend Schedule.

Chairperson, Members, Secretary, employees, etc. of the Commission to be public servants.

Directions by the Central Government.

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Protection against action taken in good faith.

Ordinance to have overriding effect.

Returns or information.

Power to make rules.

21. No suit, prosecution or other legal proceeding shall lie against the Government, Commission, Chairperson, Members, Secretary or any officer or other en of the Commission for anything which is in good faith done or intended to be done un Ordinance.

22. The provisions of this Ordinance shall have effect notwithstanding a inconsistent therewith contained in any other law for the time being in force or in any instance having effect by virtue of any law other than this Ordinance.

23. The Commission shall furnish to the Central Government such returns information with respect to its activities as the Central Government may, from time require.

24. (1) The Central Government may, by notification in the Official Gazette rules for carrying out the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powe rules may provide for all or any of the following matters, namely:—

(a) salaries and allowances payable to, and the other terms and condition service of, the Chairperson and Members under sub-section (5) of section 5 an Secretary, officers and other employees under sub-section (2) of section 6;

(b) the financial and administrative powers to be exercised by the Chain under section 13;

(c) the form in which the annual statement of accounts shall be prepared sub-section (1) of section 15;

(d) the form in, and the time at, which the annual report shall be prepared section 16;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be aft made, before each House of Parliament, while it is in session, for a total period of thir which may be comprised in one session or in two or more successive sessions, and if, the expiry of the session immediately following the session or the successive sessions afo both Houses agree in making any modification in the rule or both House agree that the should not be made, the rule shall thereafter have effect only in such modified form o no effect, as the case may be; so, however, that any such modification or annulment sl without prejudice to the validity of anything previously done under that rule.

25. (1) If any difficulty arises in giving effect to the provisions of this Ordinan Central Government may, by order published in the Official Gazette, make such provnot inconsistent with the provisions of this Ordinance, as appear to it to be necess expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two year the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be after it is made, l before each House of Parliament.

Power to remove difficulties.

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# THE GAZETTE OF INDIA EXTRAORDINARY

# THE SCHEDULE

# [See section 2 (j)]

SI. No.	Name of the University
1.	University of Delhi
2.	North Eastern Hill University
3.	Pondicherry University
4.	Assam University
5.	Nagaland University
6.	Mizoram University

# A. P. J. ABDUL KALAM, President.

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# T. K. VISWANATHAN, Secy. to the Govt. of India.

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# .रं 40) नई दिल्ली, रविवार, दिसम्बर 26, 2004 / पौष 5, 1926 No. 40] NEW DELHI, SUNDAY, DECEMBER 26, 2004 / PAUSA 5, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 26th December, 2004/Pausa 5, 1926 (Saka)

# THE PATENTS (AMENDMENT) ORDINANCE, 2004

# No. 7 of 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

# An Ordinance further to amend the Patents Act, 1970.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Patents (Amendment) Ordinance, 2004.

(2) Sub-clause (ii) of clause (a), and clause (b), of section 37, sections 41, 42, 47, 58 to 62 (both inclusive) and 73 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and the remaining provisions shall come into force on the 1<sup>st</sup> day of January, 2005.

Short title and commencement. - A -

Amendment of section 2. 2

2. In section 2 of the Patents Act, 1970 (hereinafter referred to as the principal Act), in sub-section (1),--

(a) after clause (ab), the following clause shall be inserted, namely:----

'(*aba*) "Budapest Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure done at Budapest on 28<sup>th</sup> day of April, 1977, as amended and modified from time to time;';

[PART ]]-

(b) in clause (d), for the words, brackets and figure "notified as such under subsection (1) of section 133", the words and figures "referred to as a convention country in section 133" shall be substituted;

(c) clause (g) shall be omitted;

(d) in clause (h),—

(i) in sub-clause (iii), after the words and figures "the Companies Act, 1956", the word "; or" shall be inserted;

(ii) after sub-clause (iii), the following sub-clause shall be inserted, namely:---

"(iv) by an institution wholly or substantially financed by the Government;";

(*iii*) the words "and includes the Council of Scientific and Industrial Research and any other institution which is financed wholly or for the major part by the said Council;" shall be omitted;

(e) for clause (i), the following clause shall be substituted, namely:----

(*i*) "High Court", in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be;';

(f) for clauses (l) and (m), the following clauses shall be substituted, namely:---

(1) "Opposition Board" means an Opposition Board constituted under sub-section (4) of section 25;

(m) "patent" means a patent for any invention granted under this Act;"

3. In section 3 of the principal Act,-

(a) in clause (d), for the words "new use", the words "mere new use" shall be substituted;

(b) for clause (k), the following clauses shall be substituted, namely:---

"(k) a computer programme *per se* other than its technical application to industry or a combination with hardware;

(ka) a mathematical method or a business method or algorithms;"

4. Section 5 of the principal Act shall be omitted.

5. In section 7 of the principal Act,-

(a) after sub-section (1A), the following sub-section shall be inserted, namely:---

"(*IB*) The filing date of an application referred to in sub-section (*IA*) and its complete specification processed by the patent office as designated office or elected office shall be the international filing date accorded under the Patent Cooperation Treaty.";

Amendment of section 3.

Omission of section 5.

Amendment of section 7.

(b) in sub-section (3), for the word "owner", the word "person" shall be substituted;

(c) for sub-section (4), the following sub-section shall be substituted, namely:---

"(4) Every such application (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) shall be accompanied by a provisional or a complete specification.".

- 6. In section 8 of the principal Act,-
  - (a) in sub-section (1),---

(i) for the words "within such period as the Controller may, for good and sufficient reasons, allow", the words "within the prescribed period as the Controller may allow" shall be substituted;

(*ii*) in clause (b), for the words "upto the date of the acceptance of his complete specification filed in India", the words "upto the date of grant of patent in India" shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:---

"(2) At any time after an application for patent is filed in India and till the grant of a patent or refusal to grant of patent made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant **shall furnish to the Controller** information available to him within such period as may be prescribed.".

7. In section 9 of the principal Act,---

(a) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.";

(b) in sub-section (2), the following proviso shall be inserted at the end, namely:-

"Provided that the period of time specified under sub-section (1) shall be reckoned from the date of filing of the earliest provisional specification.";

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Where an application for a patent (not being a convention application or an application filed under the Patent Cooperation Treaty designating India) is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time within twelve months from the date of filing of the application, direct that such specification shall be treated, for the purposes of this Act, as a provisional specification and proceed with the application accordingly.";

(d) in sub-section (4), for the words "the acceptance of the complete specification", the words "grant of patent" shall be substituted.

8. In section 10 of the principal Act,---

(a) in sub-section (3), for the words "before the acceptance of the application", the words "before the application is found in order for grant of a patent" shall be substituted;

Amendment of section 10.

Amendment of section 9.

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Amendment

of section 8

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No. And And

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SEC. 1]

### (b) in sub-section (4), in the proviso,—

(i) in clause (ii), for the words "the material to an authorised depository institution as may be notified by the Central Government in the Official Gazette", the words "the material to an international depository authority under the Budapest Treaty" shall be substituted;

[PART 1]-

(ii) for sub-clause (A), the following sub-clause shall be substituted, namely:---

"(A) the deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period;";

(c) for sub-section (4A), the following sub-section shall be substituted, namely:-

"(4A) In case of an international application designating India, the title, description, drawings, abstract and claims filed with the application shall be taken as the complete specification for the purposes of this Act."

9. In section 11 of the principal Act,---

(a) after sub-section (3), the following sub-section shall be inserted, namely:---

"(3A) Where a complete specification based on a previously filed application in India has been filed within twelve months from the date of that application and the claim is fairly based on the matter disclosed in the previously filed application, the priority date of that claim shall be the date of the previously filed application in which the matter was first disclosed.";

(b) in sub-section (6), after the brackets and figure "(3),", the brackets, figure and letter "(3A)," shall be inserted.

10. In section 11A of the principal Act,-

Amendment of section 11A.

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Amendment

of section 11.

(a) for sub-sections (1) to (3), the following sub-sections shall be substituted, namely:---

"(1) Save as otherwise provided, no application for patent shall ordinarily be open to the public for such period as may be prescribed.

(2) The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3), the Controller shall publish such application as soon as possible.

(3) Every application for a patent shall, on the expiry of the period specified under sub-section (1), be published, except in cases where the application—

(a) in which secrecy direction is imposed under section 35; or

(b) has been abandoned under sub-section (1) of section 9; or

(c) has been withdrawn three months prior to the period specified under sub-section (1).";

(b) in sub-section (4), for the words "of eighteen months", the words, brackets and figure "prescribed under sub-section (1)" shall be substituted;

(c) after sub-section (6), the following sub-section shall be inserted, namely:---

"(7) On and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the application:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been granted:

Provided further that the rights of a patentee in respect of applications made under sub-section (2) of section 5 before the 1<sup>st</sup> day of January, 2005 shall accrue from the date of grant of the patent."

### 11. In section 11B of the principal Act .---

Sec. 11

(a) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) No application for a patent shall be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within the prescribed period.";

(b) sub-section (2) shall be omitted;

(c) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) In case of an application in respect of a claim for a patent filed under sub-section (2) of section 5 before the 1" day of January, 2005 a request for its examination shall be made in the prescribed manner and within the prescribed period by the applicant or any other interested person.";

(d) in sub-section (4),—

(i) the words, brackets and figure "or sub-section (2)" shall be omitted;

(ii) for the proviso, the following proviso shall be substituted, namely:----

"Provided that-

(i) the applicant may, at any time after filing the application but before the grant of a patent, withdraw the application by making a request in the prescribed manner; and

(*ii*) in a case where secrecy direction has been issued under section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.";.

#### 12. In section 12 of the principal Act,-

(a) in sub-section (1), for the words, brackets, figures and letter "under subsection (1) or sub-section (2) or sub-section (3) of section 11B, the application and specification and other documents shall be referred to by the Controller", the words, brackets, figures and letter "under sub-section (1) or sub-section (3) of section 11B, the application and specification and other documents related thereto shall be referred at the earliest by the Controller" shall be substituted;

(b) in sub-section (2), for the words "a period of eighteen months from the date of such reference", the words "such period as may be prescribed" shall be substituted.

13. In section 13 of the principal Act, in sub-section (3), for the words "it has been accepted", the words "the grant of a patent" shall be substituted.

14. For sections 14 and 15 of the principal Act, the following sections shall be substituted, namely:----

"14. Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application, the specification or other documents to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding

Amendment of section 12.

Amendment of section 13.

Substitution of new sections for sections 14 and 15. Considerationof the report of examiner by Controller.

Amendment of section 11B.

[PART I]-

to dispose of the application in accordance with the provisions hereinafter appearing shall communicate as expeditiously as possible the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed period, give him an opportunity of being heard.

15. Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so.".

15. In section 16 of the principal Act,-

(a) in sub-section (1), for the words "before the acceptance of the complete specification", the words "before the grant of the patent" shall be substituted;

(b) for the Explanation, the following Explanation shall be substituted, namely:-

"Explanation.- For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the first mentioned application had been filed, and the further application shall be proceeded with as a substantive application and be examined when the request for examination is filed within the prescribed period."

Amendment 16. In section 17 of the principal Act, in sub-section (1), for the words "before acceptance of section 17. of the complete specification", the words "before the grant of the patent" shall be substituted.

Amendment of section 18.

Amendment

of section 19.

Substitution

section for section 21.

Time for putting

order for

grant.

application in

of new

17. In section 18 of the principal Act,-

(a) in sub-section (1), for the words "to accept the complete specification", the words "the application" shall be substituted;

(b) sub-section (4) shall be omitted.

18. In section 19 of the principal Act, in sub-section (1), the words and figures "by the foregoing provisions of this Act or of proceedings under section 25", the words "under this Act" shall be substituted.

19. For section 21 of the principal Act, the following section shall be substituted, namely:-

"21. (1) An application for a patent shall be deemed to have been abandoned unless, within such period as may be prescribed, the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller.

*Explanation.*-Where the application for a patent or any specification or, in the case of a convention application or an application filed under the Patent Cooperation Treaty designating India any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has refiled it or the applicant proves to the satisfaction of the Controller that for the reasons beyond his control such document could not be re-filed.

(2) If at the expiration of the period as prescribed under sub-section (1),-

(a) an appeal to the High Court is pending in respect of the application for the patent for the main invention; or

Power of Controller to refuse or require . amended applications, etc., in certain cases.

Amendment of section 16.

(b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention, the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the period as prescribed under sub-section (1), be extended until such date as the High Court may determine.

(3) If the time within which the appeal mentioned in sub-section (2) may be instituted has not expired, the Controller may extend the period as prescribed under sub-section (1), to such further period as he may determine:

Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Court."

20. Sections 22 to 24 of the principal Act shall be omitted.

21. Chapter IVA of the principal Act shall be omitted.

22. In Chapter V of the principal Act, for the Chapter heading "OPPOSITION TO GRANT OF PATENT", the Chapter heading "REPRESENTATION AND OPPOSITION PROCEEDINGS" shall be substituted.

23. For sections 25 and 26 of the principal Act, the following sections shall be substituted, namely:---

"25. (1) Where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the ground of—

(a) patentability including novelty, inventive step and industrial applicability, or

(b) non-disclosure or wrongful mentioning in complete specification, source and geographical origin of biological material used in the invention and anticipation of invention by the knowledge, oral or otherwise available within any local or indigenous community in India or elsewhere,

and the Controller shall consider and dispose of such representation in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the person making a representation referred to in that sub-section shall not become a party to any proceedings under this Act only for the reason that he has made such representation.

(3) At any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:---

(a) that the patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

Omission of sections 22 to 24. Omission of Chapter IVA. Ŷ

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Substitution of heading of Chapter V.

Substitution of new sections for sections 25 and 26.

Opposition to the patent.

SEC.1]

[PART II---

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim-

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1" day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (*ii*) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the claim of the patentee and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the claim of the patentee;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

*Explanation*—For the purposes of this clause, an invention relating to a process for which a patent is granted shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) that the patentee has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;

(i) that in the case of a patent granted on convention application, the application for patent was not made within twelve months from the date of the first application for protection for the invention made in a convention country or in India by the patentee or a person from whom he derives title;

(*j*) that the complete specification does not disclose or wrongly mentions the source and geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere,

but on no other ground.

(4) (a) Where any such notice of opposition is duly given under sub-section (3), the Controller shall notify the patentee.

(b) On receipt of such notice of opposition, the Controller shall, by order in writing, constitute a Board to be known as the Opposition Board consisting of such

Sec. 1]

officers as he may determine and refer such notice of opposition along with the documents to that Board for examination and submission of its recommendations to the Controller.

(c) Every Opposition Board constituted under clause (b) shall conduct the examination in accordance with such procedure as may be prescribed.

(5) On receipt of the recommendation of the Opposition Board and after giving the patentee and the opponent an opportunity of being heard, the Controller shall order either to maintain or to amend or to revoke the patent.

(6) While passing an order under sub-section (5) in respect of the ground mentioned in clause (d) or clause (e) of sub-section (3), the Controller shall not take into account any personal document or secret trial or secret use.

(7) In case the Controller issues an order under sub-section (5) that the patent shall be maintained subject to amendment of the specification or any other document, the patent shall stand amended accordingly.

26. (1) Where in any opposition proceeding under this Act the Controller finds that—

(a) the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent in the manner set out in clause (a) of subsection (3) of section 25 and revokes the patent on that ground, he may, on request by such opponent made in the prescribed manner, direct that the patent shall stand amended in the name of the opponent;

(b) a part of an invention described in the complete specification was so obtained from the opponent, he may pass an order requiring that the specification be amended by the exclusion of that part of the invention.

(2) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (b) of sub-section (I), filed an application for a patent for an invention which included the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the patentee in the earlier application but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act."

24. Section 27 of the principal Act shall be omitted.

25. In section 28 of the principal Act,-

(a) for sub-section (4), the following sub-section shall be substituted, namely:----

"(4) A request or claim under the foregoing provisions of this section shall be made before the grant of patent.";

(b) sub-section (5) shall be omitted;

(c) in sub-section (6), for the words, brackets and figure "Subject to the provisions of sub-section (5), where", the word "Where" shall be substituted.

26. In section 31 of the principal Act, for the words "not later than six months", the words "not later than twelve months" shall be substituted.

27. In section 34 of the principal Act, the words "to accept complete specification for a patent or " shall be omitted.

controller may treat the patent as the patent of opponent.

In cases of "obtaining"

9

Omission of section 27

Amendment of section 28.

Amendment of section 31.

Amendment of section 34.

Amendment of section 35

Amendment

Amendment

of section 37

10

**28.** In section 35 of the principal Act, in sub-section (3), for the words "acceptance ( complete specification", the words "grant of patent" shall be substituted.

29. In section 36 of the principal Act, in sub-section (1), for the words "twelve months" of section 36. the words "six months" shall be substituted.

30. In section 37 of the principal Act,-

(a) in sub-section (1),--

(i) in clause (a), for the words "to accept", the words "to grant" shall be substituted:

(ii) for the proviso, the following proviso shall be substituted, namely:-

"Provided that the application may, subject to the directions, proceed up to the stage of grant of the patent, but the application and the specification found to be in order for grant of the patent shall not be published, and no patent shall be granted in pursuance of that application.";

(b) in sub-section (2), for the words "is accepted", the words "is found to be in order for grant of the patent" shall be substituted.

31. For section 39 of the principal Act, the following section shall be substituted, namely:---

"39. (1) No person resident in India shall, except under the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless-

(a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and

(b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.

(2) The Controller shall dispose of every such application within such period as may be prescribed:

Provided that if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government.

(3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India."

32. In Chapter VIII of the principal Act, for the Chapter heading "GRANT AND SEALING OF PATENTS AND RIGHTS CONFERRED THEREBY", the Chapter heading "GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY" shall be substituted.

33. For section 43 of the principal Act, the following section shall be substituted, namely:--

Grant of patents

Substitution

of heading of

Chapter VIII.

Substitution

section for section 43.

of new

"43. (1) Where an application for a patent has been found to be in order for grant of the patent and either-

(a) the application has not been refused by the Controller by virtue of any power vested in him by this Act; or

(b) the application has not been found to be in contravention of any of the provisions of this Act,

Substutution of new section for section 39. Residents not to apply for patents outside India without prior permission.

the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register.

(2) On the grant of patent, the Controller shall publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection."

34. In section 44 of the principal Act, for the word "sealed", at both the places where it occurs, the word "granted" shall be substituted.

35. In section 45 of the principal Act, in sub-section (3), for the words "the date of Amendment advertisement of the acceptance of the complete specification", the words "the date of of section 45 publication of the application" shall be substituted.

36. In section 48 of the principal Act, the proviso shall be omitted.

37. In section 52 of the principal Act,---

(a) in sub-section (1).—

(i) for the opening words "Where a patent has been revoked", the words and figures "Where the patent has been revoked under section 64" shall be substituted;

(*ii*) for the word, "court", wherever it occurs, the words "Appellate Board or court" shall be substituted;

(b) in sub-section (2), for the word "court", occurring at both the places, the words "Appellate Board or court" shall be substituted.

38. In section 53 of the principal Act,----

(a) after sub-section (1), the following Explanation shall be inserted, namely:----

"*Explanation*—For the purposes of this sub-section, the term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.";

(b) in sub-section (2), for the words "or within that period as extended under this section", the words "or within such extended period as may be prescribed" shall be substituted;

(c) sub-section (3) shall be omitted.

39. In section 54 of the principal Act,-

(a) in sub-section (3), for the words "complete specification", occurring at both the places, the word "application" shall be substituted:

(b) for sub-section (4), the following sub-section shall be substituted, namely:---

"(4) A patent of addition shall not be granted before grant of the patent for the main invention."

40. In section 57 of the principal Act,

(a) for sub-section (3), the following sub-section shall be substituted, namely:

"(3) Any application for leave to amend an application for a patent or a complete specification or a document related thereto under this section made after the grant of patent and the nature of the proposed amendment may be published.":

Amendment of section 57

Antendment of section 54.

Amendment of section 53

Amendment of section 48

Amendment

of section 44

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Amendment of section 52.

2, 1]

#### (b) in sub-section (4), ---

(i) for the word "advertised", the word "published" shall be substituted;

(ii) for the word "advertisement", the word "publication" shall be substituted;

(c) for sub-section (6), the following sub-section shall be substituted, namely:-

"(6) The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification or any other document related thereto to comply with the directions of the Controller issued before the grant of a patent.".

41. For section 58 of the principal Act, the following section shall be substituted, namely:---

"58. (1) In any proceeding before the Appellate Board or the High Court for the revocation of a patent, the Appellate Board or the High Court, as the case may be, may, subject to the provisions contained in section 59, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise, as the Appellate Board or the High Court may think fit, and if, in any proceedings for revocation, the Appellate Board or the High Court decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

(2) Where an application for an order under this section is made to the Appellate Board or the High Court, the applicant shall give notice of the application to the Controller, and the Controller shall be entitled to appear and be heard, and shall appear if so directed by the Appellate Board or the High Court.

(3) Copies of all orders of the Appellate Board or the High Court allowing the patentee to amend the specification shall be transmitted by the Appellate Board or the High Court to the Controller who shall, on receipt thereof, cause an entry thereof and reference thereto to be made in the register."

42. In section 59 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:---

"(2) Where after the date of grant of patent any amendment of the specification or any other documents related thereto is allowed by the Controller or by the Appellate Board or the High Court, as the case may be,—

(a) the amendment shall for all purposes be deemed to form part of the specification along with other documents related thereto;

(b) the fact that the specification or any other documents related thereto has been amended shall be published as expeditiously as possible; and

(c) the right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud.".

Amendment of section 60.

Amendment of section 59.

43. In section 60 of the principal Act, in sub-section (1), for the words, brackets and figures "prescribed period or within that period as extended under sub-section (3) of section 53", the words, figures and brackets "period prescribed under section 53 or within such period as may be allowed under sub-section (4) of section 142" shall be substituted.

Amendment of section 61. 44. In section 61 of the principal Act, in sub-section (1), for the words "advertise the application", the words "publish the application" shall be substituted.

Substitution of new section for section 58.

Amendment of specification before appellate Board or High Court. 12

[PART II-

ection 62 of the principal Act,-

a) in sub-section (1), for the word "advertisement", the word "publication" re substituted;

(b) in sub-section (2), for the words "date of the advertisement", the words of publication" shall be substituted.

n section 63 of the principal Act,---

(a) in sub-section (2), for the word "advertise", the word "publish" shall be stituted;

(b) in sub-section (3), for the words "such advertisement", the words "such blication" shall be substituted.

1. In section 64 of the principal Act, in sub-section  $(I)_{q}$  for the words "on the petition person interested or of the Central Government or on a counter-claim in a suit for ement of the patent, be revoked by the High Court", the words "be revoked on a n of any person interested or of the Central Government by the Appellate Board or on ter-claim in a suit for infringement of the patent by the High Court" shall be substituted.

48. For section 65 of the principal Act, the following section shall be substituted, sly:---

"65. (1) Where at any time after grant of a patent, the Central Government is satisfied that a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962, it may direct the Controller to revoke the patent, and thereupon the Controller, after giving notice, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may revoke the patent.

(2) In any proceedings under sub-section (1), the Controller may allow the patentee to amend the complete specification in such manner as he considers necessary instead of revoking the patent."

49. For section 68 of the principal Act, the following section shall be substituted, namely:---

"68. An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and duly executed."

"(2) The Central Government may, by notification in the Official Gazette, specify the name of the Patent Office."

51. In section 78 of the principal Act,-

(a) in sub-section (4), for the word "advertised", the word "published" shall be substituted:

(b) in sub-section (5), for the words "such advertisement", the words "such publication" shall be substituted.

Amendment of section 62.

Amendment of section 63.

Amendment of section 64.

Substitution of new section for section 65.

Revocation of patent or amendment of complete specification on directions from Government in cases relating to atomic energy.

Substitution of new section for section 68.

Assignments, etc., not to be valid unless in writing and duly executed.

Amendment of section 74.

Amendment of section 78.



[PART ]]

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Amendment of section 87. 14

Amendment of section 90.

52. In section 87 of the principal Act, in sub-section (1), for the words "shall advertise the application in the Official Gazette", the words "shall publish the application in the official journal" shall be substituted.

53. In section 90 of the principal Act, in sub-section (1), for clause (vii), the following shall be substituted, namely:----

"(vii) that in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

(viii) that the licence is granted with a predominant purpose of supplying in the Indian market:

Provided that the licensee may also export the patented product in accordance with section 92A:

Provided further that in case the licence is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted to export the patented product.".

54. After section 92 of the principal Act, the following section shall be inserted, namely:---

"92A. (1) Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country.

(2) The Controller shall, on receipt of an application in the prescribed manner. grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him.

(3) The provisions of sub-sections (1) and (2) shall be without prejudice to the extent to which pharmaceutical products produced under a compulsory license can be exported under any other provision of this Act.

Explanation.-For the purposes of this section, 'pharmaceutical products' means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address public health problems and shall be inclusive of ingredients necessary for their manufacture and diagnostic kits required for their use.".

Amendment of section 100

Amendment of section 105

Amendment of section 107A.

55. In section 100 of the principal Act, in sub-section (3), for the words "the acceptance of the complete specification in respect of the patent", the words "grant of the patent" shall be substituted.

56. In section 105 of the principal Act, in sub-section (4), for the words "after the date of advertisement of acceptance of the complete specification of a patent", the words "after the publication of grant of a patent" shall be substituted.

57. In section 107A of the principal Act,---

(a) in clause (a),—

(i) for the words "using or selling", the words "using, selling or importing" shall be substituted;

(ii) for the words "use or sale," the words "use, sale or import" shall be substituted;

Insertion of new section 97A

Ccompulsory licence for export of patented pharmaceutical products in certain exceptional circumstances.

b) in clause (b), for the words "who is duly authorised by the patentee to sell or ute the product", the words "who is duly authorised under the law to produce ell or distribute the product" shall be substituted.

n section 113 of the principal Act,---

(a) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) If in any proceedings before the Appellate Board or a High Court for the revocation of a patent under section 64 and section 104, as the case may be, the validity of any claim of a specification is contested and that claim is found by the Appellate Board or the High Court to be valid, the Appellate Board or the High Court may certify that the validity of that claim was contested in those proceedings and was upheld.";

(b) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) Nothing contained in this section shall be construed as authorising the courts or the Appellate Board hearing appeals from decrees or orders in suits for infringement or petitions for revocation, as the case may be, to pass orders for costs on the scale referred to therein."

59. In section 116 of the principal Act [as substituted by section 47 of the Patents nendment) Act, 2002], in sub-section (2), clause (c) shall be omitted

60. In section 117A of the principal Act [as inserted by section 47 of the Patents mendment) Act, 2002], in sub-section (2), for the words and figures "section 20, section 5, section 27, section 28", the words, figures and brackets "section 20, sub-sections (5) of ection 25, section 28" shall be substituted.

**61.** In section 117D of the principal Act [as inserted by section 47 of the Patents (Amendment) Act, 2002], in sub-section (1), for the words, "for rectification of the register", the words and figures "for revocation of a patent before the Appellate Board under section 64 and an application for rectification of the register" shall be substituted.".

62. For section 117G of the principal Act [as inserted by the Patents (Amendment) Act, 2002], the following section shall be substituted, namely:----

"117G All cases of appeals against any order or decision of the Controller and all cases pertaining to revocation of patent other than on a counter-claim in a suit for infringement and rectification of register pending before any High Court, shall be transferred to the Appellate Board from such date as may be notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matter either *de novo* or from the stage it was so transferred."

63. In section 120 of the principal Act, for the words, "ten thousand rupees", the words "one lakh rupees" shall be substituted.

64. In section 122 of the principal Act, in sub-section (1), for the words, "twenty thousand rupees", the words "ten lakh rupees" shall be substituted,

65. In section 123 of the principal Act, for the words, "ten thousand rupees in the case of a first offence and forty thousand rupees", the words "one lakh rupees in the case of a first offence and five lakh rupees" shall be substituted.

66. In section 126 of the principal Act,-

(a) in sub-section (1), in clause (c), sub-clause (i) shall be omitted;

(b) in sub-section (2), for the words, brackets and figures "the Patents (Amendment) Act, 2002", the words, "the Patents (Amendment) Ordinance, 2004" shall be substituted.

Amendment of section 113.

Amendment of section 116.

Amendment of section 117A.

Amendment of section 117D.

Substitution of new section for section 117G

Transfer of pending proceedings to Appellate Board<sub>D</sub>

Amendment of section 120. Amendment of section 122. Amendment of section 123.

Amendment of section 126.

Substitution of new section for section 133. 16

Convention countries.

Amendment of section 135. 67. For section 133 of the principal Act, the following section shall be substituted, namely:---

"133. Any country, which is a signatory or party or a group of countries, union of countries or intergovernmental organizations which are signatories or parties to an international, regional or bi-lateral treaty, convention or arrangement to which India is also a signatory or party and which affords to the applicants for patents in India or to citizens of India similar privileges as are granted to their own citizens or citizens to their member countries in respect of the grant of patents and protection of patent rights shall be a convention country or convention countries for the purposes of this Act."

68. In section 135 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:----

"(3) In case of an application filed under the Patent Cooperation Treaty designating India and claiming priority from a previously filed application in India, the provisions of sub-sections (1) and (2) shall apply as if the previously filed application were the basic application:

Provided that a request for examination under section I I B shall be made only for one of the applications filed in India.".

Amendment of section 138. 69. In section 138 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:---

"(1) Where a convention application is made in accordance with the provisions of this Chapter, the applicant shall furnish, when required by the Controller, in addition to the complete specification, copies of the specifications or corresponding documents filed or deposited by the applicant in the patent office of the convention country as referred to in section 133 verified to the satisfaction of the Controller, within the prescribed period from the date of communication by the Controller."

70. In section 142 of the principal Act, in sub-section (4), for the words, "the complete

71. For section 143 of the principal Act, the following section shall substituted,

Amendment of section 142.

Substitution of new section for section 143.

Restrictions upon publication of specification.

Substitution

sections for section 145.

of new

"143. Subject to the provisions of Chapter VII, an application for a patent, and any specification filed in pursuance thereof, shall not, except with the consent of the

any specification filed in pursuance thereof, shall not, except with the consent of the applicant, be published by the Controller before the expiration of the period prescribed under sub-section (1) of section 11A or before the same is open to public inspection in pursuance of sub-section (3) of section 11A or section 43.".

72. For section 145 of the principal Act, the following section shall substituted, namely:---

Publication of official journal.

Amendment of section 151. "145. The Controller shall publish periodically an official journal which shall contain such information as may be required to be published by or under the provisions of this Act or any rule made thereunder.".

73. In section 151 of the principal Act,-

specification", the words, "the application" shall be substituted.

(a) in sub-section (1), for the words, "the High Court", occurring at the places, the words "the High Court or the Appellate Board" shall be substituted;

(b) in sub-section (3), for the word "courts", the words "Appellate Board or the courts, as the case may be," shall be substituted.

74. Section 152 of the principal Act shall be omitted.

75. In section 159 of the principal Act,---

(i) in sub-section (2),-

(a) for clauses (ia) and (ib), the following clauses shall be substituted, namely:---

"(ia) the period which the Controller may allow for filing of statement and undertaking for in respect of applications under sub-section (1), the period within which the details relating to processing of applications may be filed before the Controller and the details to be furnished by the applicant to the Controller under sub-section (2) of section 8;

(*ib*) the period within which a reference to the deposit of materials shall be made in the specification under sub-clause (A) of clause (*ii*) of the proviso to sub-section (4) of section 10;

(*ic*) the period for which application for patent shall not be open to the public under sub-section (I) and the manner in which the applicant may make a request to the Controller to publish his application under sub-section (2) of section 11A;

(*id*) the manner of making the request for examination for an application for patent and the period within which such examination shall be made under sub-sections (1) and (3) of section 11B;

(*ie*) the manner in which an application for withdrawal of an application for grant of a patent shall be made and the period within which a request for examination from the date of revocation of secrecy directions shall be made under the proviso to sub-section (4) of section 11B.";

(b) in clause (ii), for the word "advertised", the words "published" shall be substituted;

(c) for clause (v), the following clauses shall be substituted, namely:-

"( $\nu$ ) the manner in which and the period within which the Controller shall consider and dispose off a representation under sub-section (1) of section 25;

(va) the period within which the Controller is required to dispose off an application under section 39;";

(ii) in sub-section (3), the following proviso shall be added at the end, namely:-

"Provided that the Central Government may, if it is satisfied that circumstances exist which render it practically not possible to comply with such condition of previous publication, dispense with such compliance.".

76. Section 163 of the principal Act shall be omitted.

77. (1) Notwithstanding the omission of Chapter IVA of the principal Act by section 21 of this Ordinance, every application for the grant of exclusive marketing rights filed under that Chapter before the  $1^{st}$  day of January, 2005, in respect of a claim for a patent covered under sub-section (2) of section 5 of the principal Act, such application shall be deemed to be treated as a request for examination for grant of patent under sub-section (3) of section 11B the principal Act, as amended by this Ordinance.

(2) Every exclusive right to sell or distribute any article or substance in India granted before the  $1^n$  day of January, 2005 shall continue to be effective with the same terms and conditions on which it was granted.

Omission of section 163. Transitional provision.

section 152. Amendment of section

159.

Omission of

Sec. 1]

(3) Without prejudice to any of the provisions of the principal Act, the applications in respect of which exclusive rights have been granted before the 1<sup>st</sup> day of January, 2005 shall be examined for the grant of patent immediately on the commencement of this Ordinance.

(4) All suits relating to infringement of the exclusive right granted before 1<sup>st</sup> day of January, 2005 shall be dealt with in the same manner as if they were suits concerning infringement of patents under Chapter XVIII of the principal Act.

(5) The examination and investigation required as carried out for the grant of exclusive right shall not be deemed in any way to warrant the validity of any grant of exclusive right to sell or distribute, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.

A. P. J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

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EXTRAORDINARY भाग II -- खण्ड 1 PART II -- Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

# सं 42] नई दिल्ली, बुधवार, दिसम्बर 29, 2004 / पौष 8, 1926 No. 42] NEW DELHI, WEDNESDAY, DECEMBER 29, 2004 / PAUSA 8, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE

## (Legislative Department)

New Delhi, 29th December, 2004/Pausa 8, 1926 (Saka)

# THE PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY ORDINANCE, 2004

# No. 8 of 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance to provide for the establishment of an Authority to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

#### CHAPTER I

#### PRELIMINARY

1. (1) This Ordinance may be called the Pension Fund Regulatory and Development Authority Ordinance, 2004.

Short title, extent and commencement.

(2) It extends to the whole of India.

(3) It shall come into force at once.

Definitions:

### 2. (1) In this Ordinance, unless the context otherwise requires,-

(a) "Authority" means the Pension Fund Regulatory and Development Authority established under sub-section (1) of section 3;

(b) "central recordkeeping agency" means an agency registered under section 24 to perform the functions of recordkeeping, accounting, administration and customer service for subscribers to schemes;

(c) "Chairperson" means the Chairperson of the Authority;

(d) "individual pension account" means an account of a subscriber, executed by a contract setting out the terms and conditions under the New Pension System;

(e) "intermediary" includes pension fund, central recordkeeping agency, pension fund adviser, retirement advisor, point of presence and such other person or entity connected with collection, management, record keeping and distribution of accumulations;

(f) "member" means a member of the Authority and includes its Chairperson;

(g) "New Pension System" means an the contributory pension system referred to in section 20 whereby contributions from a subscriber are collected in an individual pension account using points of presence and central recordkeeping agency and accumulated by pension funds for pay offs as specified by regulations;

(h) "notification" means a notification published in the Official Gazette;

(i) "pension fund" means an entity registered with the Authority under subsection (3) of section 24 as a pension fund for receiving contributions, accumulating them and making payments to the subscriber in the manner specified by regulations;

(j) "Pension Regulatory and Development Fund" means the fund constituted under sub-section (1) section 37;

(k) "point of presence" means an entity registered with the Authority under sub-section (3) of section 24 as a point of presence and capable of electronic connectivity with the central recordscepting agency for the purposes of receiving and transmitting funds and instructions and pay out of funds;

(1) "prescribed" means prescribed by rules made under this Ordinance;

(m) "regulated assets" means the assets and properties, both tangible and intangible, owned, leased or developed by and other rights belonging to, the central recordsceping agency;

(n) "regulations" means regulations made by the Authority under this Ordinance;

(o) "scheme" means a scheme of pension fund approved by the Authority under this Ordinance;

(p) "Securities Appellate Tribunal" means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;

(q) "subscriber" includes a person who subscribes to a scheme of a pension fund;

[PART II----

15 of 1992.

5. (1) Every Member shall hold office for a term of five years from the date on which Term of office he assumes office.

(2) A Member my, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.

(3) The Central Government shall remove a person from the office of Member if that person--

(a) becomes an undischarged insolvent;

(b) is conjucted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;

(c) becomes of unsound mind and stands so declared by a competent court.

(d) refuses to act or becomes incapable of acting;

(e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or

(f) in the pinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public intere

Provided that not erson shall be removed under this clause until that person has been given an opportunity debeing heard in the matter.

(4) A vacancy mused under sub-section (2) or otherwise shall be filled by fresh nomination and a person as nominated shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed;

6. (1) The Centrel Government shall provide the Commission with a Secretary and such other officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Ordinance.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the Secretary, officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

7. The salaries and allowances payable to the Chairperson and Members and the administrative expenses including salaries, allowances and pensions payable to the Secretary, officers and other employees referred to in section 6, shall be paid out of the grants referred to in sub-section (1) or section 14.

8. No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

9. (1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.

(2) the Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorised by the Secretary in this behalf.

Salaries and allowances to be paid out of grants.

Vacancies, etc., not to invalidate proceedings of Commission.

Procedure to be regulated by Commission.

and conditions of service of Chairperson

and Members.

### CHAPTER III

### RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

10. Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice.

### CHAPTER IV

### FUNCTIONS AND POWERS OF THE COMMISSION

Functions of the Commission. 11. Notwithstanding anything contained in any other law for the time being in force, the Commission shall—

(a) advice the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;

(b) look into specific complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating affiliation to a Scheduled University and report its findings to the Central Government for its implementation; and

(c) to do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

Powers of Commission.

12. (1) If any dispute arises between a minority educational institution and a Scheduled University relating to its affiliation to such University, the decision of the Commission thereon shall be final.

(2) The Commission shall, for the purposes of discharging its functions under this Ordinance, have all the powers of a civil court while trying a suit and in particular, in respect of the following matters, namely:---

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act 1872 requisitioning any public record or document or copy of such record or document 1 of 1872. from any office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

Financial and administrative powers of the Chairperson. 13. The Chairperson shall exercise such financial and administrative powers as may be vested in him by the rules made under this section:

Provided that the Chairperson shall have authority to delegate such of the financial and administrative powers as he may thinks fit to any Member or Secretary or any other officer of the Commission subject to the condition that such Member or Secretary or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

Eupstions of

Right of a

Educational

Institution to seek affiliation to a Scheduled University.

Minority

### CHAPTER V

### FINANCE, ACCOUNTS AND AUDIT

14. (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Ordinance.

(2) The Commission may spend such sums of money as it thinks fit for performing the functions under this Ordinance, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

15. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Ordinance shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

16. The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

17. The Central Government shall cause the annual report, together with a memorandum of action taken on the advice tendered by the Commission under section 11 and the reasons for the non-acceptance, if any, of any such advice, and the audit report to be laid as soon as may be after they are received before each House of Parliament.

### CHAPTER VI

#### MISCELLANEOUS

18. The Central Government if deems fit may, by notification in the Official Gazette, add any other University to the Schedule or omit any University therefrom.

19. The Chairperson, Members, the Secretary, officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

20. (1) In the discharge of its functions under this Ordinance, the Commission shall be guided by such direction on questions of policy relating to national purposes, as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

Grants by the Central Government.

Accounts and audit.

Annual report.

Annual report and audit report to be laid before Parliament.

Power to amend Schedule.

Chairperson, Members, Secretary, employees, etc. of the Commission to be public servants.

Directions by the Central Government.

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Protection against action taken in good faith:

Ordinance to

have overrid-

ing effect.

Returns or

information.

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21. No suit, prosecution or other legal proceeding shall lie against the Central Government, Commission, Chairperson, Members, Secretary or any officer or other employee of the Commission for anything which is in good faith done or intended to be done under this Ordinance.

22. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Ordinance.

23. The Commission shall furnish to the Central Government such returns or other information with respect to its activities as the Central Government may, from time to time, require.

Power to make rules.

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24. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:---

(a) salaries and allowances payable to, and the other terms and conditions of the service of, the Chairperson and Members under sub-section (5) of section 5 and of the Secretary, officers and other employees under sub-section (2) of section 6;

(b) the financial and administrative powers to be exercised by the Chairperson under section 13;

(c) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 15;

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(d) the form in, and the time at, which the annual report shall be prepared under section 16;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Ordinance 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 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.

Power to remove difficulties. 25. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

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(n) specifying by regulations the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by intermediaries;

(o) calling for information from, undertaking inspection of, conducting inquiries and investigations including audit of, intermediaries and other entities or organisations connected with pension funds;

(p) exercising such other powers and functions as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under clause (0) of sub-section (2), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:-

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(*iii*) inspection of any books, registers and other documents of any person or entity referred to in section 24, at any place;

(iv) issuing commissions for the examination of witnesses or documents;

(v) any other matter which may be prescribed.

(4) Without prejudice to the provisions contained in sub-sections (1), (2) and (3) and section 15, the Authority may, by order, for reasons to be recorded in writing, in the interests of subscribers, take any of the following measures, either pending investigation or inquiry, namely:-

(i) restrain persons from participating in any scheme;

(ii) restrain any office bearer of an intermediary from acting as such;

(*iii*) impound and retain the proceeds under the scheme in respect of any activity which is under investigation;

(*iv*) attach, after passing an order, on an application made for approval, by the Judicial Magistrate of the first, class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the scheme in any manner involved in violation of any of the provisions of this Ordinance or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, relating to the proceeds actually involved in the violation of any of the provisions of this Ordinance or the rules or the regulations made thereunder shall be allowed to be attached;

(v) direct any intermediary or any person associated with the scheme in any manner not to dispose of or alienate an asset forming part of any activity which is under investigation:

Provided that the Authority shall, either before or after, passing such orders, under this section, give to such intermediaries or persons concerned an opportunity of being heard.

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Power to issue directions.

15. Save as otherwise provided in section 14, if after making, or causing to be made, an inquiry, the Authority is satisfied that it is necessary-

(i) in the interests of subscribers or orderly development of New Pension System or a pension scheme to which this Ordinance applies; or

(*ii*) to prevent the affairs of any intermediary or other persons or entities referred to in section 24 being conducted in a manner detrimental to the interests of subscribers; or

(111) to secure the proper management of any such intermediary or person or entity,

it may issue such directions to such intermediaries or entities or to any person or class of persons referred to in section 24, or associated with the pension fund, as it may deem fit:

Provided that the Authority shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries, entities or persons concerned.

16. (1) Where the Authority has a reasonable ground to believe that-

Powers of investigation.

(a) the activities of the pension fund are being conducted in a manner detrimental to the interest of the subscriber; or

(b) any intermediary or any person associated with the schemes of the pension fund has violated any of the provisions of this Ordinance or the rules or the regulations made or directions issued by the Authority thereunder,

it may, at any time, by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the pension fund and to report thereon to the Authority.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company, in case of a company and every intermediary referred to in section 24 or every person associated with the pension fund to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with the pension fund in any manner to furnish such information to, or produce such books, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or register, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with the pension fund by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any book, register, other documents and record if they are needed again:

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Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents or record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents or, as the case may be, record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath any intermediary or any person associated with the pension fund in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) If any person fails without reasonable cause or refuses-

(a) to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document or record which it is his duty under sub-section (1) or sub-section (3) to furnish; or

(b) to furnish any information which it is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7);

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to twenty five crore rupees, or with both, and also with a further fine which may extend to ten lakh rupees for every day after the first day during which the failure or refusal continues.

(7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

17. (1) Where the Authority, in consequence of information in its possession, has reason to believe that--

Search and seizure.

(a) any person who has been required under sub-section (3) of section 16 to produce, or cause to be produced, any books, accounts or other documents in his custody or power has omitted or failed to produce, or cause to be produced, such books, accounts or other documents; or

(b) any person to whom a requisition to produce any books, accounts or other documents as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which will be useful for, or relevant to, an investigation under sub-section (1) of section 16; or

(c) a contravention of any provision of this Ordinance has been committed or is likely to be committed by an intermediary, or

(d) any claim which is due to be settled by the intermediary, has been or is likely to be rejected or settled at a figure higher than a reasonable amount, or

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[PART II---

(e) any claim which is due to be settled by an intermediary, has been or is likely to be rejected or settled at a figure lower than a reasonable amount, or

(f) any illegal fees and charges have been transacted or are likely to be transacted by an intermediary, or

(g) any books, accounts, papers, receipts, vouchers, survey reports or other documents, belonging to an intermediary are likely to be tampered with, falsified or manufactured,

it may authorise any officer of the Authority, not below the rank equivalent to that of a Gazetted Officer of the Government (hereafter referred to as the authorised officer), to-

(1) enter and search any building or place where he has reason to suspect that such books, accounts or other documents, or any books or papers relating to any claim, rebate or commission or any receipts, vouchers, reports or other documents are kept;

(*ii*) break open the lock of any box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (*i*) where the keys thereof are not available.

(iii) seize all or any such books, accounts or other documents, found as a result of such search;

(iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies therefrom.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such police officer or officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (I), serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Ordinance.

(5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Authority for such retention is obtained:

Provided that the Authority shall not authorise the retention of the books, accounts, papers, receipts, vouchers, reports, or other documents for a period exceeding thirty days after all the proceedings under this Ordinance, for which the books, accounts, papers, receipts, vouchers, reports, or other documents are relevant, are completed.

(6) The person from whose custody the books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may

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make copies thereof, or take extracts there from, in the presence of the authorised officer or any other person empowered by him in this behalf at such place and time as the authorised officer may appoint in this behalf.

(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports or other documents seized under sub-section (1) objects for any reason to the approval given by the Authority under sub-section (5), he may make an application to the Central Government stating therein the reason for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, report or other documents.

(8) On receipt of the application under sub-section (7), the Central Government may, after giving the applicant an opportunity of being heard, pass such order as it thinks fit.

(9) The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1).

(10) The Central Government may, by notification, make rules in relation to any search or seizure under this section and in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer,-

(i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;

(*ii*) for ensuring safe custody of any books, accounts, papers, receipts vouchers, reports, or other documents seized under this section.

18. If the Authority finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Ordinance, or any rule or regulation made thereunder, the Authority may pass an order requiring such person to cease and desist from committing or causing such violation.

19. (1) If at any time the Authority has reason to believe that the central recordkeeping agency or pension fund is acting in a manner likely to be prejudicial to the interests of subscribers, it may, after giving the central recordkeeping agency or pension fund, as the case may be, an opportunity of being heard, make a report, thereon to the Central Government.

(2) If the Central Government, after considering the report made under subsection (1) is of the opinion, that it is necessary or proper to do so, it may appoint an Administrator to manage the affairs of the central recordkeeping agency or pension fund, as the case may be, under the direction and control of the Authority, in such manner as may be specified by notification.

#### CHAPTER V

### NEW PENSION SYSTEM

20. The contributory pension system notified by the Government of India in the Ministry of Finance *vide* notification number F. No. 5/7/2003-ECB & PR dated the 22<sup>nd</sup> December, 2003, as amended from time to time, and having the following basic features, shall, form the New Pension System under this Ordinance, namely:-

(a) every subscriber shall have an individual pension account;

(b) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;

Management by Administrator.

New Pension System

2 of 1974.

(c) there shall be a choice of multiple pension fund managers and multiple schemes;

(d) there shall be portability of individual pension accounts in case of change of employment;

(e) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;

(f) there shall not be any implicit or explicit assurance of benefits except market based guarantee mechanism to be purchased by the subscriber;

(g) a subscriber shall not exit from the New Pension System except as specified by the Central Government by, notification;

(h) at exit, the subscriber shall purchase an annuity from a life insurance company as specified under the New Pension System.

Central recordkeeping agency. 21. (1) The Authority shall, by granting a certificate of registration under subsection (3) of section 24, appoint a central recordkeeping agency:

Provided that the Authority may, in public interest, appoint more than one central recordkeeping agency.

(2) The central recordkeeping agency shall be responsible for receiving funds and instructions from subscribers through the points of presence, transmitting such instructions and transferring such funds to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central recordkeeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central recordscepting agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Ordinance or regulations, unless otherwise determined by the Authority, the central recordkeeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Point of presence.

22. (1) The Authority may, by granting a certificate of registration under subsection (3) of section 24, permit one or more persons to act as a point of presence or points of presence for the purpose of receiving contributions and instructions, transmitting them to the central record keeping agency and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard.

(2) A point of presence shall function in accordance with the terms of its certificate of registration and the regulations made under this Ordinance.

23. (1) The Authority may, by granting a certificate of registration under subsection (3) of section 24, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Ordinance.

(4) The pension fund shall manage the schemes in accordance with the regulations.

#### CHAPTER VI

#### REGISTRATION OF INTERMEDIARIES

24. (1) No intermediary, including a pension fund or a point of presence to the extent regulated under this Ordinance, shall commence any activity relating to a pension fund except under and in accordance with the conditions of a certificate of registration granted by the Authority in accordance with provisions of this Ordinance and the regulations:

Provided that any intermediary, including any point of presence, who may be associated with a scheme of pension fund immediately before the establishment of the Authority for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months till the disposal of such application.

(2) Every application for grant of a certificate of registration under this Ordinance shall be in such form and manner and shall be accompanied by such fees as may be determined by regulations;

(3) The Authority may, after considering the application and subject to such terms and conditions as it may specify, grant a certificate of registration as a central record keeping agency, point of presence, pension fund or such other intermediary, as the case may be.

(4) The Authority may, by order, suspend or cancel a certificate of registration granted under sub-section (3) in such manner as may be determined by regulations:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

### CHAPER VII

#### PENALTIES AND ADJUDICATION

25. (1) Any person, who is required under this Ordinance or any rules or regulations made thereunder,-

(a) to obtain a certificate of registration from the Authority for carrying on any activity under this Ordinance, carries on such activities without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupces for each day during which the failure continues or one crore rupces, whichever is less;

(b) to comply with the terms and conditions of certificate of registration fails to do so, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or one crore rupees, whichever is less;

Penalty for failure by an intermediary or any other person to comply with provisions of the Act, rules, regulations and directions.

Registration of central recordkeeping agency, pension fund, point of presence, etc.

Pension funds.

SEC. 1]

[PART II-

(c) to furnish any information, document, books, returns or report to the Authority, fails to furnish the same within the time specified by the Authority, he shall be liable to a penalty which may extend to one crore rupces or five times the amount of profits made or losses avoided, whichever is higher;

(d) to maintain books of accounts or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher.

(2) if any person, who is required under this Ordinance or any rules or regulations made thereunder, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher.

(3) If any intermediary registered with the Authority, after having been called upon by the Authority, in writing, to redress the grievances of subscribers, fails to redress such grievances within the time stipulated by the Authority, he shall be liable to a penalty of not more than one crore rupces or five times the amount of profits made or losses avoided, whichever is higher.

(4) If any person, who is registered under this Ordinance as an intermediary, fails to segregate moneys of the client or clients or uses the moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

(5) Whoever fails to comply with any provision of this Ordinance, the rules or the regulations made or the directions issued by the Authority under the provisions of this Ordinance for which no separate penalty has been provided, he shall be liable to a penalty which may extend to one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

Crediting sums realised by way of penalties to Subscriber Education and Protection Fund.

Power to adjudicate.

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26. All sums realised by way of penalties under this Ordinance shall be credited to the Subscriber Education and Protection Fund established under sub-section (1) of section 38.

27. (1) For the purposes of adjudging under section 25, the Authority shall appoint any of its officers not below the rank specified by regulations to be an adjudicating officer for holding an inquiry as determined by regulations, after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the matters referred to in section 25, he may recommend such penalty as he thinks fit in accordance with the provisions of that section, to the member in charge of investigation and surveillance.

(3) The penalty shall be imposed by a member other than the member in charge of investigation and surveillance:

Provided that while adjudging the quantum of penalty under section 25, the member shall have due regard to the following factors, namely:-

(a) amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) amount of loss caused to a subscriber or group of subscribers; and

(c) the repetitive nature of the default.

28. (1) Any person aggrieved may apply to the Authority for an interim measure or protection in respect of any of the following matters, namely:-

assets and supercession of management of intermediary.

(a) the detention, preservation, interim custody or sale of any asset or property which is regulated by the provisions of this Ordinance;

(b) securing any pension funds, monies and other assets and properties owned by or under the control of the pension fund;

(c) interim injunction or appointment of an administrator; and

(d) such other interim measures as may appear to the Authority to be just and necessary,

and the Authority shall have power to make such orders including an order for attachment of assets of the pension fund as it deems fit in this regard.

(2) Where, on a complaint received by the Authority or *suo motu*, the Authority, after conducting an enquiry comes to a conclusion that the governing board or board of directors, by whatever name called, or the persons in control of any intermediary to the extent regulated under this Ordinance are indulging in any activity which is in contravention of the provisions of this Ordinance or regulations, it may supersede the governing board or board of directors or management of the intermediary in accordance with the provisions of the regulations.

29. (1) Without prejudice to any award of penalty by the member under this Ordinance, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty five crore rupees or with both.

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

30. (1) The Central Government may, on the recommendation by the Authority, if satisfied, that any person, who is alleged to have violated any of the provisions of this Ordinance or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Ordinance, or the rules or the regulations made thereunder and also from the imposition of any penalty under this Ordinance with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that the recommendation of the Authority under this subsection shall not be binding upon the Central Government.

Offences

Power to grant immunity.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Ordinance to which such person would have been liable, had no such immunity been granted.

31. Notwithstanding anything contained in-

(i) the Wealth Tax Act, 1957;

filing it within that period.

order appealed against.

the appeal is presented to it.

concerned.

(ii) the Income Tax Act, 1961, or

(iii) any other enactment for the time being in force relating to tax on wealth, income, profits or gains,

the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of its wealth, income, profits or gains derived.

Cognizance of offences by Court.

Exemption from

tax on wealth, income, profits

and gains.

32. (1) No court shall take cognizance of any offence punishable under this Ordinance or any rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Ordinance.

33. (1) Any person aggrieved by an order made by the Authority or by an

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date of receipt of the order appealed against and it shall be in such form and manner and shall be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period, if it is satisfied that there was sufficient cause for not

(3) On receipt of an appeal under sub-section (I), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Authority, the parties to the appeal and to the adjudicating officers

adjudicating officer under this Ordinance may prefer an appeal before the Securities

Appellate Tribunal which shall have jurisdiction over the matter.

Appeal to the Securities Appellate

Tribunal.

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(6) Without prejudice to the provisions of sections 15T and 15U of the Securities and Exchange Board of India Act, 1992, the Securities Appellate Tribunal shall deal with an appeal under this section in accordance with such procedure as may be as prescribed.

made by it to dispose of the appeal finally within six months from the date on which

27 of

43 of

34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Ordinance or a Sccurities Appellate Tribunal is empowered by or under this Ordinance to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance.

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

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

### CHAPTER VIII

#### FINANCE, ACCOUNTS AND AUDIT

36. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Ordinance.

37. (1) There shall be constituted a fund to be called the Pension Regulatory and Development Fund and there shall be credited thereto-

(a) all Government grants, fees and charges received by the Authority;

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

(2) The Fund shall be applied for meeting-

(a) the salaries, allowances and other remuneration of the Chairperson and other members and officers and other employees of the Authority;

(b) other expenses of the Authority in connection with the discharge of its 'functions and for the purposes of this Ordinance.

**38.** (1) The Authority shall establish a fund to be called the Subscriber Education and Protection Fund.

(2) There shall be credited to the Subscriber Education and Protection Fund the following amounts, namely:-

(a) grants and donations given to the Subscriber Education and Protection Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Subscriber Education and Protection Fund;

(b) the interest or other income received out of the investments made from the Subscriber Education and Protection Fund;

(c) the sums realised by way of penalties by the Authority under section 26.

(3) The Subscriber Education and Protection Fund shall be administered and utilised by the Authority for protection of the interests of subscribers in accordance with regulations made for the purpose.

Constitution of Subscriber Education and Protection Fund.

Grants by Central Government.

Constitution of Pension Regulatory and Development Fund.

jurisdiction.

Appeal to Supreme Court

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Accounts and Audit. **39.** (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The Accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit-report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

#### CHAPTER IX

#### MISCELLANEOUS

Power of Central Government to issue directions on issues of policy. 40. (1) Without prejudice to the foregoing provisions of this Ordinance, the Authority shall, in exercise of its powers or the performance of its functions under this Ordinance, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give, in writing to it, from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

Power of Central Government to supercede the Authority. 41. (1) If at any time the Central Government is of the opinion that-

(a) on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Ordinance; or

(b) the Authority has persistently defaulted in complying with any direction issued by the Central Government that the Central Government is entitled to issue under this Ordinance or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Ordinance and as a result of such default the financial position of the Authority or the administration of the Authority has deteriorated; or

(c) circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification: Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority-

(a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Ordinance, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Central Government; and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority.

(4) The Central Government shall, as soon as may be, cause a copy of the notification issued under sub-section (1) and a full report of any action taken by it, to be laid before each House of Parliament.

42. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the pension industry as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of schemes of pension funds regulated under this Ordinance during the previous financial year.

(3) Copies of the reports received under sub-section (2) shall be laid, as soon as may be, after they are received, before each House of Parliament.

43. The Chairperson and other members and officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Ordinance, to be public servants within the meaning of section 21 of the Indian Penal Code.

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Furnishing of

returns, etc., to

Government.

Central

Members, officers and employees of the Authority to be public servants.

Protection of action taken in

good faith.

44. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made there under.

45. (1) Where an offence under this Ordinance has been committed by 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 offence and shall be liable to be proceeded against and punished accordingly:

ommitted by a Offences by

companies.

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

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance 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, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the 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.

Power to make rules. 46. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Ordinance.

(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 salary and allowances payable to and the other conditions of service of the Chairperson and whole-time members under sub-section (1) of section 7;

(b) the allowances payable to part-time members under sub-section (2) of section 7;

(c) the additional functions which may be performed by the Authority under clause (p) of sub-section (2) of section 14;

(d) any other matter in respect of which the Authority may exercise the powers of a civil court under clause (v) of sub-section (3) of section 14;

(e) the procedure to be followed by the authorised officer under sub-section (10) of section 17;

(/) the form and manner in which an appeal may be filed before the Securities Appellate Tribunal and the fee which shall accompany such appeal, under subsection (2) of section 33;

(g) the procedure to be followed by the Securities Appellate Tribunal in dealing with an appeal, under sub-section (6) of section 33;

(h) the form in which annual statement of accounts shall be maintained by the Authority under sub-section (1) of section 39;

(i) the time within which and the form and manner in which returns and reports are to be made by the Authority to the Central Government under subsection (1) of section 42;

(j) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

47. (1) The Authority may, by notification, make regulations consistent with this Po Ordinance and the rules made thereunder to carry out the provision of this re Ordinance.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings (including the quorum at such meetings) under subsection (1) of section 10;

(b) the transactions of business at the meetings of the Authority under subsection (5) of section 10;

(c) the terms and other conditions of service of the officers and other employees of the Authority under sub-section (2) of section 12;

(d) the regulations to be made by the Authority in respect of pension schemes referred to in clause (b) of sub-section (1) of section 13 and the time within which such schemes should conform to the regulations, made under sub-section (2) of that section;

(e) the establishing of mechanisms for redressing grievances of subscribers under clause (f) of sub-section (2) of section 14;

(f) the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by intermediaries under clause (n) of sub-section (2) of section 14;

(g) the duties and functions of central recordkeeping agency under subsection (2) of section 21;

(*h*) the determination of compensation of fair value of the regulated assets payable to central recordscepting agency under proviso to sub-section (3) of section 21;

(i) the manner of receiving contributions and instructions and transmitting them to the central recordkeeping agency and paying out the benefits to the subscribers, under sub-section (I) and the regulations governing functioning of points of presence under sub-section (2) of section 22;

(j) the manner in which a pension fund may receive contributions, accumulate them and make payments to the subscriber under sub-section (1), the number of pension funds under sub-section (2), the functioning of the pension fund under sub-section (3), and the manner of managing the schemes by the pension fund under sub-section (4), of section 23;

(k) the form and manner in which an application for grant of certificate of registration shall be made and the fee which shall accompany such application under sub-section (2) of section 24;

(1) the conditions subject to which a certificate of registration may be granted to an intermediary under sub-section (3) of section 24;

(m) the procedure and manner of suspension or cancellation of certificate of registration of intermediaries under sub-section (4) of section 24;

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(n) the procedure for holding inquiry by an adjudicating officer under subsection (1) of section 27;

(o) the supersession of the governing board or board of directors of the intermediary under sub-section (2) of section 28;

(p) the manner of administering and utilising the Subscribers' Education and Protection Fund under sub-section (3) of section 38;

(q) delegation of powers and functions of the Authority to Committees under sub-section (2) of section 50;

(r) any other matter which is required to be or may be specified by regulations or in respect of which provision is to be or may be made by regulations.

Rules and regulations to be laid before Parliament. **48.** Every rule and every regulation made under this Ordinance 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 rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation 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 or regulation.

Power to remove difficulties 49. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Delegation of powers. 50. (1) The Authority may, by general or special order in writing; delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the powers under section 47) as it may deem necessary.

(2) The Authority may, by a general or special order in writing, also form committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

Application of other laws not barred. 51. The provisions of this Ordinance shall be in addition to and not in derogation of any other law for the time being in force.

52. Anything done or any action taken by the Central Government under the Resolution of the Government of India in the Ministry of Finance number F.No. 5/7/2003-ECB&PR dated the 10<sup>th</sup> October, 2003 and notification number F. No. 5/7/2003-ECB & PR dated the 22<sup>nd</sup> December, 2003, shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

## A.P.J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

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सं 5] नई दिल्ली, मंगलवार, जनवरी 25, 2005/ माघ 5, 1926 No. 5] NEW DELHI, TUESDAY, JANUARY 25, 2005/ MAGHA 5, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, 25th January, 2005/Magha 5, 1926 (Saka)

## THE CENTRAL EXCISE LAWS (AMENDMENT AND VALIDATION) ORDINANCE, 2005

#### No. 1 of 2005

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Central Excise Act, 1944, rules made thereunder, certain notifications relating to exemption from duties of excise during a past period and to validate the actions taken under such notifications during such period.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Central Excise Laws (Amendment and Validation) Ordinance, 2005.

Short title and commencement.

(2) It shall come into force at once.

[PART II---

Amend-ment of section 37 of Act 10f 1944. 2

Amendment of rule 8 of the Central Excise Rules, 1944.

Amendment of notifications issued under subrul-2 (1) of rule 8 of the Central Excise Rules, 19-44. 2. For the period commencing on and from the 1<sup>st</sup> day of March, 1983 and ending with the  $28^{th}$  day of February, 1987, sub-section (1) of section 37 of the Central Excise Act, 1944 shall stand substituted and shall be deemed to have effect as if for the said sub-section, the following sub-section had been so substituted, namely:-

"(1) The Central Government may make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act.".

3. For the period commencing on and from the 1<sup>st</sup> day of March, 1983 and ending with the 28<sup>th</sup> day of February, 1987, after sub-rule (1) of rule 8 of the Central Excise Rules, 1944, as it stood before its omission by the Central Excise (Third Amendment) Rules, 1988, the following sub-rule (1A) shall stand inserted and shall be deemed to have effect as if the said sub-rule had been so inserted, namely-

"(1A) The power to issue notification as conferred by sub-rule (1) shall include the power to give retrospective effect to such notification.".

4. (1)The notifications of the Government of India in the Ministry of Finance (Department of Revenue),-

(i) No. G. S. R. 120 (E), dated the 1<sup>st</sup> March, 1983 as superseded by notification No G.S.R. 607 (E), dated 4<sup>th</sup> August, 1983 issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No.G.S.R.768 (E), dated the 1<sup>st</sup> July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) No. G.S.R. 298 (E), dated 25<sup>th</sup> March, 1985 issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No. G.S.R. 768 (E), dated the 1<sup>st</sup> July, 1988 and supersceded by the Central Excise Rules, 2000, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957and sub-clause (4) of clause 47 of the Finance Bill, 1985 which clause had force of law by virtue of the declaration made in the said Bill under the Provisional Collection of Taxes Act, 1931;

(iii) No. G.S.R. 431 (E), dated 24<sup>th</sup> May, 1985, issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No. G.S.R. 768 (E), dated the 1<sup>st</sup> July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and sub-section (4) of section 47 of the Finance Act, 1985, and

(iv) No. G. S. R. 701 (E), dated the  $2^{nd}$  September, 1985 as amended by notification No. G.S.R. 747 (E) dated  $20^{th}$  September, 1985 issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No. G.S.R. 768 (E), dated the  $1^{st}$  July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957,

by the Central Government shall stand amended and shall be deemed to have been so amended retrospectively, in the manner as specified in column (3) of the Schedule on and from the corresponding dates as specified in column (4) of the said Schedule till the date of those notifications were superseded or rescinded, as the case may be.

(2) Notwithstanding anything contained in section 11A of the Central Excise Act, 1944, recovery shall be made of all amounts of duty or interest or other charges which have not been collected or, as the case may be, which have been refunded but which would have been

58 of 1957.

58 of 1957.

16 of 1931

58 of 1957.

32 of 1985.

58 of 1957.

1 of 1944.

collected or, as the case may be, which would have not been refunded if the provisions of this section had been in force at all material times, within a period of thirty days from the date of commencement of this Ordinance, and in the event of non-payment of duty or interest or other charges so recoverable, interest at the rate of fifteen per cent. per annum shall be payable from the date immediately after the expiry of the said period of thirty days till the date of payment.

*Explanation*.- For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the notifications referred to in sub-section (1) had not been amended retrospectively by that sub-section.

5. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority-

- (a) all things done or actions taken by the Central Government under the notifications referred to in clauses (i) to (iv) of sub-section (1) of section 4 as they stood before the commencement of this Ordinance shall be deemed to be and to have always been done or taken in accordance with the provisions of the said notifications;
- (b) no suit or other proceeding shall be instituted, maintained or continued in any court, tribunal or other authority for the refund of any duty levied under the notifications referred to in clause (a):
- (c) no court shall enforce any decree or order directing the refund of any such duties levied under the notifications referred to in clause (a),
- (d) no claim or challenge shall be made in, or entertained by, any court, tribunal or other authority on the ground only that the Central Government did not have, at the material times, the power to amend retrospectively the notifications issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944.

Application section 4.

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6. For the removal of doubts, it is hereby declared that the amendment made to sub-section (1) of section 37 of the Central Excise Act, 1944 by section 2 and the amendment made to rule 8 of the Central Excise Rules, 1944 by section 3 shall be in addition to; and not in derogation of, the provisions of section 4.

1 of 1944

Validation of notifications issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944.

# [PART II----

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## THE SCHEDULE

No.	Notification No. and date	Amendment	Date of effect of amendment
(1) 1.	(2) G. S. R. 120 (E), dated the 1 <sup>st</sup> March, 1983 (36/83- Central Excise dated 1 <sup>st</sup> March, 1983)	<ul> <li>(3)</li> <li>In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:-</li> <li>'(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local</li> </ul>	(4) 31 <sup>st</sup> day of March, 1983 to 3 <sup>rd</sup> day of August, 1983 (both days inclusive)
		<ul> <li>taxes only) at which such package may be sold in retail:</li> <li>Provided that-</li> <li>(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of</li> </ul>	
		<ul> <li>such sale price shall be deemed to be the sale price;</li> <li>(b) where different sale prices are declared on different packages for the sale of such package of cigarcttes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.'.</li> </ul>	
2.	G.S.R. 607 (E), dated the 4th August, 1983 [211/1983-Central Excise, dated the 4th August, 1983]	In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:- '(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail:	4 <sup>th</sup> day of August, 1983 to 24 <sup>th</sup> day of March, 1985 (both days inclusive)
		Provided that-	
·		(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;	
		(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.'.	
3.	G.S.R. 298 (E), dated the 25 <sup>th</sup> March, 1985 [100/1985-Central Excise, dated the 25 <sup>th</sup> March, 1985]	In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:- '(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail:	25 <sup>th</sup> day of Marc 1985 to 23 <sup>rd</sup> day o May, 1985 (bot days inclusive)

5

SEC. 1]	· · · · · · · · · · · · · · · · · · ·		· · · · · · · · · · · · · · · · · · ·
S. No.	Notification No. and date	Amendment	Date of effect of amendment
(1)	(2)	(3)	(4)
		Provided that-	
		(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;	
		(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.'.	
4.	G.S.R.431 (E), dated the 24th May, 1985 [134/1985-	In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:-	24 <sup>th</sup> day of May 1985 to 1 <sup>st</sup> day o September, 198
	Central Excise, dated the 24 <sup>th</sup> May,1985]	'(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail:	(both day inclusive)
		Provided that-	
, •		(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;	
		(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.'.	
5.	G.S.R. 701 (E), dated the 2 <sup>nd</sup>	In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely:-	2 <sup>nd</sup> day of September, 1985
	September, 1985. [201/1985-Central Excise, dated the 2 <sup>nd</sup> September, 1985]	(3) "sale price", in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail:	19 <sup>th</sup> day of September, 1985 (both days inclusive)
	• • •	Provided that-	•
		(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;	
		(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such	

SEC. 1]

6

[PART II-SEC. 1]

S. No.	Notification No. and date	Amendment	Date of effe amendme	
( <u>1</u> )	(2)	(3)	(4)	
		sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.'.		
6.	G.S.R. 747 (E), dated the 20 <sup>th</sup> September, 1985. [210/1985-Central	In the said notification, for clause (4) as substituted by item (ii), the following clause shall be substituted, namely:- '(4) "sale price", in relation to the declaration on a package	September, 1 28 <sup>th</sup> day	0: 985 to 0 1987
	Excise, dated the 20 <sup>th</sup> September, 1985]	of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail:		day
		Provided that-		
		(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;		
		(b) where different sale prices are declared or different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area	f n f	
		to which such sale price relates.'.	•	
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		to which such sale price relates.'. A.P.J. ABDUL	KALAM,	
-		to which such sale price relates.'. A.P.J. ABDUL		
-	· · · · · · · · · · · · · · · · · · ·	to which such sale price relates.'. A.P.J. ABDUL	KALAM,	•
-		to which such sale price relates.'. A.P.J. ABDUL	KALAM,	•
-		to which such sale price relates.'. A.P.J. ABDUL	KALAM,	•
-		to which such sale price relates.'. A.P.J. ABDUL	KALAM, President.	
		to which such sale price relates.'. A.P.J. ABDUL	.KALAM, President. Z.S. NEGI,	
-		to which such sale price relates.'. A.P.J. ABDUL	.KALAM, President. Z.S. NEGI,	•
		to which such sale price relates.'. A.P.J. ABDUL	.KALAM, President. Z.S. NEGI,	
		to which such sale price relates.'. A.P.J. ABDUL	.KALAM, President. Z.S. NEGI,	
		to which such sale price relates.'. A.P.J. ABDUL	.KALAM, President. Z.S. NEGI,	

रजिस्ट्री संग् डी॰ एल॰----(एन)04/0007/2003----05

REGISTERED NO. DL---(N)04/0007/2003---05



असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं॰ 35] नई दिल्ली, मंगलवार, जून 28, 2005 / आषाढ़ 7, 1927 No. 35] NEW DELHI, TUESDAY, JUNE 28, 2005 / ASADHA 7, 1927

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 28th June, 2005/Asadha 7, 1927 (Saka)

### THE CITIZENSHIP (AMENDMENT) ORDINANCE, 2005

#### No. 2 OF 2005

Promulgated by the President in the Fifty-sixth Year of the Republic of India.

An Ordinance further to amend the Citizenship Act, 1955.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Citizenship (Amendment) Short title Ordinance, 2005.

and commencement.

Amendment

(2) It shall come into force at once.

namely:-

2. In section 2 of the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in sub-section (I),-

of section 2.

57 of 1955.

(i) for clause (ee), the following clause shall be substituted,

'(ee) "overseas citizen of India" means a person registered as an overseas citizen of India by the Central Government under section 7A;";

(ii) clause (gg) shall be omitted.

Amendment of section 5.

Substitution of new section for section 7A.

Registration of overseas citizens of India.

3. In section 5 of the principal Act, in sub-section (1), in clause (g), for the words "two years", the words "one year" shall be substituted.

4. For section 7A of the principal Act, the following section shall be substituted, namely:-

"7A. The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register as an overseas citizen of India-

(a) any person of full age and capacity,-

(*i*) who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or

(*ii*) who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(*iii*) who is citizen of another country, but belonged to a territory that become part of India after the  $15^{th}$  day of August, 1947; or

(*iv*) who is a child or a grand-child of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a):

Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India.".

5. The Fourth Schedule to the principal Act shall be omitted.

Omission of Fourth Schedule.

> A.P.J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2005.



असाधारण

EXTRAORDINARY भाग II — खण्ड 1

PART II - Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

## सं॰ 57] नई दिल्ली, वृहस्पतिवार, अक्तूबर 13, 2005 / आश्विन 21, 1927 No. 57] NEW DELHI, THURSDAY, OCTOBER 13, 2005 / ASVINA 21, 1927

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, dated the 13th October, 2005/21 Asvina, 1927 (Saka)

#### THE MANIPUR UNIVERSITY ORDINANCE, 2005

#### No. 3 of 2005

Promulgated by the President in the Fifty-sixth Year of the Republic of India.

An Ordinance to establish and incorporate a teaching and affiliating University in the State of Manipur and to provide for matters connected therewith or incidental thereto.

WHEREAS a Bill to establish and incorporate a teaching and affiliating University in the State of Manipur and to provide for matters connected therewith or incidental thereto has been introduced in the Council of States but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Manipur University Ordinance, 2005.

Short title and commencement.

(2) It shall come into force at once.

Definitions.

2. In this Ordinance, and in all Statutes made hereunder, unless the context otherwise requires,-

(a) "Academic Council" means the Academic Council of the University;

(b) "academic staff" means such categories of staff as are designated as academic staff by the Ordinances;

(c) "Affiliated College" means a college admitted to the privileges of the University;

(d) "Board of Studies" means the Board of Studies of the University;

(e) "Chancellor," "Vice-Chancellor", and "Pro-Vice-Chancellor" mean, respectively, the Chancellor, Vice-Chancellor and Pro-Vice-Chancellor of the University;

(f) "College Development Council" means the College Development Council of the University;

(g) "Constituent College" means a college maintained by the University;

(h) "Court" means the Court of the University;

(i) "Department" means a Department of Studies and includes a Centre of Studies;

(*j*) "distance education system" means the system of imparting education through any means of communication, such as broadcasting, telecasting, correspondence courses, seminars, contact programmes or the combination of any two or more such means;

(k) "employee" means any person appointed by the University and includes teachers and other staff of the University;

(1) "Executive Council" means the Executive Council of the University;

(m) "Hall" means a unit of residence or of corporate life for the students of the University, or of a College or an Institution, maintained by the University;

(n) "Institution" means an academic institution, not being a College, maintained by, or admitted to the privileges of, the University;

(o) "Principal" means the Head of a College or an Institution maintained by the University and includes, where there is no Principal, the person for the time being duly appointed to act as Principal, and in the absence of the Principal, or the acting Principal, a Vice-Principal duly appointed as such;

(p) "recognised teachers" means such persons as may be recognised by the University for the purpose of imparting instructions in a College or an Institution admitted to the privileges of the University;

(q) "Regulations" means the Regulations made by any authority of the University under this Ordinance for the time being in force;

(r) "School" means a School of Studies of the University;

(s) "Statutes" and "Ordinances" mean, respectively, the Statutes and the Ordinances of the University for the time being in force;

(1) "teachers of the University" means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction or conducting research in the University or in any College or Institution maintained by the University and are designated as teachers by the Ordinances;

(u) "University" means the Manipur University established and incorporated as a University under this Ordinance;

Manipur Act 8 of 1980. SEC. 1]

3. (1) The Manipur University in the State of Manipur, established under the Manipur University Act, 1980, shall be established as a body corporate under this Ordinance by the same name of "Manipur University".

(2) The first Chancellor, the first Vice-Chancellor and the first members of the Court, the Executive Council and the Academic Council, and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, shall constitute the University.

(3) The University shall have perpetual succession and a common seal and shall sue and be sued by the said name.

(4) The headquarters of the University shall be at Imphal.

4. On and from the date of commencement of this Ordinance, -

Effect of establishment of the University.

Establishment of

the University.

(a) any reference to the Manipur University in any contract or other instrument shall be deemed as a reference to the University;

(b) all property, movable and immovable, of or belonging to the Manipur University shall vest in the University;

(c) all rights and liabilities of the Manipur University shall be transferred to, and be the rights and liabilities of, the University;

(d) every person employed by the Manipur University immediately before the commencement of this Ordinance shall hold his office or service in the University by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Ordinance had not been promulgated, and shall continue to do so unless and until his employment is terminated or until such promulgated tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the University in accordance with the term of the contract with the employee or, if no provision is made therein in this behalf, on payment to him by the University of compensation equivalent to three months' remuneration in case of permanent employees and one month's remuneration in the case of other employees:

Provided further that any reference, by whatever form of words, to the Vice-Chancellor and Pro-Vice-Chancellor of the Manipur University in any law for the time being in force, or in any instrument or other document, shall be construed as a reference respectively to the Vice-Chancellor and the Pro-Vice-Chancellor of the University;

Manipur Act 8 of 1980. (e) the Vice-Chancellor of the Manipur University, appointed under the provisions of the Manipur University Act, 1980 shall be deemed to have been appointed as the Vice-Chancellor under this Ordinance, and shall hold office for a period of three months or till such time the first Vice-Chancellor is appointed under section 47 of the Ordinance, whichever is earlier; and

(f) all Colleges, Institutions, Schools and Departments affiliated to, or admitted to the privileges of, or maintained by, the Manipur University shall stand affiliated to, or admitted to the privilege of, or maintained by, the University.

PART II-

Objects of the University.

5. The objects of the University shall be to disseminate and advance knowledge by providing instructional and research facilities in such branches of learning as it may deem fit; to make provisions for integrated courses in humanities, natural and physical sciences, social sciences, forestry and other allied disciplines in the educational programmes of the University; to take appropriate measures for promoting innovations in teaching-learning process, inter-disciplinary studies and research; to educate and train manpower for the development of the State of Manipur; and to pay special attention to the improvement of the social and economic conditions and welfare of the people of that State, their intellectual, academic and cultural development.

Powers of University.

6. The University shall have the following powers, namely: -

(i) to provide for instructions in such branches of learning as the University may, from time to time, determine and to make provisions for research and for the advancement and dissemination of knowledge;

(*ii*) to grant, subject to such conditions as the University may determine, diplomas or certificates to, and confer degrees or other academic distinctions on the basis of examinations, evaluation or any other method of testing, on persons, and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;

(iii) to organise and to undertake extramural studies, training and extension services;

(*iv*) to confer honorary degrees or other distinctions in the manner prescribed by the Statutes;

(v) to provide facilities through the distance education system to such persons as it may determine;

(vi) to institute Principalships, Professorships, Readerships, Lecturerships and other teaching or academic positions, required by the University and to appoint persons to such Principalships, Professorships, Readerships, Lecturerships or other teaching or academic positions;

(vii) to recognise an institution of higher learning for such purposes as the University may determine and to withdraw such recognition;

(*viii*) to recognise persons for imparting instructions in any College or Institution admitted to the privileges of the University;

(ix) to appoint persons working in any other University or organisation as teachers of the University for a specified period;

(x) to create administrative, ministerial and other posts and to make appointments thereto;

(xi) to co-operate or collaborate or associate with any other University or authority or institution of higher learning in such manner and for such purposes as the University may determine;

(xii) to establish, with the prior approval of the Central Government, such Centres and specialised laboratories or other units for research and instruction as are, in the opinion of the University, necessary for the furtherance of its objects;

(xiii) to institute and award fellowships, scholarships, studentships, medals and prizes;

(xiv) to establish and maintain Colleges, Institutions and Halls;

(xv) to make provision for research and advisory services and for that purpose to enter into such arrangements with other institutions, industrial or other organisations, as the University may deem necessary;

(xvi) to organise and conduct refresher courses, workshops, seminars and other programmes for teachers, evaluators and other academic staff;

(xvii) to admit to its privileges colleges and institutions within the State of Manipur not maintained by the University; to withdraw all or any of those privileges in accordance with such conditions as may be prescribed by the Statutes; to recognise, guide, supervise, and control Halls not maintained by the University and other accommodation for students, and to withdraw any such recognition;

(xviii) to appoint on contract or otherwise visiting Professors, Emeritus Professors, Consultants, Scholars and such other persons who may contribute to the advancement of the objects of the University;

(xix) to confer autonomous status on a College or an Institution or a Department, as the case may be, in accordance with the Statutes;

(xx) to determine standards of admission to the University, which may include examination, evaluation or any other method of testing;

(xxi) to demand and receive payment of fees and other charges;

(xxii) to supervise the residences of the students of the University and to make arrangements for promoting their health and general welfare;

(xxiii) to lay down conditions of service of all categories of employees, including their code of conduct;

(xxiv) to regulate and enforce discipline among the students and the employees, and to take such disciplinary measures in this regard as may be deemed by the University to be necessary;

(xxv) to make arrangements for promoting the health and general welfare of the employees;

(xxvi) to receive benefactions, donations and gifts and to acquire, hold, manage and dispose of any property, movable or immovable, including trust and endowment properties for the purposes of the University;

(xxvii) to borrow, with the approval of the Central Government, on the security of the property of the University, money for the purposes of the University;

(xxviii) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of its objects.

7. The jurisdiction of the University shall extend to the whole of the State of Manipur.

8. The University shall be open to persons of either sex and of whatever caste, creed, race or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be appointed as a teacher of the University or to hold any other office therein or be admitted as a student in the University or to graduate thereat or to enjoy or exercise any privilege thereof:

Provided that nothing in this section shall be deemed to prevent the University from making special provisions for the employment or admission of women, physically handicapped or of persons belonging to the weaker sections of the society and, in particular, of the Scheduled Castes and the Scheduled Tribes.

Jurisdiction.

University open to all classes, castes and creed. The Visitor.

9. (1) The President of India shall be the Visitor of the University.

(2) The Visitor may, from time to time, appoint one or more persons to review the work and progress of the University, including Colleges and Institutions maintained by it, and to submit a report thereon; and upon receipt of that report, the Visitor may, after obtaining the views of the Executive Council thereon through the Vice-Chancellor, take such action and issue such directions as he considers necessary in respect of any of the matters dealt with in the report and the University shall be bound to comply with such directions.

(3) The Visitor shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, libraries, laboratories and equipment, and of any College or Institution maintained by the University or admitted to its privileges; and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the administration or finances of the University, Colleges or Institutions.

(4) The Visitor shall, in every matter referred to in sub-section (3), give notice of his intention to cause an inspection or inquiry to be made, -

(a) to the University, if such inspection or inquiry is to be made in respect of the University or any College or Institution maintained by it, or

(b) to the management of the College or Institution, if the inspection or inquiry is to be made in respect of College or Institution admitted to the privileges of the University, and the University or the management, as the case may be, shall have the right to make such representations to the Visitor, as it may consider necessary.

(5) After considering the representations, if any, made by the University or the management, as the case may be, the Visitor may cause to be made such inspection or inquiry as is referred to in sub-section (3).

(6) Where any inspection or inquiry has been caused to be made by the Visitor, the University or the management shall be entitled to appoint a representative, who shall have the right to be present and be heard at such inspection or inquiry.

(7) The Visitor may, if the inspection or inquiry is made in respect of the University or any College or Institution maintained by it, address the Vice-Chancellor with reference to the result of such inspection or inquiry together with such views and advice with regard to the action to be taken thereon, as the Visitor may be pleased to offer, and on receipt of address made by the Visitor, the Vice-Chancellor shall communicate, to the Executive Council, the views of the Visitor with such advice as the Visitor may offer upon the action to be taken thereon.

(8) The Visitor may, if the inspection or inquiry is made in respect of any College or Institution admitted to the privileges of the University, address the management concerned through the Vice-Chancellor with reference to the result of such inspection or inquiry, his views thereon and such advice as he may be pleased to offer upon the action to be taken thereon.

(9) The Executive Council or the management, as the case may be, shall communicate, through the Vice-Chancellor to the Visitor such action, if any, as it proposes to take or has been taken upon the result of such inspection or inquiry.

(10) Where, the Executive Council or the management, does not, within a reasonable time, take action to the satisfaction of the Visitor, the Visitor may, after considering any explanation furnished or representation made by the Executive Council or the management, issue such directions as he may think fit and the Executive Council or the management, as the case may be, shall comply with such directions.

(11) Without prejudice to the foregoing provisions of this section, the Visitor may, by order in writing, annul any proceeding of the University which is not in conformity with this Ordinance, the Statutes or the Ordinances:

Provided that before making any such order, he shall call upon the Registrar to show cause why such an order should not be made, and, if any cause is shown within a reasonable time, he shall consider the same.

(12) The Visitor shall have such other powers as may be prescribed by the Statutes.

10. The Governor of the State of Manipur shall be the Chief Rector of the University.

11. The following shall be the officers of the University,-

(1) the Chancellor;

(2) the Vice-Chancellor;

(3) the Pro-Vice-Chancellor;

(5) the Registrar;

(6) the Finance Officer;

(7) the Controller of Examinations;

(8) the Librarian; and

(9) such other officers as may be declared by the Statutes to be officers of the. University.

12. (1) The Chancellor shall be appointed by the Visitcr in such manner as may be prescribed by the Statutes.

(2) The Chancellor shall, by virtue of his office, be the head of the University and shall, if present, preside at the Convocations of the University held for conferring degrees and meetings of the Court.

13. (1) The Vice-Chancellor shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.

(2) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

(3) The Vice-Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Ordinance and shall report to such authority at its next meeting the action taken by him on such matter:

Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final:

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to represent against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice-Chancellor.

(4) The Vice-Chancellor, if he is of the opinion that any decision of any authority of the University is beyond the powers of the authority conferred by the provisions of this Ordinance, the Statutes or the Ordinances or that any decision taken is not in the interest of the University, may ask the authority concerned to review its decision within sixty days of such decision and if the authority refuses to review the decision either in whole or in part or no decision is taken by it within the said period of sixiy days, the matter shall be referred to the Visitor whose decision thereon shall be final.

The Vice-Chancellor.

The Chancellor.

The Chief Rector

Officers of the University.

SEC. 1]

(4) the Deans of Schools;

and perform such duties as may be prescribed by the Statutes.

exercise such other nowers and perform such other duties a

PART II

(5) The Vice-Chancellor shall exercise such other powers and perform such other duties as may be prescribed by the Statutes or the Ordinances.

The Pro-Vice-Chancellor. 14. The Pro-Vice-Chancellor shall be appointed in such manner and on such terms and conditions of service, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

15. Every Dean of School shall be appointed in such manner and shall exercise such powers

The Deans of Schools.

The Registrar.

16. (1) The Registrar shall be appointed in such manner and on such terms and conditions of service as may be prescribed by the Statutes.

(2) The Registrar shall have the power to enter into agreements, sign documents and authenticate records on behalf of the University and shall exercise such powers and perform such duties as may be prescribed by the Statutes.

The Finance Officer. 17. The Finance Officer shall be appointed in such manner and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

The Controller of Examinations shall be appointed in such manner and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

The Librarian. 19. The Librarian shall be appointed in such manner and on such terms and conditions of service, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

Other officers. **20.** The manner of appointment and powers and duties of other officers of the University shall be prescribed by the Statutes.

Authorities of the University.

....

21. The following shall be the authorities of the University,-

(1) the Court;

(2) the Executive Council;(3) the Academic Council;

(4) the College Development Council;

(5) the Board of Studies:

(6) the Finance Committee; and

(7) such other authorities as may be declared by the Statutes to be the authorities of the University.

The Court.

22. (1) The constitution of the Court and the term of  $\delta$  ffice of its members shall be prescribed by the Statutes.

(2) Subject to the provisions of this Ordinance, the Court shall have the following powers and functions, namely:-

(a) to review, from time to time, the broad policies and programmes of the University and to suggest measures for the improvement and development of the University;

(b) to consider and pass resolutions on the annual report and the annual accounts of the University and the audit report on such accounts;

(c) to advise the Visitor in respect of any matter which may be referred to it for advice; and

(d) to perform such other functions as may be prescribed by the Statutes.

23. (1) The Executive Council shall be the principal executive bod of the University.

(2) The constitution of the Executive Council, the term of office of its members and its powers and functions shall be prescribed by the Statutes.

24. (1) The Academic Council shall be the principal academic body of the University and shall, subject to the provisions of this Ordinance, the Statutes and the Ordinances, co-ordinate and exercise general supervision over the academic policies of the University.

(2) The constitution of the Academic Council, the term of office of its members and its powers and functions shall be prescribed by the Statutes.

25. (1) The College Development Council shall be responsible for admitting Colleges to the privileges of the University.

(2) The constitution of the College Development Council, the term of office of its members and its powers and functions shall be prescribed by the Statutes.

26. The constitution, powers and functions of the Boards of Studies shall be prescribed by 7 the Statutes.

27. The constitution, powers and functions of the Finance Committee shall be prescribed by the Statutes.

28. The constitution, powers and functions of other authorities, as may be declared by the Statutes to be the authorities of the University, shall be prescribed by the Statutes.

29. Subject to the provisions of this Ordinance, the Statutes may provide for all or any of the following matters, namely:-

(a) the constitution, powers and functions of authorities and other bodies of the University, as may be constituted from time to time;

(b) the appointment and continuance in office of the members of the said authorities and bodies, the filling up of vacancies of members, and all other matters relating to those authorities and other bodies for which it may be necessary or desirable to provide;

(c) the appointment, powers and duties of the officers of the University and their emoluments;

(d) the appointment of teachers, academic staff and other employees of the University, their emoluments and conditions of service;

(e) the recognition of persons as University recognised teachers;

(f) the appointment of teachers, academic staff working in any other University or organisation for a specific period for undertaking a joint project;

(g) the conditions of service of employees including provisions for pension, insurance, provident fund, the manner of termination of service and disciplinary action;

(h) the principles governing the seniority of service of the employees of the University;

(i) the procedure for arbitration in cases of dispute between employees or students and the University;

(j) the procedure for appeal to the Executive Council by any employee or student against the action of any officer or authority of the University;

The Executive Council.

The Academic Council.

The College Development Council.

The Boards of Studies.

The Finance Committee.

Other authorities of the University.

Powers to make Statutes.

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(k) the conferment of autonomous status on a College or an Institution or a Department;
 (l) the establishment and abolition of Schools, Departments, Centres, Halls, Colleges and Institutions;

(m) the conferment of honorary degrees;

(n) the withdrawal of degrees, diplomas, certificates and other academic distinctions;

(o) the conditions under which Colleges and Institutions may be admitted to the privileges of the University and the withdrawal of such privileges;

(p) the management of Colleges and Institutions established by the University;

(q) the delegation of powers vested in the authorities or officers of the University;

(r) the maintenance of discipline among the employees and students;

(s) all other matters which by this Ordinance are to be or may be provided for by the Statutes.

Statutes, how to be made.

**30.** (1) The first Statutes are those set out in the Schedule.

(2) The Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes referred to in sub-section (1):

Provided that the Executive Council shall not make, amend or repeal any Statutes affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion in writing on the proposed changes, and any opinion so expressed shall be considered by the Executive Council.

(3) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the assent of the Visitor who may assent thereto or withhold assent or remit to the Executive Council for re-consideration.

(4) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor.

(5) Notwithstanding anything contained in the foregoing sub-sections, the Visitor may make new or additional Statutes or amend or repeal the Statutes referred to in sub-section (1), during the period of three years immediately after the commencement of this Ordinance:

Provided that the Visitor may, on the expiry of the said period of three years, make, within one year from the date of such expiry, such detailed Statutes as he may consider necessary and such detailed Statutes shall be laid before both Houses of Parliament.

(6) Notwithstanding anything contained in the foregoing sub-sections, the Visitor may direct the University to make provisions in the Statutes in respect of any matter specified by him and if the Executive Council is unable to implement such direction within sixty days of its receipt, the Visitor may, after considering the reasons, if any, communicated by the Executive Council for its inability to comply with such direction, make or amend the Statutes suitably.

Power to make Ordinances. 31. (1) Subject to the provisions of this Ordinance and the Statutes, the Ordinances may provide for all or any of the following matters, namely: -

(a) the admission of students to the University and their enrolment as such;

(b) the courses of study to be laid down for all degrees, diplomas and certificates of the University;

(c) the medium of instruction and examination;

(d) the award of degrees, diplomas, certificates and other academic distinctions, the qualifications for the same and the means to be taken relating to the granting and obtaining of the same;

(e) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University;

(f) the conditions for award of fellowships, scholarships, studentships, medals and prizes;

(g) the conduct of examinations, including the term of office and manner of appointment and the duties of examining bodies, examiners and moderators;

(h) the conditions of residence of the students of the University;

(i) the special arrangements, if any, which may be made for the residence, discipline and teaching of women students and the prescribing of special courses of studies for them;

(j) the establishment of Centres of Studies, Boards of Studies, Specialized Laboratories and other Committees;

(k) the manner of co-operation and collaboration with other Universities, institutions and other agencies including learned bodies or associations;

(1) the creation, composition and functions of any other body which is considered necessary for improving the academic life of the University;

(m) the institution of fellowships, scholarships, studentships, medals and prizes;

(n) the supervision of management of Colleges and Institutions admitted to the privileges of the University;

(o) the setting up of a machinery for redressal of grievances of employees; and

(p) all other matters which by this Ordinance or the Statutes, are to be or may be, provided for by the Ordinances.

(2) The first Ordinances shall be made by the Vice-Chancellor with the previous approval of the Central Government and the Ordinances so made may be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes:

Provided that till such time as the first Ordinances are not so made by the Vice-Chancellor, in respect of the matters that are to be provided for by the Ordinances under this Ordinance and Statutes, the relevant provisions of the Statutes and the Ordinances of the Manipur University in force immediately before the commencement of this Ordinance shall be applicable insofar as they are not inconsistent with the provisions of this Ordinance and the Statutes.

**32.** The authorities of the University may make Regulations, consistent with this Regulations. Ordinance, the Statutes and the Ordinances for the conduct of their own business and that of the Committees, if any, appointed by them and not provided for by this Ordinance, the Statutes or the Ordinances, in the manner prescribed by the Statutes.

33. (1) The annual report of the University shall be prepared under the direction of the Executive Council, which shall include, among other matters, the steps taken by the University towards the fulfilment of its objects and shall be submitted to the Court on or after such date as may be prescribed by the Statutes and the Court shall consider the report in its annual meeting.

(2) The Court shall submit the annual report to the Visitor along with its comments, if any.

Annual report.

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26 of 1996.

(3) A copy of the annual report, as prepared under sub-section (1), shall also be submitted to the Central Government, which shall, as soon as may be, cause the same to be laid before both Houses of Parliament.

Annual accounts.

34. (1) The annual accounts and balance-sheet of the University shall be prepared under the directions of the Executive Council and shall, once at least every year and at intervals of not more than fifteen months, be audited by the Comptroller and Auditor-General of India or by such persons as he may authorize in this behalf.

(2) A copy of the annual accounts together with the audit report thereon shall be submitted to the Court and the Visitor along with the observations of the Executive Council.

(3) Any observations made by the Visitor on the annual accounts shall be brought to the notice of the Court and the observations of the Court, if any, shall, after being considered by the Executive Council, be submitted to the Visitor.

(4) A copy of the annual accounts together with the audit report as submitted to the Visitor, shall also be submitted to the Central Government, which shall, as soon as may be, cause the same to be laid before both Houses of Parliament.

(5) The audited annual accounts after having been laid before both Houses of Parliament shall be published in the Gazette of India.

**35.** The University shall furnish to the Central Government such returns or other information with respect to its property or activities as the Central Government may, from time to time, require.

36. (1) Every employee of the University shall be appointed under a written contract, which shall be lodged with the University and a copy of which shall be furnished to the employee concerned.

(2) Any dispute arising out of the contract between the University and any employee shall, at the request of the employee, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the employee concerned and an umpire appointed by the Visitor.

(3) The decision of the Tribunal shall be final, and no suit shall lie in any civil court in respect of the matters decided by the Tribunal.

(4) Every request made by the employee under sub-section (2), shall be deemed to be a submission to arbitration upon the terms of this section within the meaning of the Arbitration and Conciliation Act, 1996.

(5) The procedure for regulating the work of the Tribunal shall be prescribed by the Statutes.

37. (1) Any student or candidate for an examination whose name has been removed from the rolls of the University by the orders or resolution of the Vice-Chancellor, Discipline Committee or Examination Committee, as the case may be, and who has been debarred from appearing at the examinations of the University for more than one year, may, within ten days of the date of receipt of such orders or copy of such resolution by him, appeal to the Executive Council and the Executive Council may confirm, modify or reverse the decision of the Vice-Chancellor or the Committee, as the case may be.

(2) Any dispute arising out of any disciplinary action taken by the University against a student shall, at the request of such student, be referred to a Tribunal of Arbitration and the provisions of sub-sections (2), (3), (4) and (5) of section 36 shall, as far as may be, apply to a reference made under this sub-section.

Returns and Information.

Conditions of service of employees.

Procedure of appeal and arbitration in disciplinary cases against students. 38. Every employee or student of the University or of a College or Institution maintained by the University or admitted to its privileges shall, notwithstanding anything contained in this Ordinance, have a right to appeal within such time as m y be prescribed by the Statutes, to the Executive Council against the decision of any officer or authority of the University or of the Principal or the management of any College or an Institution, as the case may be, and thereupon the Executive Council may confirm, modify or reverse the decision appealed against.

**39.** (1) The University shall constitute for the benefit of its employees such provident or pension fund or provide such insurance schemes as it may deem fit in such manner and subject to such conditions as may be prescribed by the Statutes.

(2) Where such provident fund or pension fund has been so constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925, shall apply to such fund, as if it were a Government provident fund.

**40.** If any question arises as to whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Visitor whose decision thereon shall be final.

41. All casual vacancies among the members (other than *ex officio* members) of any authority or other body of the University shall be filled, as soon as may be, by the person or body who appoints, elects or co-opts the member whose place has become vacant and person appointed, elected or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

**42.** No act or proceedings of any authority or other body of the University shall be invalid merely by reason of the existence of a vacancy or vacancies among its members.

**43.** No suit or other legal proceeding shall lie against any officer or other employee of the University for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Ordinance, the Statutes or the Ordinances.

44. Notwithstanding anything contained in the Indian Evidence Act, 1872 or in any other law for the time being in force, a copy of any receipt, application, notice, order, proceeding or resolution of any authority or other body of the University, or any other document in possession of the University, or any entry in any register duly maintained by the University, if certified by the Registrar, shall be received as *prima facie* evidence of such receipt, application, notice, order, proceeding, resolution or document or the existence of entry in the register and shall be admitted as evidence of the matters and transactions therein where the original thereof would, if produced, have been admissible in evidence.

45. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Ordinance.

(2) Every order made under sub-section (1) 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 order or both Houses agree that the order should not be made, the 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

1 of 1872.

19 of 1925.

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constitution of authorities and bodics. Filling of

Disputes as to

Right to appeal.

Provident and pension funds.

Casual vacancies.

Proceedings of authorities or bodies not invalidated by vacancies.

Protection of action taken in good faith.

Mode of proof of University record.

Power to remove difficulties.

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without prejudice to the validity of anything previously done under that order.

46. (1) Every Statute, Ordinance or Regulation made under this Ordinance shall be published in the Official Gazette.

(2) Every Statute, Ordinance or Regulation made under this Ordinance 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 Statute, Ordinance or Regulation or both Houses agree that the Statute, Ordinance or Regulation should not be made, the Statute, Ordinance or Regulation 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 Statute, Ordinance or Regulation.

(3) The power to make Statutes, Ordinances or Regulations shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Ordinance, to the Statute, Ordinance or Regulations or any of them but no retrospective effect shall be given to any Statute, Ordinance or Regulation so as to prejudicially affect the interests of any person to whom such Statute, Ordinance or Regulation may be applicable.

Transitional provisions.

Statutes, Ordinances and

Regulations to be published in

Gazette and to

be laid before

Parliament.

the Official

47. Notwithstanding anything contained in this Ordinance and the Statutes,-

(a) the first Chancellor and first Vice-Chancellor shall be appointed by the Visitor in such manner and on such conditions as may be deemed fit and each of the said officer shall hold office for such term, not exceeding five years as may be specified by the Visitor;

(b) the first Registrar and the first Finance Officer shall be appointed by the Visitor and each of the said officers shall hold office for a term of three years;

(c) the first Court and the first Executive Council shall consist of not more than thirty members and eleven members, respectively, who shall be nominated by the Visitor and shall hold office for a term of three years;

(d) the first College Development Council shall consist of not more than ten members, who shall be nominated by the Visitor and they shall hold office for a term of three years;

(e) the first Academic Council shall consist of not more than twenty-one members, who shall be nominated by the Visitor and they shall hold office for a term of three years:

Provided that if any vacancy occurs in the above offices or authorities, the same shall be filled by appointment or nomination, as the case may be, by the Visitor, and the person so appointed or nominated shall hold office for so long as the officer or member in whose place he is appointed or nominated would have held office, if such vacancy had not occurred.

48. (1) The Manipur University Act, 1980 is hereby repealed.

(2) Notwithstanding such repeal,-

(a) all appointments made, orders issued, degrees and other academic distinctions conferred, diplomas and certificates awarded, privileges granted, or other things done under the Manipur University Act, 1980, shall be deemed to have been respectively made, issued, conferred, awarded, granted or done under the corresponding provisions of this Ordinance and, except as otherwise provided by or this Ordinance or the Statutes, continue in force unless and until they are superseded by any order made under this Ordinance or the Statutes; and

Manipur Act 8 of 1980.

(b) all proceedings of Selection Committees for the appointment or promotion of teachers that took place before the commencement of this Ordinance and all actions of the Executive Council in respect of the recommendations of such Selection Committees where no orders of

Repeal of Manipur Act 8 of 1980. appointment on the basis thereof were passed before the commencement of this Ordinance shall, notwithstanding that the procedure for selection has been modified by this Ordinance, be deemed to have been valid but further proceeding in connection with such pending selections shall be taken in accordance with the provisions of this Ordinance and be continued from the stage where they stood immediately before such commencement, except if the concerned authorities take, with the approval of the Visitor, a decision to the contrary.

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## THE SCHEDULE

#### (See section 30) ~

#### THE STATUTES OF THE UNIVERSITY

The Chancellor.

1. (1) The Chancellor shall be appointed by the Visitor from a panel of not less than three persons recommended by the Executive Council from amongst persons of eminence in the academic or public life of the country:

Provided that if the Visitor does not approve of any of the persons so recommended, he may call for fresh recommendations from the Executive Council.

(2) The Chancellor shall hold office for a term of five years and shall not be eligible for reappointment:

Provided that notwithstanding the expiry of his term of office, the Chancellor shall continue to hold office until his successor enters upon his office.

2. (1) The Vice-Chancellor shall be appointed by the Visitor from a panel of not less than three persons who shall be recommended by a Committee as constituted under clause (2):

Provided that if the Visitor does not approve of any of the persons included in the panel, he may call for an extended fresh panel.

(2) The Committee referred to in clause (1) shall consist of three persons, out of whom two shall be nominated by the Executive Council and one by the Visitor and the nominee of the Visitor shall be the convener of the Committee:

Provided that none of the members of the Committee shall be an employee of the University or an institution maintained by, or admitted to the privileges of, the University or a member of any authority of the University.

(3) The Vice-Chancellor shall be a whole-time salaried officer of the University.

(4) The Vice-Chancellor shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier, and he shall not be eligible for re-appointment:

Provided that notwithstanding the expiry of the said period of five years, he shall continue in office until his successor is appointed and enters upon his office:

Provided further that the Visitor may direct any Vice-Chancellor after his term has expired, to continue in office for such period, not exceeding a total period of one year, as may be specified by him.

(5) The emoluments and other conditions of service of the Vice-Chancellor shall be as follows:-

(i) the Vice-Chancellor shall be paid a monthly salary and allowances, other than house rent allowance, at the rates fixed by the Central Government from time to time and he shall be entitled, without payment of rent, to use a furnished residence throughout his term of office and no charge shall fall on the Vice-Chancellor in respect of the maintenance of such residence.

(*ii*) The Vice-Chancellor shall be entitled to such terminal benefits and allowances as may be fixed by the Central Government from time to time:

The Vice-Chancellor. Provided that where an employee of the University, or a college or an institution maintained by, or admitted to the privileges of, the University, or of any other University or any college or institution maintained by or admitted to the privileges of, such other University, is appointed as the Vice-Chancellor, he may be allowed to continue to contribute to any provident fund of which he is a member and the University shall contribute to the account of such person in that provident fund at the same rate at which the person had been contributing immediately before his appointment as the Vice-Chancellor:

Provided further that where such employee had been member of any pension scheme, the University shall make the necessary contribution to such scheme.

(*iii*) The Vice-Chancellor shall be entitled to travelling allowance at such rates as may be fixed by the Executive Council.

(iv) The Vice-Chancellor shall be entitled to leave on full pay at the rate of thirty days in a calendar year and the leave shall be credited to his account in advance in two half-yearly instalments of fifteen days each on the first day of January and July every year:

Provided that if the Vice-Chancellor assumes or relinquishes charge of the office of the Vice-Chancellor during the currency of a half year, the leave shall be credited proportionately at the rate of two and-a-half days for each completed month of service.

(v) In addition to the leave referred to in sub-clause (iv), the Vice-Chancellor shall also be entitled to half-pay leave at the rate of twenty days for each completed year of service, and half-pay leave may also be availed of as commuted leave on full pay on medical certificate:

Provided that when such commuted leave is availed of, twice the amount of half-pay leave shall be debited against half-pay leave due.

(6) If the office of the Vice-Chancellor becomes vacant duc to death, resignation or otherwise, or if he is unable to perform his duties due to ill-health or any other cause, the Pro-Vice-Chancellor shall perform the duties of the Vice-Chancellor:

Provided that if the Pro-Vice-Chancellor is not available, the senior most Professor shall perform the duties of the Vice-Chancellor until a new Vice-Chancellor assumes office or the existing Vice-Chancellor resumes the duties of his office, as the case may be.

3. (1) The Vice-Chancellor shall be ex officio Chairman of the Executive Council, the Academic Council and the Finance Committee and shall, in the absence of the Chancellor, preside at the Convocations held for conferring degrees and at meetings of the Court.

(2) The Vice-Chancellor shall be entitled to be present at, and address, any meeting of any authority or other body of the University, but shall not be entitled to vote thereat unless he is a member of such authority or body.

(3) It shall be the duty of the Vice-Chancellor to see that this Ordinance, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all the powers necessary to ensure such observance.

(4) The Vice-Chancellor shall have all the powers necessary for the proper maintenance of discipline in the University and he may delegate any such powers to such person or persons as he deems fit.

(5) The Vice-Chancellor shall have the power to convene or cause to be convened the meetings of the Executive Council, the Academic Council and the Finance Committee.

4. (1) The Pro-Vice-Chancellor shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor:

Pro-Vice-Chancellor.

Powers and duties of the Vice-Chancellor.

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Provided that where the recommendation of the Vice-Chancellor is not accepted by the Executive Council, the matter shall be referred to the Visitor who may either appoint the person recommended by the Vice-Chancellor or ask the Vice-Chancellor to recommend another person to the Executive Council:

Provided further that the Executive Council may, on the recommendation of the Vice-Chancellor, appoint a Professor to discharge the duties of a Pro-Vice-Chancellor in addition to his own duties as a Professor.

(2) The term of office of a Pro-Vice-Chancellor shall be such as may be decided by the Executive Council but it shall not in any case exceed five years or until the expiration of the term of office of the Vice-Chancellor, which ever is earlier:

Provided that a Pro-Vice-Chancellor whose term of office has expired shall be eligible for re-appointment:

Provided further that, in any case, a Pro-Vice-Chancellor shall retire on attaining the age of sixty-five years:

Provided also that a Pro-Vice-Chancellor shall, while discharging the duties of the Vice-Chancellor under clause ( $\delta$ ) of Statute 2, continue in office notwithstanding the expiration of his term of office as Pro-Vice-Chancellor, until the Vice-Chancellor resumes office or a new Vice-Chancellor assumes office, as the case may be.

(3) The emoluments and other terms and conditions of service of a Pro-Vice-Chancellor shall be such as may be prescribed by the Ordinances.

(4) The Pro-Vice-Chancellor shall assist the Vice-Chancellor in respect of such matters as may be specified by the Vice-Chancellor in this behalf, from time to time, and shall also exercise such powers and perform such duties as may be assigned or delegated to him by the Vice-Chancellor.

5. (1) Every Dean of School shall be appointed by the Vice-Chancellor from amongst the Professors in the School by rotation in the order of seniority for a period of three years:

Provided that in case there is only one Professor or no Professor in a School, the Dean shall be appointed, for the time being, from amongst the Professor, if any, and the Readers in the School by rotation in the order of seniority:

Provided further that a Dean on attaining the age of sixty-two years shall cease to hold office as such.

(2) When the office of the Dean is vacant or when the Dean is, by reason of illness, absence or any other cause, unable to perform duties of his office, the duties of the office shall be performed by the senior-most Professor or Reader, as the case may be, in the School.

(3) The Dean shall be the Head of the School and shall be responsible for the conduct and maintenance of the standards of teaching and research in the School and shall have such other functions as may be prescribed by the Ordinances.

(4) The Dean shall have the right to be present and to speak at any meeting of the Boards of Studies or Committees of the School, as the case may be, but shall not have the right to vote thereat unless he is a member thereof.

The Registrar.

6. (1) The Registrar shall be appointed by the Executive Council on the recommendation of a Selection Committee constituted for the purpose and shall be a whole-time salaried officer of the University.

(2) He shall be appointed for a term of five years and shall be eligible for re-appointment.

(3) The emoluments and other terms and conditions of service of the Registrar shall be such as may be prescribed by the Executive Council from time to time:

Provided that the Registrar shall retire on attaining the age of sixty-two years:

Provided further that a Registrar shall, notwithstanding his attaining the age of sixty-two years, continue in office until his successor is appointed and enters upon his office or until the expiry of a period of one year, whichever is earlier.

(4) When the office of the Registrar is vacant or when the Registrar is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(5) (a) The Registrar shall have power to take disciplinary action against such of the employees, excluding teachers and other academic staff, as may be specified in the order of the Executive Council and to suspend them pending inquiry, to administer warnings to them or to impose on them the penalty of censure or the withholding of increment:

Provided that no such penalty shall be imposed unless the person has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(b) An appeal shall lie to the Vice-Chancellor against any order of the Registrar imposing any of the penalties specified in sub-clause (a).

(c) In a case where the inquiry discloses that a punishment beyond the power of the Registrar is called for, the Registrar shall, upon the conclusion of the inquiry, make a report to the Vice-Chancellor along with his recommendations:

Provided that an appeal shall lie to the Executive Council against an order of the Vice-Chancellor imposing any penalty.

(6) The Registrar shall be *ex officio* Secretary of the Executive Council, the Academic Council and the College Development Council, but shall not be deemed to be a member of any of these authorities and he shall be *ex officio* Member-Secretary of the Court.

(7) It shall be the duty of the Registrar -----

(a) to be the custodian of the records, the common seal and such other property of the University as the Executive Council shall commit to his charge;

(b) to issue all notices convening meetings of the Court, the Executive Council, the Academic Council, the College Development Council and of any Committees appointed by those authorities;

(c) to keep the minutes of all the meetings of the Court, the Executive Council, the Academic Council, the College Development Council and of any Committees appointed by those authorities;

(d) to conduct the official correspondence of the Court, the Executive Council, the Academic Council and the College Development Council;

 $_{n}(e)$  to supply to the Visitor, copies of the agenda of the meetings of the authorities of the University as soon as they are issued and the minutes of such meetings;

(f) to represent the University in suits or proceedings by or against the University, sign powers of attorney and verify pleadings or depute his representative for the purpose; and

(g) to perform such other duties as may be specified in the Statutes, the Ordinances or the Regulations or as may be required from time to time by the Executive Council or the

Vice-Chancellor.

7. (1) The Finance Officer shall be appointed by the Executive Council on the recommendations of a Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University.

(2) The Finance Officer shall be appointed for a term of five years and shall be eligible for re-appointment.

(3) The emoluments and other terms and conditions of service of the Finance Officer shall be such as may be prescribed by the Executive Council from time to time:

Provided that the Finance Officer shall retire on attaining the age of sixty-two years:

Provided further that the Finance Officer shall, notwithstanding his attaining the age of sixty-two years, continue in office until his successor is appointed and enters upon his office or until the expiry of a period of one year, whichever is earlier.

(4) When the office of the Finance Officer is vacant or when the Finance Officer is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(5) The Finance Officer shall be *ex officio* Secretary of the Finance Committee, but shall not be deemed to be a member of such Committee.

(6) The Finance Officer shall ----

(a) exercise general supervision over the funds of the University and shall advise it as regards its financial policy; and

(b) perform such other financial functions as may be assigned to him by the Executive Council or as may be prescribed by the Statutes or the Ordinances.

(7) Subject to the control of the Executive Council, the Finance Officer shall --

(a) hold and manage the property and investments of the University including trust and endowed property;

(b) ensure that the limits fixed by the Executive Council for recurring and non-recurring expenditure for a year are not exceeded and that all moneys are expended on the purpose for which they are granted or allotted;

(c) be responsible for the preparation of annual accounts and the budget of the University and for their presentation to the Executive Council;

(d) keep a constant watch on the state of the cash and bank balances and on the state of investments;

(e) watch the progress of the collection of revenue and advise on the methods of collection employed;

(f) ensure that the registers of buildings, land, furniture and equipment are maintained up-to-date and that stock-checking is conducted, of equipment and other consumable materials in all offices, Departments, University 'Institutes, Centres and Specialised Laboratories;

(g) bring to the notice of the Vice-Chancellor unauthorised expenditure and other financial irregularities and suggest disciplinary action against persons at fault; and

The Finance

Officer.

(h) call for from any office, Department, Centre, Laboratory, College or Institution maintained by the University any information or returns that he may consider necessary for the performance of his duties.

(8) Any receipt given by the Finance Officer or the person or persons duly authorised in this behalf by the Executive Council for any money payable to the University shall be sufficient discharge for payment of such money.

8. (1) The Controller of Examinations shall be appointed by the Executive Council on the recommendations of a Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University.

(2) The Controller of Examinations shall be appointed for a term of five years and shall be eligible for re-appointment.

(3) The emoluments and other terms and conditions of service of the Controller of Examinations shall be such as may be prescribed by the Executive Council from time to time:

Provided that the Controller of Examinations shall retire on attaining the age of sixty-two years:

Provided further that the Controller of Examinations shall, notwithstanding his attaining the age of sixty-two years, continue in office until his successor is appointed and enters upon his office or until the expiry of a period of one year, whichever is earlier.

(4) When the office of the Controller of Examinations is vacant or when the Controller of Examinations is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(5) The Controller of Examinations shall arrange for and superintend the examinations of the University in the manner prescribed by the Ordinances.

9. (1) The Librarian shall be appointed by the Executive Council on the recommendations of the Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University.

(2) The Librarian shall exercise such powers and perform such duties as may be assigned to him by the Executive Council.

10. (1) An annual meeting of the Court shall be held on a date to be fixed by the Executive Council unless some other date has been fixed by the Court in respect of any year.

(2) At an annual meeting of the Court, a report on the working of the University during the previous year, together with a statement of the receipts and expenditure, the balance sheet as audited, and the financial estimates for the next year shall be presented.

(3) A copy of the statement of receipts and expenditure, the balance sheet and the financial estimates referred to in clause (2) shall be sent to every member of the Court at least seven days before the date of the annual meeting.

(4) Special meetings of the Court may be convened by the Executive Council or the Vice-Chancellor or if there is no Vice-Chancellor, the Pro-Vice-Chancellor or if there is no Pro-Vice-Chancellor, by the Registrar.

(5) Eleven members of the Court shall form a quorum for a meeting of the Court.

11. Seven members of the Executive Council shall form a quorum for a meeting of the Executive Council.

Quorum for meeting of the Executive Council.

The Librarian.

Meetings of the Court.

The Controller of Examinations. Powers and functions of the Executive Council. 22

12. (1) The Executive Council shall have the power of management and administration of the revenues and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(2) Subject to the provisions of this Ordinance, the Statutes and the Ordinances, the Executive Council shall, in addition to all other powers vested in it, have the following powers, namely:-

(i) to create teaching and other academic posts, to determine the number and emoluments of such posts and to define the duties and conditions of service of Professors, Readers, Lecturers and other academic staff:

Provided that no action shall be taken by the Executive Council in respect of the number and qualifications of teachers and other academic staff otherwise than after consideration of the recommendations of the Academic Council;

(*ii*) to appoint such Professors, Readers, Lecturers and other academic staff, as may be necessary, on the recommendation of the Selection Committee constituted for the purpose and to fill up temporary vacancies therein;

(*iii*) to recognise persons as University recognized teachers in the manner prescribed by the Ordinances;

(*iv*) to create administrative, ministerial and other necessary posts (including Chairs) and to make appointments thereto in the manner prescribed by the Ordinances;

(v) to grant leave of absence to any officer of the University other than the Chancellor and the Vice-Chancellor, and to make necessary arrangements for the discharge of the functions of such officer during his absence;

(vi) to regulate and enforce discipline among employees in accordance with the Statutes and the Ordinances;

(vii) to manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the University and for that purpose to appoint such agents as it may think fit;

(viii) to fix limits on the total recurring and the total non-recurring expenditure for a year on the recommendation of the Finance Committee;

(ix) to invest any money belonging to the University, including any unapplied income, in such stocks, funds, share or securities, from time to time as it may think fit or in the purchase of immovable property in India, with the like powers of varying such investment from time to time;

(x) to transfer or accept transfers of any movable or immovable property on behalf of the University;

(xi) to provide buildings, premises, furniture and apparatus and other means needed for carrying on the work of the University;

(xii) to enter into, vary, carry out and cancel contracts on behalf of the University;

(xiii) to entertain, adjudicate upon, and if thought fit, to redress any grievances of the employees and students of the University who may, for any reason, feel aggrieved;

(xiv) to appoint examiners and moderators and, if necessary, to remove them, and to fix their fees, emoluments and travelling and other allowances, after consulting the Academic Council;

PART II-

1.2

(xv) to select a common seal for the University and provide for the custody and use of such seal;

(xvi) to make such special arrangements as may be necessary for the residence and discipline of women students;

(xvii) to institute fellowships, scholarships, studentships, medals and prizes;

(xviii) to provide for the appointment of Visiting Professors, Emeritus Professors, Consultants and Scholars and determine the terms and conditions of such appointments; and

(xix) to exercise such other powers and perform such other duties as may be conferred or imposed on it by the Ordinance or the Statutes.

13. Nine members of the Academic Council shall form a quorum for a meeting of the Academic Council.

Quorum of meeting of the Academic Council.

Powers and functions of

Council.

the Academic

14. Subject to the provisions of this Ordinance, the Statutes and the Ordinances, the Academic Council shall, in addition to all other powers vested in it, have the following powers, namely:-

(a) to exercise general supervision over the academic policies of the University and to give directions regarding methods of instruction, co-ordination of teaching among the Colleges and the Institutions, evaluation of research and improvement of academic standards;

(b) to bring about and promote inter-School co-ordination and to establish or appoint such committees or boards as may be deemed necessary for the purpose;

(c) to consider matters of general academic interest either on its own initiative, or on a reference by a School or the Executive Council, and to take appropriate action thereon; and

(d) to frame such Regulations and rules consistent with the Statutes and the Ordinances regarding the academic functioning of the University, discipline, residence, admissions, award of fellowships and studentships, fees, concessions, corporate life and attendance.

15. (1) The University shall have such Schools of Studies as may be specified in the Statutes.

(2) Every School shall have a School Board and the members of the first School Board shall be nominated by the Executive Council for a period of three years.

(3) The composition, powers and functions of a School Board shall be prescribed by the Ordinances.

(4) The conduct of the meetings of a School Board and the quorum required for such meetings shall be prescribed by the Ordinances.

(5) (a) Every School shall consist of such Departments as may be assigned to it by the Ordinances:

Provided that the Executive Council may, on the recommendation of the Academic Council, establish Centres of Studies to which may be assigned such teachers of the University as the Executive Council may consider necessary.

(b) Each Department shall consist of the following members, namely:-

(i) Teachers of the Department;

(ii) Persons conducting research in the Department;

Schools of

Studies and

Departments.

(iii) Dean of the School;

(iv) Honorary Professors, if any, attached to the Department; and

(v) such other persons as may be members of the Department in accordance with the provisions of the Ordinances.

Board of Studies. 16. (1) Each Department shall have a Board of Studies.

(2) The constitution of the Board of Studies and the term of office of its members shall be prescribed by the Ordinances.

(3) Subject to the overall control and supervision of the Academic Council, the functions of a Board of Studies shall be to approve subjects for research for various degrees and other requirements of research degrees and to recommend to the concerned School Board in the manner prescribed by the Ordinances -

(a) courses of studies and appointment of examiners for courses, but excluding research degrees;

(b) appointment of supervisors for research; and

(c) measures for the improvement of the standard of teaching and research:

Provided that the above functions of a Board of Studies shall, till the Board of Studies is constituted under this Ordinance, be performed by the Department.

College maintained by University.

17. (1) The Manipur Institute of Technology, Imphal shall be maintained by the University.

(2) The organisation, conditions of maintenance and management of the College in clause (1) shall be prescribed by the Ordinances.

18. (1) The Finance Committee shall consist of the following members, namely:-

(i) the Vice-Chancellor;

(*ii*) the Pro-Vice-Chancellor;

(*iii*) three persons to be nominated by the Executive Council, out of whom at least one shall be a member of the Executive Council; and

(iv) three persons to be nominated by the Visitor.

(2) Five members of the Finance Committee shall form a quorum for a meeting of the Finance Committee.

(3) All the members of the Finance Committee, other than *ex officio* members, shall hold office for a term of three years.

(4) A member of the Finance Committee shall have the right to record a minute of dissent if he does not agree with any decision of the Finance Committee.

(5) The Finance Committee shall meet at least thrice every year to examine the accounts and to scrutinise proposals for expenditure.

(6) All proposals relating to creation of posts, and those items which have not been included in the Budget, shall be examined by the Finance Committee before they are considered by the Executive Council.

miversity.

The Finance Committee. (7) The annual accounts and the financial estimates of the University prepared by the Finance Officer shall be laid before the Finance Committee for consideration and comments and thereafter submitted to the Executive Council for approval.

(8) The Finance Committee shall recommend limits for the total recurring expenditure and the total non-recurring expenditure for the year, based on the income and resources of the University (which, in the case of productive works, may include the proceeds of loans).

19. (1) There shall be Selection Committees for making recommendations to the Executive Council for appointment to the posts of Professor, Reader, Lecturer, Registrar, Finance Officer, Librarian and Principals of Colleges and Institutions maintained by the University.

(2) The Selection Committee for appointment to the posts specified in Column 1 of the Table below shall consist of the Vice-Chancellor, a nominee of the Visitor and the persons specified in the corresponding entry in Column 2 of the said Table:

#### TABLE

(i) The Dean of the School.

(ii) The Head of the Department.

Professor will be concerned.

Professor

Reader/Lecturer

Lecturer (i) The Head of the Department.

(ii) One Professor nominated by the Vice-Chancellor.

(*iii*) Two persons not in the service of the University, nominated by the Executive Council, out of a panel of names recommended by the Academic Council for their special knowledge of, or interest in, the subject with which the Reader/Lecturer will be concerned.

(*iii*) Three persons not in the service of the University, nominated by the Executive Council, out of a panel of names recommended by the Academic Council for their special knowledge of, or interest in, the subject with which the

(i) Two members of the Executive Council nominated by it.

(*ii*) One person not in the service of the University nominated by the Executive Council.

(*i*) Two persons not in the service of the University who have special knowledge of the subject of the Library Science/Library Administration nominated by the Executive Council.

(*ii*) One person not in the service of the University nominated by the Executive Council.

Three persons not in the service of the University of whom two shall be nominated by the Executive Council and one by the Academic Council for their special knowledge of, or interest in, a subject in which instruction is being provided by the College or Institution.

*Explanation* 1.—Where the appointment is being made for an inter-disciplinary project, the head of the project shall be deemed to be the Head of the Department concerned.

Registrar/Finance Officer

Principal of College or

Institution maintained

by the University.

Librarian

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SEC. 1]

*Explanation* 2.—The Professor to be nominated by the Vice-Chancellor shall be a Professor concerned with the specialty for which the selection is being made and the Vice-Chancellor shall consult the Head of the Department and the Dean of School before nominating the Professor.

(3) The Vice-Chancellor, or in his absence the Pro-Vice-Chancellor, shall convene and preside at the meeting of the Selection Committee:

Provided that the meeting of the Selection Committee shall be fixed after prior consultation with, and subject to the convenience of Visitor's nominee and the experts nominated by the Executive Council:

Provided further that the proceedings of the Selection Committee shall not be valid unless, -

where the number of Visitor's nominee and the persons nominated by the Executive Council is four in all, at least three of them attend the meeting; and

where the number of Visitor's nominee and the persons nominated by the Executive Council is three in all, at least two of them attend the meeting.

(4) The procedure to be followed by the Selection Committee shall be laid down in the Ordinances.

(5) If the Executive Council is unable to accept the recommendations made by the Selection Committee, it shall record its reasons and submit the case to the Visitor for final orders.

(6) Appointments to temporary posts shall be made in the manner indicated below---

(i) If the temporary vacancy is for duration longer than one academic session, it shall be filled on the advice of the Selection-Committee in accordance with the procedure indicated in the foregoing clauses:

Provided that if the Vice-Chancellor is satisfied that in the interests of work it is necessary to fill the vacancy, the appointment may be made on a purely temporary basis on the advice of a local Selection Committee referred to in sub-clause (*ii*) for a period not exceeding six months.

(*ii*) If the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a local Selection Committee consisting of the Dean of the School concerned, the Head of the Department and a nominee of the Vice-Chancellor:

Provided that if the same person holds the offices of the Dean and the Head of the Department, the Selection Committee may contain two nominees of the Vice-Chancellor:

Provided further that in the case of sudden casual vacancies of teaching posts caused by death or any other reason, the Dean may, in consultation with the Head of the Department concerned, make a temporary appointment for a month and report to the Vice-Chancellor and the Registrar about such appointment.

(*iii*) No teacher appointed temporarily shall, if he is not recommended by a regular Selection Committee for appointment under the Statutes, be continued in service on such temporary employment, unless he is subsequently selected by a local Selection Committee or a regular Selection Committee, for a temporary or permanent appointment, as the case may be.

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20. (1) Notwithstanding anything contained in Statute 19, the Executive Council may invite a person of high academic distinction and professional attainments to accept a post of Professor or any other equivalent academic post in the University on such terms and conditions as it deems fit and on the person agreeing to do so appoint him to the post.

(2) The Executive Council may appoint a teacher or any other academic staff working in any other University or organisation for undertaking a joint project in accordance with the manner laid down in the Ordinances.

21. The Executive Council may appoint a person selected in accordance with the procedure laid down in Statute 19 for a fixed tenure on such terms and conditions as it deems fit.

22. (1) The qualifications of recognized teachers shall be such as may be prescribed by the Ordinances.

(2) All applications for the recognition of teachers shall be made in such manner as may be laid down by the Ordinances.

(3) No teacher shall be recognised as a teacher except on the recommendation of a Selection Committee constituted for the purpose in the manner laid down in the Ordinances.

(4) The period of recognition of a teacher shall be determined by the Ordinances made in that behalf.

(5) The Academic Council may, by a special resolution passed by a majority of not less than two-thirds of the members present and voting, withdraw recognition from a teacher:

Provided that no such resolution shall be passed until notice in writing has been given to the person concerned calling upon him to show cause, within such time as may be specified in the notice, why such resolution should not be passed and until his objections, if any, and any evidence he may produce in support of them have been considered by the Academic Council.

23. (1) An authority of the University may appoint as many standing or special Committees as it may deem fit, and may appoint to such Committees persons who are not members of such authority.

(2) A Committee appointed under clause (1) may deal with any subject delegated to it subject to subsequent confirmation by the authority appointing it.

24. (1) All the teachers and other academic staff of the University shall, in the absence of any agreement to the contrary, be governed by the terms and conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the Regulations.

(2) The emoluments of members of the academic staff shall be such as may be prescribed by the Ordinances.

(3) Every teacher and member of the academic staff of the University shall be appointed on a written contract, the form of which shall be prescribed by the Ordinances.

(4) A copy of every contract referred to in clause (3) shall be deposited with the Registrar.

25. (1) All the employees of the University, other than the teachers and other academic staff shall, in the absence of any contract to the contrary, be governed by the terms and conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the Regulations.

(2) The manner of appointment and emoluments of employees, other than the teachers and other academic staff, shall be such as may be prescribed by the Ordinances.

Terms and conditions of service and code of conduct of teachers, etc.

Appointment for a fixed tenure.

Recognised teachers.

Committees.

Terms and conditions of service and code of conduct of other employees. Seniority list.

28

26. (1) Whenever, in accordance with the Statutes, any person is to hold an office or be a member of an authority of the University by rotation according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade and in accordance with such other principles as the Executive Council may, from time to time, prescribe.

(2) It shall be the duty of the Registrar to prepare and maintain in respect of each class of persons to whom the provisions of these Statutes apply, a complete and up-to-date seniority list in accordance with the provisions of clause (1).

(3) If two or more persons have equal length of continuous service in a particular grade or the relative seniority of any person or persons is otherwise in doubt, the Registrar may, on his own motion and shall, at the request of any such person, submit the matter to the Executive Council whose decision thereon shall be final.

27. (1) Where there is an allegation of misconduct against a teacher, a member of the academic staff or other employee of the University, the Vice-Chancellor, in the case of the teacher or a member of the academic staff, and the authority competent to appoint (hereinafter referred to as the appointing authority) in the case of other employee may, by order in writing, place such teacher, member of the academic staff or other employee, as the case may be, under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made:

Provided that the Executive Council may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the teacher or a member of the academic staff, revoke such order.

(2) Notwithstanding anything contained in the terms of the contract of appointment or of any other terms and conditions of service of the employees, the Executive Council in respect of teachers and other academic staff, and the appointing authority in respect of other employees, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.

(3) Save as aforesaid, the Executive Council, or as the case may be, the appointing authority, shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and after giving three months' notice or on payment of three months' salary in lieu thereof.

(4) No teacher, member of the academic staff or other employee shall be removed under clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(5) The removal of a teacher, member of the academic staff or other employee shall take effect from the date on which the order of removal is made:

Provided that where the teacher, member of the academic staff or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.

(6) Notwithstanding anything contained in the foregoing provisions of this Statute, a teacher, member of the academic staff or other employee may resign —

(a) if he is a permanent employee, only after giving three months' notice in writing to the Executive Council or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof;

(b) if he is not a permanent employee, only after giving one month's notice in writing to the Executive Council or, as the case may be, the appointing authority or by paying one month's salary in licu thereof:

Removal of employees of the University. Provided that such resignation shall take effect only on the date on which the resignation is accepted by the Executive Council or the appointing authority as the case may be.

28. (1) The Executive Council may, on the recommendation of the Academic Council and by a resolution passed by a majority of not less than two-thirds of the members present and voting, make proposals to the Visitor for the conferment of honorary degrees:

Provided that in case of emergency, the Executive Council may, on its own motion, make such proposals.

(2) The Executive Council may, by a resolution passed by a majority of not less than twothirds of the members present and voting, withdraw, with the previous sanction of the Visitor, any honorary degree conferred by the University.

29. The Executive Council may, by a special resolution passed by a majority of not less than two-thirds of the members present and voting, withdraw an degree or academic distinction conferred on, or any certificate or diploma granted to, any person by the University for good and sufficient cause:

Provided that no such resolution shall be passed until a notice in writing has been given to that person calling upon him to show cause within such time as may be specified in the notice why such a resolution should not be passed and until his objections, if any, and any evidence he may produce in support of them, have been considered by the Executive Council.

**30.** (1) All powers relating to the maintenance of discipline and disciplinary action in relation to the students of the University shall vest in the Vice-Chancellor.

(2) There shall be a Proctor of the University to assist the Vice-Chancellor in the exercise of the powers referred to in clause (1), who shall be appointed by the Executive Council from amongst the Professors and Readers in the manner prescribed by the Ordinances.

(3) The Vice-Chancellor may delegate all or any of the powers referred to in clause (1), as he deems proper, to the Proctor and to such other officers as he may specify in this behalf.

(4) Without prejudice to the generality of his powers relating to the maintenance of discipline and taking such action, as may seem to him appropriate for the maintenance of discipline, the Vice-Chancellor may, in exercise of such powers, by order, direct that any student or students be expelled or rusticated, for a specified period, or be not admitted to a course or courses of study in a College, Institution or Department or a School of the University for a stated period, or be punished with fine for an amount to be specified in the order, or be debarred from taking an examination or examinations conducted by the University, College, Institution or Department or a School for one or more years, or that the results of the student or students concerned in the examination or examinations in which he or they have appeared be cancelled.

(5) The Principals of College, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University shall have the authority to exercise all such disciplinary powers over the students in their respective Colleges, Institutions, Schools and teaching Departments in the University, as may be necessary for the proper conduct of such Colleges, Institutions, Schools and teaching Departments.

(6) Without prejudice to the powers of the Vice-Chancellor and the Principal and other persons specified in clause (5), detailed rules of discipline and proper conduct shall'be made by the University. The Principals of College, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University may also make such supplementary rules as they deem necessary for the purposes stated therein.

(7) At the time of admission, every student shall be required to sign a declaration to the effect that he submits himself to the disciplinary jurisdiction of the Vice-Chancellor and other authorities of the University.

Maintenance of discipline amongst students of University.

Withdrawal of

degrees, etc.

. Honorary degrees. Maintenance of discipline among Students of Colleges etc.

Admission of Colleges, etc., to the privileges of University. 31. All powers relating to discipline and disciplinary action in relation to students of a College or an Institution not maintained by the University, shall vest in the Principal of the College or Institution, as the case may be, in accordance with the procedure prescribed by the Ordinances.

PART II-

**32.** (1) Colleges and other Institutions situated within the jurisdiction of the University may be admitted to such privileges of the University as the Executive Council and the College Development Council may decide on the following conditions, namely:-

(a) every such College or Institution shall have a regularly constituted Governing Body, consisting of not more than fifteen persons approved by the Executive Council and including among others, two teachers of the University to be nominated by the Executive Council and three representatives of the teaching staff of whom the Principal of the College or Institution shall be one. The procedure for appointment of members of the Governing Body and other matters affecting the management of a College or an Institution shall be prescribed by the Ordinances: "

Provided that the said condition shall not apply in the case of Colleges and Institutions maintained by Government which shall, however, have an Advisory Committee consisting of not more than fifteen persons which shall consist of among others, three teachers including the Principal of the College or Institution, and two teachers of the University nominated by the Executive Council;

(b) every such College or Institution shall satisfy the Executive Council and the College Development Council on the following matters, namely:-

(i) the suitability and adequacy of its accommodation and equipment for teaching;

(ii) the qualifications and adequacy of its teaching staff and the conditions of their service;

(iii) the arrangements for the residence, welfare, discipline and supervision of students;

(*iv*) the adequacy of financial provision made for the continued maintenance of the College or Institution; and

(v) such other matters as are essential for the maintenance of the standards of University education.

(c) no College or Institution shall be admitted to any privileges of the University except on the recommendation of the Academic Council made after considering the report of a Committee of Inspection appointed for the purpose by the Academic Council;

(d) colleges and Institutions desirous of admission to any privileges of the University shall be required to intimate their intension to do so in writing so as to reach the Registrar not later than the 15th August, preceding the year from which permission applied for is to have effect;

(e) a College or an Institution shall not, without the previous permission of the Executive Council, College Development Council and the Academic Council, suspend instruction in any subject or course of study which it is authorized to teach and teaches.

(2) Appointment to the teaching staff and Principal of Colleges or Institutions admitted to the privileges of the University shall be made in the manner prescribed by the Ordinances:

Provided that nothing in this clause shall apply to Colleges and Institutions maintained by Government.

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(3) The service conditions of the administrative and other non-academic staff of every ollege or Institution referred to in clause (2) shall be such as may be laid down in the ordinances:

<sup>55</sup> Provided that nothing in this clause shall apply to Colleges and Institutions maintained by Government.

(4) Every College or Institution admitted to the privileges of the University shall be inspected at least once in every two academic years by a Committee appointed by the Academic Council, and the report of the Committee shall be submitted to the Academic Council, which shall forward the same to the College Development Council and Executive Council with such recommendations as it may deem fit to make.

(5) The College Development Council and the Executive Council, after considering the report and the recommendations, if any, of the Academic Council, shall forward a copy of the report to the Governing Body of the College or Institution with such remarks, if any, as they may deem fit for suitable action.

(6) The Executive Council may, after consulting the College Development Council and Academic Council, withdraw any privileges granted to a College or an Institution, at any time it considers that the College or Institution does not satisfy any of the conditions on the fulfillment of which the College or Institution was admitted to such privileges:

Provided that before any privileges are so withdrawn, the Governing Body of the College or Institution concerned shall be given an opportunity to represent to the Executive Council why such action should not be taken.

(7) Subject to the conditions set forth in clause (1), the Ordinances may prescribe-

(i) such other conditions as may be considered necessary; and

(*ii*) the procedure for the admission of Colleges and Institutions to the privileges of the University and for the withdrawal of those privileges.

**33.** Convocations of the University for the conferring of degrees or for other purposes shall be held in such manner as may be prescribed by the Ordinances.

34. Where no provision is made for a President or Chairman to preside over a meeting of any authority of the University or any Committee of such authority or when the President or Chairman so provided for is absent, the members present shall elect one from among themselves to preside at such meeting.

35. Any member, other than an *ex officio* member of the Court, the Executive Council, the Academic Council or any other authority of the University or any Committee of such authority may resign by letter addressed to the Registrar and the resignation shall take effect as soon as such letter is received by the Registrar.

36. (1) A person shall be disqualified for being chosen as, and for being, a member of any of the authorities of the University-

(i) if he is of unsound mind;

(ii) if he is an undischarged insolvent;

(*iii*) if he has been convicted by a court of law of an offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months.

(2) If any question arises as to whether a person is or had been subjected to any of the disqualifications mentioned in clause (I), the question shall be referred to the Visitor and his decision shall be final and no suit or other proceeding shall lie in any civil court against such

Convocations.

Acting Chairman of meetings.

Resignation.

Disgualification.

37. Notwithstanding anything contained in the Statutes, a person who is not ordinarily resident in India shall not be eligible to be an officer of the University or a member of any

38. Notwithstanding anything contained in the Statutes, a person who holds any post in the

University or is a member of any authority or body of the University in his capacity as a

member of a particular authority or body or as the holder of a particular appointment shall hold

such office or membership only for so long as he continues to be a member of that particular

decision.

authority of the University.

Residence condition for membership and office.

Membership of authorities by virtue of membership of other bodies.

Alumni Association **39.** (1) There shall be an Alumni Association for the University.

authority or body or the holder of that particular appointment, as the case may be.

(2) The subscription for membership of the Alumni Association shall be prescribed by the Ordinances.

(3) No member of the Alumni Association shall be entitled to vote or stand for election unless he has been a member of the Association for at least one year prior to the date of election and is a degree holder of the University of at least five years standing:

Provided that the condition relating to the completion of one year's membership shall not apply in the case of the first election."

Students Council. 40. (1) There shall be constituted in the University, a Students' Council for every academic year, consisting of -

(a) the Dean of Students' Welfare who shall be the Chairman of the Students' Council;

(b) all students who have won prizes in the previous academic year in the field of studies, fine arts, sports and extension work;

(c) twenty students to be nominated by the Academic Council on the basis of merit in studies, sports, activities and all round development of personality:

Provided that any student of the University shall have the right to bring up any matter concerning the University before the Students' Council if so permitted by the Chairman, and he shall have the right to participate in the discussions at any meeting when the matter is taken up for consideration.

(2) The functions of the Students' Council shall be to make suggestions to the appropriate authorities of the University in regard to the programmes of studies, students' welfare and other matters of importance, in regard to the working of the University in general and such suggestions shall be made on the basis of consensus of opinion.

(3) The Students' Council shall meet at least once in an academic year preferably in the beginning of that year.

Ordinances, how made. 41. (1) The first Ordinances made under sub-section (2) of section 31 may be amended, repealed or added to at any time by the Executive Council in the manner specified in the following sub-sections.

(2) No Ordinance in respect of the matters enumerated in sub-section (1) of section 31 shall be made by the Executive Council unless a draft of such Ordinance has been proposed by the Academic Council.

(3) The Executive Council shall not have power to amend any draft of any Ordinance proposed by the Academic Council under clause (2), but may reject the proposal or return the draft to the Academic Council for re-consideration, either in whole or in part, together with any amendment which the Executive Council may suggest.

(4) Where the Executive Council has rejected or returned the draft of an Ordinance proposed by the Academic Council, the Academic Council may consider the question afresh and in case the original draft is reaffirmed by a majority of not less than two-thirds of the members present and voting and more than half the total number of members of the Academic Council, the draft may be sent back to the Executive Council which shall either adopt it or refer it to the Visitor whose decision shall be final.

(5) Every Ordinance made by the Executive Council shall come into effect immediately.

(6) Every Ordinance made by the Executive Council shall be submitted to the Visitor within two weeks from the date of its adoption.

(7) The Visitor shall have the power to direct the University to suspend the operation of any Ordinance.

(8) The Visitor shall inform the Executive Council about his objection to the Ordinance referred to in clause (7) and may, after receiving the comments of the University, either withdraw the order suspending the Ordinance or disallow the Ordinance, and his decision shall be final.

42. (1) The authorities of the University may make Regulations consistent with the Regulations. Ordinance, the Statutes and the Ordinances for the following matters, namely:

(i) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;

(ii) providing for all matters which are required by the Ordinance, the Statutes or the Ordinance to be prescribed by Regulations;

(iii) providing for all other matters solely concerning such authorities or committees appointed by them and not provided for by the Ordinance, the Statutes or the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meeting and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment in such manner as it may specify of any Regulation made under the Statutes or the annulment of any such Regulation.

43. Subject to the provisions of the Ordinance and the Statutes, any officer or authority of the University may delegate his or its powers to any other officer or authority or person under his or its respective control and subject to the condition that overall responsibility for the exercise of the powers so delegated shall continue to vest in the officer or authority delegating such powers.

Delegation of powers.

A.P.J. ABDUL KALAM. President.

BRAHM AVTAR AGRAWAL, Addl. Secretary to the Govt. of India.

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# **EXTRAORDINARY**

भाग II — खण्ड 1 PART II --- Section 1

प्राधिकार से प्रकाशित

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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 31st October, 2005/Karitka 9, 1927 (Saka)

# THE TAXATION LAWS (AMENDMENT) ORDINANCE, 2005 No. 4 OF 2005

Promulgated by the President in the Fifty-sixth Year of the Republic of India.

An Ordinance further to amend the Income-tax Act, 1961 and the Finance Act, 2005.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

### CHAPTER I

### PRELIMINARY

1. (1) This Ordinance may be called the Taxation Laws (Amendment) Ordinance, Short title and 2005.

commencement.

(2) It shall come into force at once.

### CHAPTER II

### AMENDMENTS TO THE INCOME-TAX ACT, 1961

Amendment of section 10. 2. In section 10 of the Income-tax Act, 1961 (hereafter in this Chapter referred to as the Income-tax Act), with effect from the 1st day of April, 2006,-

(a) in clause ( $\delta BB$ ), for the words, figures and letters "or entered into after the 30th day of September, 2005 and approved by the Central Government in this

behalf', the words, figures and letters "or entered into after the 31st day of March, 2006 and approved by the Central Government in this behalf' shall be substituted;

(b) in clause (15A), in the proviso, for the words, figures and letters "the 1st day of October, 2005", the words, figures and letters "the 1st day of April, 2006" shall be substituted;

(c) after clause (38), the following clauses shall be inserted, namely:-

(39) any specified income arising, from any international sporting event held in India, to the person or persons notified by the Central Government in the Official Gazette, if such international sporting event-

(*a*) is approved by the international body regulating the international sport relating to such event;

(b) has participation by more than two countries;

(c) is notified by the Central Government in the Official Gazette for the purpose of this clause.

*Explanation.*- For the purpose of this clause, "the specified income" means the income, of the nature and to the extent, arising from the international sporting event, which the Central Government may notify in this behalf;

(40) any income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation, transmission or distribution of power if such receipt is for settlement of, dues in connection with reconstruction or revival of an existing business of power generation:

Provided that the provisions of this clause shall apply if reconstruction or revival of any existing business of power generation is by way of transfer of such business to the Indian company notified under sub-clause (a) of clause (v) of sub-section (4) of section 80-IA;

(41) any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation, transmission or distribution of power where such transfer is effected on or before the 31st day of March, 2006 to the Indian company notified under sub-clause (a) of clause (v) of sub-section (4) of section 80-IA.'.

43 of 1961.

3. In section 80-IA of the Income-tax Act, in sub-section (4), after clause (iv), the following clause shall be inserted with effect from the 1st day of April, 2006, namely:-

"(v) an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant, if-

(a) such Indian company is formed before the 30th day of November, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before the 31st day of December, 2005 by the Central Government for the purposes of this clause;

(b) such undertaking begins to generate or transmit or distribute power before the 31st day of March, 2007.".

4. In section 115W of the Income-tax Act, in clause (a), with effect from the 1st Amendment of day of April, 2006,-

section 115W.

(a) for sub-clause (iii), the following sub-clause shall be substituted, namely:-

"(iii) an association of persons or a body of individuals, whether incorporated or not;";

(b) after sub-clause (v), the following proviso shall be inserted, namely:-

"Provided that any person eligible for exemption under clause (23C) of section 10 or registered under section 12AA or a political party registered under section 29A of the Representation of the People Act, 1951 shall not be deemed to be an employer for the purposes of this Chapter;".

### CHAPTER III

### AMENDMENTS TO THE FINANCE ACT, 2005

5. In Chapter VII of the Finance Act, 2005 (hereafter in this Chapter referred to as the Finance Act), in section 94, with effect from the 1st day of June, 2005,-

(a) after clause (3), the following clause shall be inserted and shall be deemed to have been inserted, namely:-

10 of 1949.

10 of 1949.

(3A) "banking company" means a company to which the Banking Regulation Act, 1949 applies and includes any bank referred to in section 51 of that Act;';

(b) after clause (4), the following clause shall be inserted and shall be deemed to have been inserted, namely:-

(4A) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949;'...

SEC. 1]

43 of 1951.

18 of 2005.

Amendment of section 94.

Amendment of section 80-IA.

Insertion of new section 112A. 6. In Chapter VII of the Finance Act, after section 112, the following section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 2005, namely:-

This Chapter not to apply in certain cases.

"112A.The provisions of this Chapter shall not apply to, or in relation to, the taxable banking transactions entered into on or after the 1st day of June, 2005,-

(a) between a scheduled bank and a banking company or a co-operative bank; or

(b) between a scheduled bank and another scheduled bank.".

## A.P.J. ABDUL KALAM, President.

T.K. VISWANATHAN, Secy. To the Govt. of India.

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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 23rd January, 2006/Magha 3, 1927 (Saka)

# THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS (AMENDMENT) ORDINANCE, 2006

### No. 1 of 2006

An Ordinance to amend the National Commission for Minority Educational Institutions Act, 2004.

WHEREAS the National Commission for Minority Educational Institutions (Amendment) Bill, 2005 has been introduced in the Council of States but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:---

## THE GAZETTE OF INDIA EXTRAORDINARY

Short title and commencement.

1. (1) This Ordinance may be called the National Commission for Minority Educational Institutions (Amendment) Ordinance, 2006.

(2) It shall come into force at once.

Amendment of section 2.

2. In section 2 of the National Commission for Minority Educational Institutions Act, 2004 (hereinafter referred to as the principal 2 of 2005. Act),-

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PART II

(i) in clause (a), the word "Scheduled" shall be omitted;

(ii) after clause (a), the following clause shall be inserted, namely:-

'(aa) "appropriate Government" means,-

(i) in relation to an educational institution recognised for conducting its programmes of studies under any Act of Parliament, the Central Government; and

(ii) in relation to any other educational recognised conducting institution for its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established;';

(iii) after clause (c), the following clause shall be inserted, namely:-

> '(ca) "Competent authority" means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities;';

(iv) after clause (d), the following clause shall be inserted, namely:-

> '(da) "educational rights of minorities" means the rights of minorities to establish and administer educational institutions of their choice;';

(v) clause (j) shall be omitted.

Substitution of new Chapter for Chapter III.

3. For Chapter III of the principal Act, the following Chapter shall be substituted, namely:-

### 'CHAPTER III

### RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

Right to establish a

10. (1) Any person who desires to establish a Minority

Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose. Minority Educational Institution.

(2) The Competent authority shall,-

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant,

decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competant authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,-

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate,

it shall be deemed that the Competent authority has granted a no object certificate to the applicant.

(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation .- For the purpose of this section,---

(a) "applicant" means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) "no objection certificate" means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

10A. (1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established. Right of a Minority Educational Institution to seek affiliation. (2) Any person who is authorised in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations of the University.

Provided that such authorised person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.'.

Amendment of section 11.

4. In section 11 of the principal Act, for clauses (b) and (c), the following clauses shall be substituted, namely:-

"(b) enquire, suo motu, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.".

5. In section 12 of the principal Act,-

(a) in sub-section (1), the word "Scheduled" shall be omitted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:---

"(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.".

6. After section 12 of the principal Act, the following sections shall be inserted, namely: -

12A. (1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the Competent authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.

(2) An appeal under sub-section (1) shall be filed within thirty days from the date of the order referred to in sub-section (1) communicated to the applicant:

Provided that the Commission may entertain an appeal after expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908, so far as may be, shall apply as they apply in respect of a decree of a civil court.

12B. (1) Without prejudice to the provisions contained in the National Minority Commission Act, 1992, where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.

Power of the Commission to decide on the minority status of an educational institution.

5 of 1908.

45 of 1860.

2 of 1974.

19 of 1992.

Insertion of new sections 12A to 12F.

Appeal against orders of the Competent authority.

SEC. 1]

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section 12.

Amendment of

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order communicated to the applicant:

Provided that the Commission may entertain an appeal after expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal, an opportunity of being heard, decide on the minority status of the educational institution and shall proceed to give such directions as it may deem fit and, all such directions shall be binding on the parties.

*Explanation.*— For the purposes of this section and section 12C, "authority" means any authority or officer or commission which is established under any law for the time being in force or under any order of the appropriate Government, for the purpose of granting a certificate of minority status to an educational institution.

12C. The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by any authority or Commission, as the case may be, cancel such status under the following circumstances, namely:-

(a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;

(b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.

12D. (1) The Commission shall have the power to investigate into the complaints relating to deprivation of the educational rights of minorities.

(2) The Commission may, for the purpose of conducting any investigation pertaining to a complaint under this Act, utilize the services of any officer of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

Power to cancel.

Power of Commission to Investigate matters relating to deprivation of educational rights of minorities. (3) For the purpose of investigation under sub-section (1), the officer whose services are utilized may, subject to the direction and control of the Commission,-

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(4) The officer whose services are utilized under subsection (2) shall investigate into any matter entrusted to it by the Commission and submit a report thereon to it within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such further inquiry as it may think fit.

12E. (1) The Commission, while enquiring into the complaints of violation or deprivation of educational rights of minorities shall call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto, within such time as may be specified by it:

Power of Commission to call for information, etc.

Provided that,-

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required, or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

(2) Where the inquiry establishes violation or deprivation of the educational rights of the minorities by a public servant, the Commission may recommend to the concerned Government or authority, the initiation of disciplinary proceedings or such other action against the concerned person or persons as may be deemed fit.

(3) The Commission shall send a copy of the inquiry report, together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken, or proposed to be taken thereon, to the Commission.

(4) The Commission shall publish its inquiry report and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

12F. No court (except the Supreme Court and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) shall entertain any suit, application or other proceedings in respect of any order made under this Chapter.".

7. Section 18 of the principal Act shall be omitted.

of section 24.

8. In section 24 of the principal Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:-

"(aa) the forms in which appeal under sub-section (3) of section 12A and sub-section (3) of section 12B shall be made;".

9. The Schedule to the principal Act shall be omitted.

A.P.J. ABDUL KALAM. President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

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Omission of

section 18.

jurisdiction.

Bar of

Amendment

Omission of Schedule. रजिस्ट्री संं डी॰ एल॰---(एन)04/0007/2006---08



HR Gazette of India

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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 11th September, 2006/20 Bhadra, 1928 (Saka)

# THE NATIONAL COUNCIL FOR TEACHER EDUCATION (AMENDMENT AND VALIDATION) ORDINANCE, 2006

### No 2 OF 2006

# Promulgated by the President in the Fifty-seventh Year of the Republic of India .

An Ordinance to amend the National Council for Teacher Education Act, 1993, to provide for validation of qualifications in teacher education obtained from certain institutions and to prescribe penalty for running unrecognised institutions, and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

Short title and commencement.

1. (1) This Ordinance may be called the National Council for Teacher Education (Amendment and Validation) Ordinance, 2006.

(2) It shall come into force at once.

Insertion of new section 17A.

In the National Council for Teacher Education 2. Act, 1993 (hereinafter referred to as the principal 73 of 1993. Act), after section 17, the following section shall be inserted, namely:-

No admission without recognition.

"17A. No institution shall admit any student to a course or training in teacher education, unless the institution, concerned has obtained recognition under section 14 or permission under section 15, as the case may be.".

Insertion of new Chapter IVA.

In the principal Act, after section 18, the 3. following Chapter shall be inserted, namely:-

### **CHAPTER IVA**

# TEMPORARY PROVISIONS FOR **RECOGNITION OF CERTAIN INSTITUTIONS**

Definition.

In this Chapter, "specified date" 18A. means the date of commencement of the National Council for Teacher Education (Amendment and Validation) Ordinance, 2006.

Recognition of certain institutions.

18B. (1) Where an institution, offering a course or training in teacher education before the specified date, failed to make an application under sub-section (1) of section 14, but an examining body granted affiliation to, and held examination for a course or training in teacher education conducted by, such institution, or such examination was due, before

the specified date, the provisions of this Chapter shall apply in respect of such institution.

(2) An institution falling under subsection (1) may make an application to the Regional Committee concerned in such form and within such period and along with such fee, as may be prescribed.

- (3) An application under sub-section (2) shall be dealt with in such manner as may be prescribed.
- (4) An order granting recognition to an institution on its application under sub-section (2) shall be deemed to be effective from the date of grant of affiliation to it or holding of examination for a course or training conducted by it for the first time, whichever is earlier.
- 18C. (1) Where an institution, offering a course or training in teacher education before of the specified date, was refused recognition under clause (b) of subsection (3) of section 14 and it failed to prefer an appeal under sub-section (1) of section 18, but an examining body granted affiliation to, and held examination for a course or training conducted by, such institution, or such examination was due, before the specified date, such institution may prefer an appeal to the Council within a period of sixty days from the specified date.
  - An appeal under sub-section (1) shall be accompanied with such fee as is prescribed for an appeal under subsection (3) of section 18.

(2)

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(3) An appeal under sub-section (1) shall be in the same form and dealt with in the same manner as an appeal preferred under sub-section (1) of section 18. 3

Appeals

certain

institutions.

(4) Where the Council reverses the order appealed against under sub-section (1), an order granting recognition to an institution shall be deemed to be effective from the date of grant of affiliation to it or holding of examination for a course or training conducted by it for the first time, whichever is earlier.

18D. Notwithstanding anything contained in section 16, where an institution offering a course or training in teacher education before the specified date, obtains recognition by virtue of sub-section (4) of section 18B or sub-section (4) of section 18C, the affiliation granted by an examining body to, and the examination held for a course or training conducted by, such institution, shall be deemed to have been validly granted and held, as the case may be.

18E. Notwithstanding anything contained in sub-section (4) of section 17, where an institution offering a course or training in teacher education before the specified date, obtains recognition by virtue of sub-section (4) of section 18B or sub-section (4) of section 18C, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall be deemed to have been validly obtained.

Validation.

18F. Anything done or any action taken or any effect given in terms of sections 18B, 18C, 18D and 18E shall be valid, notwithstanding any judgment, decree or order of any court, tribunal or other authority to the contrary:

Provided that where any unrecognised institution offering a course or training in teacher education before the specified date was directed by any court, tribunal or other authority to return the fees and pay compensation to students admitted by such institution, such institution shall comply with such direction:

Validity of affiliations and examinations in respect of certain institutions.

Validity of qualifications obtained from certain institutions.

4

[PART II-

Provided further that in respect of students whose qualifications are deemed to have been validly obtained under section 18E, the amount of fees and compensation shall be credited to the Fund of the Council.

18G. This Chapter shall remain in force for a Duration and period of six months from the specified date, savings but its expiry under the operation of this section shall not affect –

- (a) the previous operation of, or anything duly done or suffered under this Chapter, or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under this Chapter, or
- (c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if this Chapter had not expired.'.

4. In the principal Act, after section 30, the following section shall be inserted, namely:-

Insertion of new section 30A.

"30A. An institution which contravenes section 17A shall be liable to pay to the Council a penalty of an amount equal to double the amount received from each student against his admission in such institution:

Penalty for contravention of section 17A.

Provided that before imposing any penalty, the Council shall give to the institution concerned a reasonable opportunity of being heard."

5. In the principal Act, in section 31, in sub-section (2), after clause (g), the following clauses shall be inserted, namely:-

### Amendment of section 31.

"(ga) the form in which and the period within

which an application under sub-section (2) of section 18B is to be made, and the fee payable on such application;

(gb) the manner of dealing with an application under sub-section (3) of section 18B;".

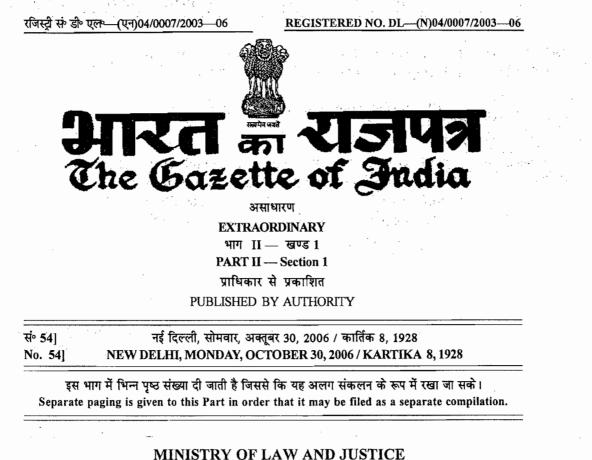
### A.P.J. ABDUL KALAM, President.

# K.N. CHATURVEDI, Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2006.

MGIPMRND-2738GI(CRC)-11-09-2006.

Repealed by Act, 57 \$ 2006, 5.3 ( 10. lt 30-10-2006)



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# (Legislative Department)

New Delhi, the 30th October, 2006/Kartika 8, 1928 (Saka)

# THE INDIAN TELEGRAPH (AMENDMENT) ORDINANCE, 2006

No. 3 2006

Promulgated by the President in the Fifty-seventh Year of the Republic of India.

An Ordinance further to amend the Indian Telegraph Act, 1885.

WHEREAS the Indian Telegraph (Amendment) Bill, 2006 to amend section 3 of the Indian Telegraph Act, 1885, for providing support to the cellular mobile service in rural areas, besides the basic telegraph services, was introduced in the House of the People, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

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Short title and commencement.

1. (1) This Ordinance may be called the Indian Telegraph (Amendment) Ordinance, 2006.

(2) It shall come into force at once.

section 3.

Amendment of 2, In section 3 of the Indian Telegraph Act, 13 of 1885. 1885, in clause (1A), for the words "obligation to provide access to basic telegraph services", the words "obligation to provide access to telegraph services" shall be substituted.

## A.P.J. ABDUL KALAM, President.

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### K.N. CHATURVEDI. Secy. to the Govt. of India.

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PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2006. a salah s

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MGIPMRND---3037GI(CRC)---30-10-2006.

Repealed in Ach, 17 \$207, 5. 4 (co. lt 23-1-2007)

रजिस्ट्री संं डी॰ एल॰---(एन)04/0007/2006---08

REGISTERED NO. DL-(N)04/0007/2006-08

# X æ The Gazette of India असाधारण

EXTRAORDINARY भाग II -- खण्ड 1 PART II --- Section 1 प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं॰ 11]	नई दिल्ली, मंगलवार, जनवरी 23, 2007 / माघ 3, 1928
No. 11]	NEW DELHI, TUESDAY, JANUARY 23, 2007 / MAGHA 3, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23rd January, 2007/3 Magha, 1928 (Saka)

### THE BANKING REGULATION (AMENDMENT) ORDINANCE, 2007

### No. 1 of 2007

Promulgated by the President in the Fifty-seventh Year of the Republic of India.

An Ordinance further to amend the Banking Regulation Act, 1949.

WHEREAS the Banking Regulation (Amendment) Bill, 2005 to further amend the Banking Regulation Act, 1949 was introduced in the House of the People, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to some of the provisions of the said Bill and to make amendment to the Banking Regulation Act, 1949;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:----

1. (1) This Ordinance may be called the Banking Regulation (Amendment) Ordinance, Short title and 2007.

commencement.

(2) It shall come into force at once.

Amendment of section 24.

section 53.

2. In section 24 of the Banking Regulation Act, 1949 (hereinafter referred to as the 10 of 1949. principal Act),—

(a) sub-sections (1) and (2) shall be omitted;

(b) for sub-section (2A), the following sub-section shall be substituted, namely:---

"(2A) A scheduled bank, in addition to the average daily balance which it is, or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934 and every other banking company, in addition to the cash reserve which 2 of 1934. it is required to maintain under section 18, shall maintain in India, assets, the value of which shall not be less than such percentage not exceeding forty per cent of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight as the Reserve Bank may, by notification in the Official Gazette, specify from time to time and such assets shall be maintained, in such form and manner, as may be specified in such notification.";

(c) sub-section (2B) shall be omitted.

Amendment of **3.** In section 53 of the principal Act,—

(i) in sub-section (1), the words and figures "or any of their branches functioning or located in any Special Economic Zone established under the Special Economic Zones Act, 2005" shall be omitted; 28 of 2005.

(*ii*) in sub-section (2), in the opening portion, for the words, brackets and figure "A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament", the following words, brackets and figures shall be substituted, namely:—

"A copy of every notification proposed to be issued under sub-section (1) relating to any banking company or institution or any class of banking companies or any branch of a banking company or an institution, as the case may be, functioning or located in any Special Economic Zone established under the Special Economic Zones Act, 2005 shall be laid in draft before each House of Parliament".

28 of 2005.

A.P.J. ABDUL KALAM, President.

K.N. CHATURVEDI, Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2007.

MGIPMRND-126GI(S5)-23.01.2007

Repealed by Att 19 y 20075.5 (w. 8+ 29-1-2007)

रजिस्ट्री संं डी॰ एल॰---(एन)04/0007/2006---08

REGISTERED NO. DL--(N)04/0007/2006-08



असाधारण **EXTRAORDINARY** भाग II — खण्ड 1 PART II --- Section 1 प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं॰ 12] नई दिल्ली, सोमवार, जनवरी 29, 2007 / माघ 3, 1928 No. 12] NEW DELHI, MONDAY, JANUARY 29, 2007 / MAGHA 3, 1928

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### MINISTRY OF LAW AND JUSTICE

### (Legislative Department)

New Delhi, the 29th January, 2007/9 Magha, 1928 (Saka)

# THE NATIONAL INSTITUTE OF PHARMACEUTICAL EDUCATION AND RESEARCH (AMENDMENT) ORDINANCE, 2007

### No. 2 of 2007

Promulgated by the President in the Fifty-eighth Year of the Republic of India.

An Ordinance further to amend the National Institute of Pharmaceutical Education and Research Act, 1998.

WHEREAS Parliament is not is session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:---

1. (1) This Ordinance may be called the National Institute of Pharmaceutical Education Short title and and Research (Amendment) Ordinance, 2007.

commencement.

(2) It shall come into force at once.

## THE GAZETTE OF INDIA EXTRAORDINARY

[PART II-SEC. 1]

Amendment of section 3.

section 4.

2. In the National Institute of Pharmaceutical Education and Research Act, 1998 13 of 1998 (hereinafter referred to as the principal Act), in section 3, for clause (g), the following clause shall be substituted, namely:----

'(g) "Institute" means a National Institute of Pharmaceutical Education and Research established under sub-section (1) or sub-section (2A) of section 4; 3. In the principal Act, in section 4.

Amendment of

(i) after sub-section (2), the following sub-section shall be inserted, namely:-"(2A) The Central Government may, by notification in the Official Gazette, establish similar Institutes in different parts of the country.";

(*ii*) in sub-section (3),—

(A) for clause (d), the following clause shall be substituted, namely:----

"(d) the Secretary, Technical Education, Government of the State within which the Institute is situated, ex officio;";

(B) after clause (i), the following clause shall be inserted, namely:----

"(ja) a representative of the Pharmacy Council of India;".

4. In the principal Act, after section 4, the following section shall be inserted, namely:-

Centres of Institute.

yan di Parjah

Starter and a

Insertion of new section 4A.

> "4A. An Institute, with the prior approval of the Central Government, may, by notification in the Official Gazette, establish one or more centres in different locations within its jurisdiction.".

#### A.P.J. ABDUL KALAM, President.

## K.N. CHATURVEDI, Secy, to the Govt. of India

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MGIPMRND-152GI(S5)-29.01.2007

Repealed by AC, 18 920075-5 (co. Ct. 29-1-2007)

(एन)04/0007/2006-08 REGISTERED NO. DL-(N)04/0007/2006-08 रजिस्टी सेन् डी॰ एल॰



असाधारण EXTRAORDINARY भाग II --- खण्ड 1 PART II - Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 13] No. 13]

नई दिल्ली, सोमवार, जनवरी 29, 2007 / माघ 9, 1928 NEW DELHI, MONDAY, JANUARY 29, 2007 / MAGHA 9, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE

#### (Legislative Department)

New Delhi, the 29th January, 2007/9 Magha, 1928 (Saka)

# THE NATIONAL TAX TRIBUNAL (AMENDMENT) ORDINANCE, 2007 No. 3 of 2007

Promulgated by the President in the Fifty-eighth Year of the Republic of India.

An Ordinance to amend the National Tax Tribunal Act, 2005.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:----

1. (1) This Ordinance may be called the National Tax Tribunal (Amendment) Ordinance, Short title and 2007.

commencement

(2) It shall come into force at once.

[PART II—SEC. 1]

Amendment of 2. In section 5 of the National Tax Tribunal Act, 2005 (hereinafter referred to as the 49 of 2005) principal Act), in sub-section (5),—

(i) the words "in consultation with the Chairperson" shall be omitted;

(ii) the following proviso shall be inserted, namely:

"Provided that no Member shall be transferred without the concurrence of the Chairperson.".

Amendment of 3. In Section 6 of the principal Act, in sub-section (2), in clause (b), for the words "seven years", the words "five years" shall be substituted.

Amendment of **4.** In section 13 of the principal Act, in sub-section (1), the words "or any person duly authorised by him or it" shall be omitted.

A.P.J. ABDULKALAM, President.

#### K.N. CHATURVEDI, Secy. to the Govt. of India.

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MGIPMRND---153GI(85)---29.01.2007.

Repealed by ACK, 11 g 2007, 5.10 (10, C+. 11-11-2005)

रजिस्ट्री संग् डी॰ एल॰----(एन)04/0007/2006----08

REGISTERED NO. DL--(N)04/0007/2006-08



असाधारण EXTRAORDINARY भाग II — खण्ड1 PART II ---- Section 1 प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं॰ 14] नई दिल्ली, शुक्रवार, फरवरी 2, 2007 / माघ 13, 1928 No. 14] NEW DELHI, FRIDAY, FEBRUARY 2, 2007 / MAGHA 13, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE

## (Legislative Department)

New Delhi, the 2nd February, 2007/13 Magha, 1928 (Saka)

# THE SPORTS BROADCASTING SIGNALS (MANDATORY SHARING WITH PRASAR BHARATI) ORDINANCE, 2007

#### No. 4 of 2007

Promulgated by the President in the Fifty-eighth Year of the Republic of India.

An Ordinance to provide access to the largest number of listeners and viewers, on a free to air basis, of sporting events of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:---

## CHAPTER I

#### PRELIMINARY

1. (1) This Ordinance may be called the Sports Broadcasting Signals (Mandatory Short title, Sharing with Prasar Bharati) Ordinance, 2007.

extent and commencement. (2) It extends to the whole of India.

(3) Save as otherwise provided, it shall be deemed to have come into force on the 11th day of November, 2005.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,-

(a) "broadcaster" means any person who provides a content broadcasting service and includes a broadcasting network service provider when he manages and operates his own television or radio channel service;

(b) "broadcasting" means assembling and programming any form of communication content, like signs, signals, writing, pictures, images and sounds, and either placing it in the electronic form on electro-magnetic waves on specified frequencies and transmitting it through space or cables to make it continuously available on the carrier waves, or continuously streaming it in digital data form on the computer networks, so as to be accessible to single or multiple users through receiving devices either directly or indirectly; and all its grammatical variations and cognate expressions;

(c) "broadcasting service" means assembling, programming and placing communication content in electronic form on the electro-magnetic waves on specified frequencies and transmitting it continuously through broadcasting network or networks so as to enable all or any of the multiple users to access it by connecting their receiver devices to their respective broadcasting networks and includes the content broadcasting services and the broadcasting network services;

(d) "broadcasting network service" means a service, which provides a network of infrastructure of cables or transmitting devices for carrying broadcasting content in electronic form on specified frequencies by means of guided or unguided electro-magnetic waves to multiple users, and includes the management and operation of any of the following:

(i) Teleport/Hub/Earth Station,

(ii) Direct-to-Home (DTH) Broadcasting Network,

(iii) Multi-system Cable Television Network,

(iv) Local Cable Television Network,

(v) Satellite Radio Broadcasting Network,

(vi) any other network service as may be prescribed by the Central Government;

(e) "cable television channel service" means the assembly, programming and transmission by cables of any broadcasting television content on a given set of frequencies to multiple subscribers;

(f) "cable television network" means any system consisting of closed transmission paths and associated signal generation, control and distribution equipment, designed to receive and re-transmit television channels or programmes for reception by multiple subscribers;

(g) "community radio service" means terrestrial radio broadcasting intended and restricted only to a specific community and within specified territory;

(h) "content" means any sound, text, data, picture (still or moving), other audiovisual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically; (*i*) "content broadcasting service" means the assembling, programming and placing content in electronic form and transmitting or retransmitting the same on electromagnetic waves on specified frequencies, on a broadcasting network so as to make it available for access by multiple users by connecting their receiving devices to the network, and includes the management and operation of any of the following:

(i) terrestrial television service,

(ii) terrestrial radio service,

*(iii)* satellite television service,

(iv) satellite radio service,

(v) cable television channel service,

(vi) community radio service,

(vii) any other content broadcasting services as may be prescribed by the Central Government;

(j) "Direct-to-Home (DTH) broadcasting service" means a service for multichannel distribution of programmes direct to a subscriber's premises without passing through an intermediary such as a cable operator by uplinking to a satellite system;

(k) "Guidelines" means the Guidelines issued under section 5;

(1) "multi-system cable television network" means a system for multi-channel downlinking and distribution of television programmes by a land-based transmission system using wired cable or wireless cable or a combination of both for simultaneous reception either by multiple subscribers directly or through one or more local cable operators;

(m) "Prasar Bharati" means the Corporation known as the Prasar Bharati (Broadcasting Corporation of India) established under sub-section (1) of section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990;

(n) "prescribed" means prescribed by rules made under this Ordinacne;

(*o*) "satellite television service" means a television broadcasting service provided by using a satellite, and received with or without the help of a local delivery system but does not include Direct-to-Home delivery service;

(p) "satellite radio service" means a radio broadcasting service provided by using a satellite and directly receivable through receiver sets by multiple subscribers in India;

(q) "service provider" means provider of a broadcasting service;

(r) "specified" means specified under the Guidelines issued under section 5;

(s) "sporting events of national importance" means such national or international sporting events, held in India or abroad, as may be notified by the Central Government in the Official Gazette to be of national importance;

(*t*) "terrestrial television service" means a television broadcasting service provided over the air by using a land-based transmitter and directly received through receiver sets by the public;

(u) "terrestrial radio service" means a radio broadcasting service provided over the air by using a land-based transmitter and directly received through receiver sets by the public.

25 of 1990.

(2) Words and expressions used and not defined in this Ordinance and defined in the Cable Television Networks (Regulation) Act, 1995, the Telecom Regulatory Authority of India 07 of 1995. Act, 1997, the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933 shall have 24 of 1997. the meanings respectively assigned to them in those Acts.

#### CHAPTER II

#### MANDATORY SHARING OF SPORTS BROADCASTING SIGNALS WITH PRASAR BHARATI

Mandatory sharing of certain sports broadcasting signals. 3. (1) No content rights owner or holder and no television or radio broadcasting service provider shall carry a live television broadcast on any cable or Direct-to-Home network or radio commentary broadcast in India of sporting events of national importance, unless it simultaneously shares the live broadcasting signal, without its advertisements, with the Prasar Bharati to enable them to re-transmit the same on its terrestrial networks and Direct-to-Home networks in such manner and on such terms and conditions as may be specified.

(2) The terms and conditions under sub-section (1) shall also provide that the advertisement revenue sharing between the content rights owner or holder and the Prasar Bharati shall be in the ratio of not less than 75:25 in case of television coverage and 50:50 in case of radio coverage.

(3) The Central Government may specify a percentage of the revenue received by the Prasar Bharati under sub-section (2), which shall be utilised by the Prasar Bharati for broadcasting other sporting events.

4. The Central Government may specify penalties to be imposed, including suspension or revocation of licence, permission or registration, for violation of various terms and conditions as may be specified under section 3, subject to the condition that amount of a pecuniary penalty shall not exceed one crore rupees:

Provided that no penalty shall be imposed without giving a reasonable opportunity to the service provider:

Provided further that no act or omission on the part of any person after the 11th November, 2005 and before the date of promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 shall be subjected to penalties.

#### CHAPTER III

#### POWERS OF THE CENTRAL GOVERNMENT TO ISSUE GUIDELINES

5. The Central Government shall take all such measures, as it deems fit or expedient, by way of issuing Guidelines for mandatory sharing of broadcasting signals with Prasar Bharati relating to sporting events of national importance:

Provided that the Guidelines issued before the promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 shall be deemed to have been issued validly under the provisions of this section.

#### CHAPTER IV

#### MISCELLANEOUS

Validation.

6. (1) The provisions of the Guidelines issued by the Central Government for Downlinking of Television Channels on the 11th November, 2005 and for Uplinking from India on the 2nd December, 2005 for mandatory sharing of the sports broadcasting signals shall be deemed to be valid as if they have been issued under this Ordinance.

Penalties.

Power of the Central Government to issue Guidelines. (2) Notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority, any action taken by the Central Government or the Prasar Bharati in pursuance of the guidelines referred to in sub-section (1) shall be deemed to be and to have always been for all purposes in accordance with the law, as if the Guidelines had been validly in force at all material times and notwithstanding anything as aforesaid and without prejudice to the generality of the foregoing provisions, no legal proceeding shall be maintained or continued in any court for the enforcement of any direction given by any court or any decree or order which would not have been so given had the Guidelines been validly in force at all material times.

7. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

8. Every rule and Guidelines made and issued, as the case may be, under this Ordinance shall be laid, as soon as may be after it is made or issued, 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 exipiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or Guidelines, or both Houses agree that the rule or Guidelines should not be made, the rule or Guidelines 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 or Guidelines.

9. The relevant provisions under the Guidelines for Downlinking of Television Channels issued on the 11th November, 2005 and the Guidelines for Uplinking from India issued on the 2nd December, 2005 for mandatory sharing of sports broadcasting signals with Prasar Bharati, shall continue to remain in force till fresh Guidelines are issued under this Ordinance.

Power of the Central Government to make rules.

Rules and Guidelines to be laid before Parliament.

Saving.

A. P. J. ABDUL KALAM, President.

#### K. N. CHATURVEDI, Secy. to the Govt. of India.

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MGIPMRND-172GI(S5)-03.02.2007.

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Repealed by Act, 32 of 2007 5. 10 (w. et. 29-6-2007)

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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 21st June, 2007/31 Jyaistha, 1929(Saka)

# THE STATE BANK OF INDIA (AMENDMENT) ORDINANCE, 2007 No. 5 OF 2007 Promulgated by the President in the Fifty-eighth Year of the Republic of India.

An Ordinance further to amend the State Bank of India Act, 1955.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:---

1. (1) This Ordinance may be called the State Bank of India (Amendment) Ordinance, 2007.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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Amendment of ection 3.	2. In the State Bank of India Act, 1955 (hereinafter referred to as the principal Act), 2: in section 3, in sub-section (2), for the words "Reserve Bank", the words "Central Government" shall be substituted.	3 of 1955
Amendment of ection 5.	3. In section 5 of the principal Act, in sub-section (2), for the words "Reserve Bank", the words "Central Government" shall be substituted.	
Amendment of ection 10.	4. In section 10 of the principal Act, in sub-section (2), for the words "Reserve Bank", the words "Central Government" shall be substituted.	
Amen Iment of ection 11.	5. In section 11 of the principal Act, for the words "Reserve Bank", the words "Central Government" shall be substituted.	
Amendment of ection 18.	6. In section 18 of the principal Act, in sub-section (2), for the words "All directions given by the Central Government shall be given through the Reserve Bank", the words "All directions shall be given by the Central Government" shall be substituted.	
Amendment of ection 19.	7. In section 19 of the principal Act, in clause (c), for the words "Reserve Bank", the words "Central Government" shall be substituted.	
Amendment of acction 24.	8. In section 24 of the principal Act, in sub-section (4), for the words "Reserve Bank", the words "Central Government" shall be substituted.	
Amendment of section 36.	9. In section 36 of the principal Act, —	
	(1) in sub-section (1), $-$	
1	(a) in clause (a), for the words "Reserve Bank", the words "Central Government" shall be substituted:	

(b) in clause (b),-

(i) the words "the Reserve Bank or" shall be omitted.

(ii) in the proviso,—

(A) for the words "Reserve Bank", occurring at both the places, the words "Central Government" shall be substituted;

(B) for the words "paid to that Bank", the words "paid to that Government" shall be substituted.

(2) in clause (a) and clause (aa) of sub-section (2) and in sub-section (3), for the words "Reserve Bank" wherever they occur, the words "Central Government" shall be substituted.

> A.P.J. ABDUL KALAM, President.

K.N. CHATURVEDI, Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2007. रजिस्ट्री सं॰ डी॰ एल॰---(एन)04/0007/2006----08



EXTRAORDINARY भाग II — खण्ड 1

PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

 सं॰ 37]
 नई दिल्ली, बुधवार, जुलाई 4, 2007 / आषाढ़ 13, 1929

 No. 37]
 NEW DELHI, WEDNESDAY, JULY 4, 2007/ ASADHA 13, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 4th July, 2007/Asadha 13, 1929 (Saka)

## THE NATIONAL CAPITAL TERRITORY OF DELHI LAWS (SPECIAL PROVISIONS) ORDINANCE, 2007

#### No. 6 OF 2007

# Promulgated by the President in the Fifty-eighth Year of the Republic of India.

An Ordinance to make special provisions for the National Capital Territory of Delhi for a further period of one year and for matters connected therewith or incidental thereto.

WHEREAS there had been phenomenal increase in the population of the National Capital Territory of Delhi owing to migration and other factors resulting in tremendous pressure on land and infrastructure leading to encroachment or unauthorised developments which are not in consonance with the concept of planned development as provided in the Master Plan of Delhi-2001 and the relevant Acts and building bye-laws made thereunder;

AND WHEREAS Master Plan of Delhi-2001 has been extensively modified and notified by the Central Government on 7th February, 2007 with the perspective for the year 2021 keeping in view the emerging new dimensions in urban development vis-a-vis the social, financial and other ground realities;

Master Plan of Delhi with the AND WHEREAS perspective for the year 2021 specifically provides for strategies for housing for urban poor as well as to deal with the informal sector:

AND WHEREAS a revised policy for relocation and rehabilitation of slum dwellers in the National Capital Territory of Delhi is also under consideration of the Central Government;

AND WHEREAS a strategy and a scheme has been prepared by the local authorities in the National Capital Territory of Delhi for regulation of urban street vendors in accordance with the national policy for Urban Street Vendors/Master Plan for Delhi-2021;

AND WHEREAS some time is required for making orderly arrangements in accordance with the revised policy for relocation and rehabilitation of slum dwellers of Delhi as well as for putting in place the scheme for regulation of urban street vendors in terms of the Master Plan of Delhi- 2021 and also the national policy in this regard;

AND WHEREAS the Central Government is yet to take a considered view on the Policy regarding existing farm houses involving construction beyond permissible building limits and regarding schools, dispensaries, religious institutions and cultural institutions in rural areas built on agricultural land, inter alia, in the light of recommendations of the Expert Committees constituted by the Central Government in the year 2006;

AND WHEREAS the Delhi Laws (Special Provisions) Act, 2006 was enacted on 19th May, 2006 to make special provisions for the areas of Delhi for a period of one year which lapsed on 18<sup>th</sup> May, 2007;

AND WHEREAS it is expedient to have a law in terms of the Master Plan of Delhi-2021, in continuation of the said Act for a further period of one year to provide temporary relief and to minimize avoidable hardship and irreparable loss to the people of the National Capital Territory of

Delhi against any action by the concerned agency in respect of persons covered by the policies referred to above which are expected to be finalised within the period so extended;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the plan, scheme and policies aforesaid;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the National Capital Territory of Delhi Laws (Special Provisions) Ordinance, 2007.

Short title, extent, commencement and duration.

Definitions.

(2) It extends to the National Capital Territory of Delhi.

(3) It shall be deemed to have come into force on the  $19^{th}$  day of May, 2007.

(4) It shall cease to have effect on the expiry of one year from the date of its commencement, except as respects things done or omitted to be done before such cesser, and upon such cesser section 6 of the General Clauses Act, 1897, shall apply as if this Ordinance had then been repealed by a Central Act.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "building bye-laws" means bye-laws made under section 481 of the Delhi Municipal Corporation Act, 1957 or the bye-laws made under section 188, sub-section (3) of section 189 and sub-section (1) of section 190 of the Punjab Municipal Act, 1911, as in force in New Delhi or the regulations made under sub-section (1) of section 57 of the Delhi Development Act, 1957, relating to buildings;

(b) "Delhi" means the entire area of the National Capital Territory of Delhi except the Delhi Cantonment as defined in clause (11) of section 2 of the Delhi Municipal Corporation Act, 1957;

(c) "encroachment" means unauthorised occupation of Government land or public land by way of putting temporary, semi-permanent or permanent

10 of 1897.

66 of 1957.

Punjab Act 3 of 1911.

61 of 1957.

66 of 1957.

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structure for residential use or commercial use or any other use;

(d) "local authority" means the Delhi Municipal Corporation established under the Delhi Municipal Corporation Act, 1957 or the New Delhi Municipal Council established under the New Delhi Municipal Council Act, 1994 or the Delhi Development Authority established under the Delhi Development Act, 1957, legally entitled to exercise control in respect of the areas under their respective jurisdiction;

(e) "Master Plan" means the Master Plan for Delhi with the perspective for the year 2021 notified vide notification number S.O. 141(E) on 7<sup>th</sup> February, 2007 under the Delhi Development Act, 1957;

(f) "notification" means a notification published in the Official Gazette;

(g) "punitive action" means action taken by a local authority under the relevant law against unauthorised development and shall include demolition, sealing of premises and displacement of persons or their business establishment from their existing location, whether in pursuance of court orders or otherwise;

(h) "relevant law" means in case of—

(*i*) the Delhi Development Authority, the Delhi Development Act, 1957;

(*ii*) the Municipal Corporation of Delhi, the Delhi Municipal Corporation Act, 1957; and

(*iii*) the New Delhi Municipal Council, the New Delhi Municipal Council Act, 1994;

(i) "unauthorised development" means use of land or use of building or construction of building carried out in contravention of the sanctioned plans or without obtaining the sanction of plans, or in contravention of the land use as permitted under the Master Plan or Zonal Plan or layout plan, as the case may be, and includes any encroachment.

(2) The words and expressions used but not defined herein shall have the meanings respectively assigned to them in the Delhi Development Act, 1957, the Delhi Municipal Corporation Act, 1957 and the New Delhi Municipal Council Act, 1994. 66 of 1957.

PART II-

44 of 1994. 61of 1957.

61 of 1957.

61 of 1957.

66 of 1957.

44 of 1994.

61 of 1957.

66 of 1957.

44 of 1994.

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3. (1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall within a period of one year of the coming into effect of this Ordinance, take all possible measures to finalise norms, policy guidelines and feasible strategies to deal with the problem of encroachment or unauthorised development in the form of encroachment by slum dwellers and *Jhuggi-Jhompri* clusters, hawkers and urban street vendors, existing farm houses involving construction beyond permissible building limits, and schools, dispensaries, religious institutions, cultural institutions in rural areas built on agricultural land, as mentioned below:

(a) policy for relocation and rehabilitation of slum dwellers and *Jhuggi-Jhompri* clusters in accordance with provisions of Master Plan of Delhi-2021 to ensure development of Delhi in a sustainable, planned and humane manner;

(b) strategy for regulation of urban street vendors in consonance with the national policy for urban street vendors and hawkers as provided in Master Plan of Delhi-2021;

(c) policy regarding existing farm houses involving construction beyond permissible building limits; and

(d) policy regarding schools, dispensaries, religious institutions, cultural institutions in rural areas built on agricultural land.

(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, *status quo* as on the 1<sup>st</sup> day of January, 2006 shall be maintained in respect of encroachment or unauthorised development mentioned in sub-section (1).

(3) All notices issued by any local authority for initiating action against encroachment or unauthorised development referred to in sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken during the said period of one year.

(4) Notwithstanding any other provision contained in this Ordinance, the Central Government may, at any time before the expiry of one year, withdraw the exemption by notification, in respect of encroachment or unauthorised

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SEC. 1]

Enforcement to be kept in

abeyance.

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development mentioned in sub-section (2) or sub-section (3), as the case may be.

4. During the period of operation of this Ordinance, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely:—

(a) encroachment on public land except in those cases which are covered under clauses (a) and (b) of sub-section (1) of section 3;

(b) removal of slums and *Jhuggi-Jhompri* dwellers and hawkers and urban street vendors, in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.

Power of Central Government to give directions.

Repeal and

savings.

5. The Central Government may, from time to time, issue such directions to the local authorities as it may deem fit, for giving effect to the provisions of this Ordinance and it shall be the duty of the local authorities, to comply with such directions.

6. (1) The Delhi Laws (Special Provisions) Act, 2006 is hereby repealed.

(2) Notwithstanding such repeal, any thing done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

A.P.J. ABDUL KALAM, President.

K.N. CHATURVEDI, Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI-2007.

MGIPMRND-2670GI-4-07-2007.

## Provisions of this Ordinance not to apply in certain cases.

ection

22 of 2006.

Repealed by Act, 439207,5.6 (w. lt- 19-5-2007)

X.

जिस्ट्री संं डी॰ एल॰---(एन)04/0007/2006----08

REGISTERED NO. DL-(N)04/0007/2006-08



असाधारण

The Gazette of India

EXTRAORDINARY भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं॰ 42] नई दिल्ली, शनिवार, सितम्बर 15, 2007 / भाद्र 24, 1929 No. 42] NEW DELHI, SATURDAY, SEPTEMBER 15, 2007 / BHADRA 24, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 15th September, 2007/24 Bhadra, 1929 (Saka)

# THE NATIONAL CAPITAL TERRITORY OF DELHI LAWS (SPECIAL PROVISIONS) SECOND ORDINANCE, 2007

No. 7 OF 2007

Promulgated by the President in the Fifty-eighth Year of the Republic of India.

An Ordinance to make special provisions for the National Capital Territory of Delhi for a further period up to 31<sup>st</sup> December, 2008 and for matters connected therewith or incidental thereto.

WHEREAS there had been phenomenal increase in the population of the National Capital Territory of Delhi owing to migration and other factors resulting in tremendous pressure on land and infrastructure leading to encroachment or unauthorised developments which are not in consonance with the concept of planned development as provided in the Master Plan of Delhi 2001 and the relevant Acts and building bye-laws made thereunder;

#### THE GAZETTE OF INDIA EXTRAORDINARY

PART II-

AND WHEREAS the Master Plan of Delhi 2001 has been extensively modified and notified by the Central Government on 7<sup>th</sup> February, 2007 with the perspective for the year 2021 keeping in view the emerging new dimensions in urban development *vis-a-vis* the social, financial and other ground realities;

AND WHEREAS the Master Plan of Delhi with the perspective for the year 2021 specifically provides for strategies for housing for urban poor as well as to deal with the informal sector;

AND WHEREAS a revised policy for relocation and rehabilitation of slum dwellers in the National Capital Territory of Delhi is also under consideration of the Central Government;

AND WHEREAS a strategy and a scheme has been prepared by the local authorities in the National Capital Territory of Delhi for regulation of urban street vendors in accordance with the National Policy for Urban Street Vendors and the Master Plan for Delhi 2021;

AND WHEREAS some time is required for making orderly arrangements in accordance with the revised policy for relocation and rehabilitation of slum dwellers of Delhi as well as for putting in place the scheme for regulation of urban street vendors in terms of the Master Plan of Delhi 2021 and also the national policy in this regard;

AND WHEREAS the Central Government has considered and finalised a policy regarding regularisation of unauthorised colonies, village *abadi* area and its extension, as existed on the 31<sup>st</sup> day of March, 2002 for which the guidelines are being framed;

AND WHEREAS the Central Government require time to take a considered view on the policy regarding existing farm houses involving construction beyond permissible building limits and regarding schools, dispensaries, religious institutions and cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land, *inter alia*, in the light of recommendations of the Expert Committees constituted by the Central Government in the year 2006;

AND WHEREAS the National Capital Territory of Delhi Laws (Special Provisions) Ordinance, 2007 for making special provisions for the areas of the National Capital Territory of Delhi for a further period of one year promulgated on 4<sup>th</sup> July, 2007 will cease to operate from the 21<sup>st</sup> day of September, 2007;

AND WHEREAS the National Capital Territory of Delhi Laws (Special Provisions) Bill, 2007 introduced in Parliament to replace the National Capital Territory of Delhi Laws (Special Provisions) Ordinance, 2007 could not be taken up for consideration and passing since Parliament adjourned sine die;

AND WHEREAS it is expedient to have a law in terms of the Master Plan of Delhi, 2021, in continuation of the said Ordinance for a period up to 31st December, 2008 to provide temporary relief and to minimise avoidable hardships and irreparable loss to the people of the National Capital Territory of Delhi against any action by the concerned agency in respect of persons covered by the policies referred to above which are expected to be finalised within the period so extended:

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the plan, scheme and policies aforesaid;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

Short title. extent. commencement and duration.

SEC. 1]

**1.** (1) This Ordinance may be called the National Capital Territory of Delhi Laws (Special Provisions) Second Ordinance, 2007.

(2) It extends to the National Capital Territory of Delhi.

(3) It shall be deemed to have come into force on the 19<sup>th</sup> day of May, 2007.

(4) It shall cease to have effect on the 31<sup>st</sup> day of December. 2008 except as respects things done or omitted to be done before such cesser, and upon such cesser section 6 of the General Clauses Act, 1897, shall apply as if this Ordinance had 10 of 1897. then been repealed by a Central Act.

(1) In this Ordinance, unless the context otherwise requires,-

Definitions.

(a) "building bye-laws" means bye-laws made under section 481 of the Delhi Municipal Corporation Act, 1957 or the bye-laws made under section 188, sub-section (3) of section 189 and subsection (1) of section 190 of the Punjab Municipal Act, 1911, as in force in New Delhi or the regulations made under sub-section (1) of section 57 of the Delhi Development Act, 1957, relating to buildings;

66 of 1957.

Punjab Act 3 of 1911.

61 of 1957.

(b) "Delhi" means the entire area of the National Capital Territory of Delhi except the Delhi Cantonment as defined in clause (11) of section 2 of the Delhi Municipal Corporation Act, 1957;

(c) "encroachment" means unauthorised occupation of Government land or public land by way of putting temporary, semi-permanent or permanent structure for residential use or commercial use or any other use;

"local authority" means the Delhi Municipal Corporation (d)established under the Delhi Municipal Corporation Act, 1957, or the New Delhi Municipal Council established under the New Delhi Municipal Council Act, 1994 or the Delhi Development Authority established under the Delhi Development Act, 1957, legally entitled to exercise control in respect of the areas under their respective jurisdiction;

(e) "Master Plan" means the Master Plan for Delhi with the perspective for the year 2021 notified, vide the notification number S.O.141(E) dated 7th February, 2007 under the Delhi Development Act, 1957;

"notification" means a notification published in the Official (f) Gazette:

(g) "punitive action" means action taken by a local authority under the relevant law against unauthorised development and shall include demolition, sealing of premises and displacement of persons or their business establishment from their existing location, whether in pursuance of court orders or otherwise;

(h) "relevant law" means in case of-

- (i) the Delhi Development Authority, the Delhi Development Act, 1957;
- (ii) the Municipal Corporation of Delhi, the Delhi Municipal Corporation Act, 1957; and
- (iii) the New Delhi Municipal Council, the New Delhi Municipal Council Act, 1994;

44 of 1994.

61 of 1957.

66 of 1957.

(i) "unauthorised development" means use of land or use of building or construction of building or development of colonies, village abadi area and its extension, carried out in contravention of the sanctioned plans or without obtaining the sanction of plans, or in contravention of the land use as permitted under the Master Plan or Zonal Plan or layout plan, as the case may be, and includes any encroachment.

66 of 1957.

66 of 1957.

44 of 1994. 61 of 1957.

61 of 1957.

PART II-

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(2) The words and expressions used but not defined herein shall have the meanings respectively assigned to them in the Delhi Development Act, 1957, the Delhi Municipal Corporation Act, 1957 and the New Delhi Municipal Council Act, 1994.

61 of 1957. 66 of 1957. 44 of 1994.

Enforcement to be kept in abeyance. **3.**(1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall before the expiry of this Ordinance, take all possible measures to finalise norms, policy guidelines and feasible strategies to deal with the problem of encroachment or unauthorised development in the form of encroachment by slum dwellers and *Jhuggi-Jhompri* clusters, hawkers and urban street vendors, unauthorised colonies, village *abadi* area and its extension, existing farm houses involving construction beyond permissible building limits and schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land, as mentioned below:

(a) policy for relocation and rehabilitation of slum dwellers and *Jhuggi-Jhompri* clusters in accordance with provisions of the Master Plan of Delhi 2021 to ensure development of Delhi in a sustainable, planned and humane manner;

(b) strategy for regulation of urban street vendors in consonance with the national policy for urban street vendors and hawkers as provided in the Master Plan of Delhi 2021;

(c) scheme containing guidelines for regularisation of unauthorised colonies, village *abadi* area and its extension, as existed on the 31<sup>st</sup> day of March, 2002, and where construction took place even beyond that date and up to the 8<sup>th</sup> day of February, 2007;

(*d*) policy regarding existing farm houses involving construction beyond permissible building limits; and

(e) policy regarding schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land.

(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgement, decree or order of any court, status quo -

- (i) as on the 1<sup>st</sup> day of January, 2006 in respect of encroachment or unauthorised development; and
- (ii) in respect of unauthorised colonies, village abadi area and its extension, which existed on the 31<sup>st</sup> day of March, 2002 and where construction took place even beyond that date and up to the 8<sup>th</sup> day of February, 2007, mentioned in sub-section (1),

## shall be maintained.

(3) All notices issued by any local authority for initiating action against encroachment or unauthorised development referred to in sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken till the  $31^{st}$  day of December, 2008.

(4) Notwithstanding any other provision contained in this Ordinance, the Central Government may, at any time before the 31<sup>st</sup> day of December, 2008, withdraw the exemption by notification in respect of encroachment or unauthorised development mentioned in sub-section (2) or sub-section (3), as the case may be.

Provisions of this Ordinance not to apply in certain cases. **4.** During the period of operation of this Ordinance, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely:-

(a) encroachment on public land except in those cases which are covered under clauses (a), (b) and (c) of sub-section (1) of section 3;

(b) removal of slums and *Jhuggi-Jhompri* dwellers, hawkers and urban street vendors, unauthorised colonies or part thereof, village *abadi* area and its extension, in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.

Power of Central Government to give directions. 5. The Central Government may, from time to time, issue such directions to the local authorities as it may deem fit, for giving effect to the provisions of this Ordinance and it shall be the duty of the local authorities to comply with such directions.

SEC. 1]

### THE GAZETTE OF INDIA EXTRAORDINARY

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Repeal and savings.

**6.** (1) The National Capital Territory of Delhi Laws (Special Ordinance Provisions) Ordinance, 2007 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the National Capital Territory of Delhi Laws (Special O Provisions) Ordinance, 2007, shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

Ordinance 6 of 2007

## PRATIBHA DEVISINGH PATIL, President.

#### BRAHM AVTAR AGRAWAL, Additional Secretary to the Govt. of India.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2007.

MGIPMRND-4032GI(CRC)-15.09.2007

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REGISTERED NO. DL-(N)04/0007/2003-07



#### असाधारण

EXTRAORDINARY

भाग II — खण्ड 1 PART II — Section 1

प्राधिकार से प्रकाशित

#### PUBLISHED BY AUTHORITY

सं• 50]	नई दिल्ली, शनिवार, अक्तूबर 27, 2007/कार्तिक 5, 1929
No. 50]	NEW DELHI, SATURDAY, OCTOBER 27, 2007/KARTIKA 5, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 27th October, 2007/Kartika 5, 1929 (Saka)

THE PAYMENT OF BONUS (AMENDMENT) ORDINANCE, 2007

#### No. 8 of 2007

Promulgated by the President in the Fifty-eighth Year of the Republic of India.

An Ordinance further to amend the Payment of Bonus Act, 1965.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:----

1. (1) This Ordinance may be called the Payment of Bonus (Amendment) Ordinance, 2007.

(2) It shall be deemed to have come into force on the 1st day of April, 2006.

2. In section 2 of the Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act), in clause (13), for the words "three thousand and five hundred rupees", the words "ten thousand rupees" shall be substituted.

Short title and commencement.

Amendment of section 2.

21 of 1965.

Amendment of section 12. 3. In section 12 of the principal Act, for the words "two thousand and five hundred rupees", in both the places where they occur, the words "three thousand and five hundred rupees" shall be substituted.

4. In section 32 of the principal Act, clause (vi) shall be omitted.

Amendment of section 32.

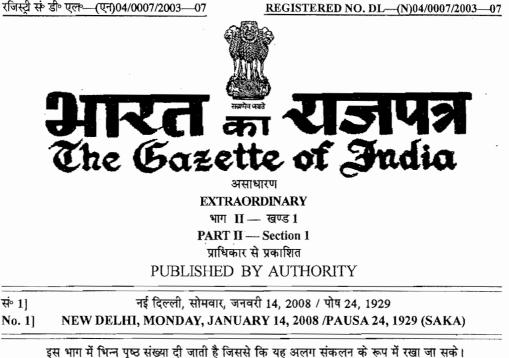
# PRATIBHA DEVISINGH PATIL, President.

K. N. CHATURVEDI, Secy. to the Govt. of India.

PRINTED BY THE MANAGER, GOVT. OF INDIA PRISS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2007.

MGIPMRND-4237GI-29-10-2007.

Repealed by Act, 10 g 2008, J. 9 (c. Cr. 14-1-2008)



इस भाग में भिन्न पृष्ठ संख्या दो जाती है जिससे कि यह अलग संकलन के रूप में रखा जो सक। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE

#### (Legislative Department)

New Delhi, the 14th January, 2008/Pausa 24, 1929 (Saka)

## THE DELIMITATION (AMENDMENT) ORDINANCE, 2008

#### No. 1 of 2008

Promulgated by the President in the Fifty-eighth Year of the Republic of India.

An Ordinance further to amend the Delimitation Act, 2002.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Delimitation (Amendment) Ordinance, 2008.

(2) It shall come into force at once.

2. In section 10 of the Delimitation Act, 2002 (hereinafter referred to as the principal Act), ---

(i) in sub-section (4), the following proviso shall be inserted, namely:---

"Provided that nothing in this sub-section shall apply to the delimitation orders published in relation to the State of Jharkhand.";

(*ii*) in sub-section (6), for the words "within two years of the constitution of the Commission", the words "within a period not later than 31st day of July, 2008" shall be substituted.

Short title and commencement

Amendment of section 10.

33of 2002.

Insertion of new sections 10A and 10B. Deferment of delimitation in certain cases.

3. After section 10 of the principal Act, the following sections shall be inserted, namely:---

"10A. (1) Notwithstanding anything contained in sections 4, 8 and 9, if the President is satisfied that a situation has arisen whereby the unity and integrity of India is threatened or there is a serious threat to the peace and public order, he may, by order, defer the delimitation exercise in a State.

(2) Every order made under this section shall be laid before each House of Parliament.

10B. Notwithstanding anything contained in sub-section (2) of section 10, the final orders relating to readjustment of number of seats and delimitation of constituencies in respect of the State of Jharkhand published under the said section vide order O.N. 63(E), dated 30th April, 2007 and O.N. 110(E), dated 17th August, 2007 shall have no legal effect and the delimitation of the constituencies as it stood before the publication of the said order shall continue to be in force until the year 2026 in relation to every election to the House of the People or to the Legislative Assembly, as the case may be, held after the commencement of the Delimitation (Amendment) Ordinance, 2008.".

#### PRATIBHA DEVISINGH PATIL, President.

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#### K.D. SINGH, Secy. to the Govt. of India.

#### PRINTED BY THE MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2008.

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Delimitation Commission's order with respect to the State of Jharkhand not to have any legal effect. Repealed by Act, 11 of 2008, SU (w. et 31-1-2008) (1947) the store (47)04/0007/2003-08 REGISTERED NO. DL-(N)04/0007/2003-08





असाधारण्

EXTRAORDINARY

भाग II — खण्ड 1 PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

> MINISTRY OF LAW AND JUSTICE (Legislative Department)

> > New Delhi, the 31st January, 2008/ Magha 11, 1929 (Saka)

# THE RAILWAYS (AMENDMENT) ORDINANCE, 2008 No. 2 of 2008

Promulgated by the President in the Fifty-ninth Year of the Republic of India.

An Ordinance further to amend the Railways Act, 1989.

WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for her to take immediate action.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Railways (Amendment) Short t Ordinance, 2008.

Short title and commencement.

(2) It shall come into force at once.

24 of 1989.

2. In section 2 of the Railway's Act, 1989 (hereinafter referred to as Amendment of the principal Act), ---

(a) after clause (7), the following clause shall be inserted, namely:-

'(7A) "competent authority" means any person authorised by the Central Government, by notification, to perform the functions of the competent authority for such area as may be specified in the notification; ';

(b) after clause (29), the following clause shall be inserted, namely:---

' (29A) "person interested" includes, —

(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

(ii) tribals and other traditional forest dwellers, who have lost any traditional rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;

(iii) a person interested in an easement affecting the land; and

(iv) persons having tenancy rights under the relevant State laws;';

(c) after clause (37), the following clause shall be inserted, namely:---

'(37A) "special railway project" means a project, notified as such by the Central Government from time to time, for providing national infrastructure for a public purpose in a specified time-frame, covering one or more States or the Union territories;'.

Insertion of nev Chapter IVA.

#### CHAPTER IVA

## LAND ACQUISITION FOR A SPECIAL RAILWAY PROJECT

20A. (1) Where the Central Government is satisfied that for a Power to acquin public purpose any land is required for execution of a special land, etc. railway project, it may, by notification, declare its intention to acquire such land.

(2) Every notification under sub-section (1), shall give a brief description of the land and of the special railway project for which the land is intended to be acquired.

2 of 2007.

THE GAZETTE OF INDIA EXTRAORDINARY

(3) The State Government or the Union territory, as the case may be, shall for the purposes of this section, provide the details of the land records to the competent authority, whenever required.

(4) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which shall be in a vernacular language.

20B. On the issue of a notification under sub-section (1) of Power to enter for section 20A, it shall be lawful for any person, authorised by the survey, etc. competent authority in this behalf, to—

(a) make any inspection, survey, measurement, valuation or enquiry ;

(b) take levels;

(c) dig or bore into sub-soil;

(d) set out boundaries and intended lines of work ;

(e) mark such levels, boundaries and lines placing marks and cutting trenches; or

(f) do such other acts or things as may be considered necessary by the competent authority.

20C. The damages caused while carrying out works on land such as survey, digging or boring sub-soil, marking boundaries or cutting trenches or clearing away any standing crop, fence or forest or doing such other acts or things which may cause damages while acting under section 20B particularly relating to land which is excluded from acquisition proceeding, shall be evaluated and compensation shall be paid to the persons having interest in that land, within six months from the completion of the said works.

20D. (1) Any person interested in the land may, within a period of thirty days from the date of publication of the notification under sub-section (1) of section 20A, object to the acquisition of land for the purpose mentioned in that sub-section.

(2) Every objection under sub-section (1), shall be made to the competent authority in writing, and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

*Explanation.*— For the purposes of this sub-section, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961.

Evaluation of damages during survey, measurement, etc.

Hearing of objections, etc.

SEC. 1]

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25 of 1961.

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Declaration of

acquisition.

(3) Any order made by the competent authority under subsection (2) shall be final.

20E. (1) Where no objection under sub-section (1) of section 20D has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification, that the land should be acquired for the purpose mentioned in sub-section (1) of section 20A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 20A for its acquisition, but no declaration under sub-section (1) of this section has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 20A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under subsection (1) shall not be called in question in any court or by any other authority.

20F. (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) The competent authority shall make an award under this section within a period of one year from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the competent authority may, after the expiry of the period of limitation, if he is satisfied that the delay has been caused due to unavoidable circumstances, and for the reasons to be recorded in writing, he may make the award within an extended

Determination of amount payable as compensation.

## period of six months:

Provided further that where an award is made within the extended period, the entitled person shall, in the interest of justice, be paid an additional compensation for the delay in making of the award, every month for the period so extended, at the rate of not less than five per cent. of the value of the award, for each month of such delay.

(3) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition, an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

(4) Before proceeding to determine the amount under subsection (1) or sub-section (3), as the case may be, the competent authority shall give a public notice published in two local newspapers, one of which shall be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(5) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 20D, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(6) If the amount determined by the competent authority under sub-section (1) or as the case may be sub-section (3) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government in such manner as may be prescribed.

(7) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under this Act.

(8) The competent authority or the arbitrator while determining the amount of compensation under sub-section (1) or sub-section(6), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 20Å;

26 of 1996.

Sec. 1]

(b) the damage, if any sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

(9) In addition to the market-value of the land as above provided, the competent authority or the arbitrator, as the case may be, shall in every case award a sum of sixty per centum on such market-value, in consideration of the compulsory nature of the acquisition.

20G. (1) The competent authority shall adopt the following criteria in assessing and determining the market value of the land, -

Criterion for determination of market value of land.

 (i) the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds in the area, where the land is situated; or

2 of 1899.

(ii) the average of the sale price for similar type of land situated in the village or vicinity, ascertained from not less than fifty per cent. of the sale deeds registered during the preceding three years, where higher price has been paid;

#### whichever is higher.

(2) Where the provisions of sub section (1) are not applicable for the reason that:

(i) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(ii) the registered sale deeds for similar land as mentioned in clause (i) of sub-section (1) are not available for the preceding three years; or

(iii) the minimum land value has not been specified

under the Indian Stamp Act,1899 by the appropriate authority,

the concerned State Government shall specify the floor price per unit area of the said land based on the average higher prices paid for similar type of land situated in the adjoining areas or vicinity, ascertained from not less than fifty per cent. of the sale deeds registered during the preceding three years where higher price has been paid, and the competent authority may calculate the value of the land accordingly.

(3) The competent authority shall, before assessing and determining the market value of the land being acquired under this Act, --

- (a) ascertain the intended land use category of such land; and
- (b) take into account the value of the land of the intended category in the adjoining areas or vicinity,

for the purpose of determination of the market value of the land being acquired.

(4) In determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, the competent authority may use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by the competent authority.

(5) The competent authority may, for the purpose of determining the value of trees and plants, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(6) For the purpose of assessing the value of the standing crops damaged during the process of land acquisition proceedings, the competent authority may utilise the services of experienced persons in the field of agriculture as he considers necessary.

20H. (1) The amount determined under section 20F shall be deposited by the Central Government, in such manner as may be prescribed by that Government, with the competent authority before taking possession of the land.

Deposit and payment of amount.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

SEC. 1]

(3) Where several persons claim to be interested in the amount deposited under sub section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 20F by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 20-I till the date of actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government, in such manner as may be prescribed by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.

20-I. (1) Where any land has vested in the Central Government under sub-section (2) of section 20E, and the amount determined by the competent authority under section 20F with respect to such land has been deposited under sub-section (1) of section 20H with the competent authority by the Central Government, the competent authority may, by notice in writing, direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within a period, of sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply—

(a) in case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a district,

and such Commissioner or Collector, as the case may be, shall

Power to take Possession:

SEC. 1]

enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

20J. Where the land has vested in the Central Government under section 20E, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of the special railway project or part thereof or any other work connected therewith.

20K. The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commission for examination of witnesses.

20L. (1) The land acquired under this Act shall not be transferred to any other purpose except for a public purpose, and after obtaining the prior approval of the Central Government.

(2) When any land or part thereof, acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall return to the Central Government by reversion.

20M. Whenever any land acquired under this Act is transferred to any person for a consideration, eighty per cent. of the difference in the acquisition cost and the consideration received, which in no case shall be less than the acquisition cost, shall be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired, and for the purpose, a separate fund may be maintained which shall be administered by the competent authority in such manner as may be prescribed by the Central Government.

20N. Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.

Utilisation of land for the purpose it is acquired.

Sharing with landowners the difference in price of a land when transferred for a higher consideration.

Land Acquisition

Act 1 of 1894 not

to apply.

Government. -

Right to enter into land where land

has vested in

Central

Competent authority to have certain powers of

civil court.

20-O. The provisions of the National Rehabilitation and Resettlement Policy, 2007 for project affected families, notified by the Government of India in the Ministry of Rural Development vide number F.26011/4/2007-LRD, dated the 31<sup>st</sup> October, 2007, shall apply in respect of acquisition of land by the Central Government under this Act.

Application of the National Rehabilitation and Resettlement Policy, 2007 to persons affected due to land acquisition.

Power to make rules in respect of

matters in this Chapter.

PART II-

20P. (1) The Central Government may, by notification, make rules to carry out the purposes of this Chapter.

(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 manner of appointment of arbitrator under subsection (6) of section 20F;

(b) the manner in which the amount shall be deposited with the competent authority under sub-sections (1) and (6) of section 20H;

(c) the manner of maintenance and administration of separate fund for the purposes of section 20M.'.

#### PRATIBHA DEVISINGH PATIL, President.

K.D. SINGH, Secy. to the Govt. of India.

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# **MINISTRY OF LAW AND JUSTICE**

# (Legislative Department)

New Delhi, 31st January, 2008/Magha 11, 1929 (Saka)

THE FORWARD CONTRACTS (REGULATION) AMENDMENT ORDINANCE, 2008

No. 3 of 2008

Promulgated by the President in the Fifty-ninth Year of the Republic of India.

An Ordinance further to amend the Forward Contracts (Regulation) Act, 1952 and the Securities and Exchange Board of India Act, 1992.

WHEREAS a Bill further to amend the Forward Contracts (Regulation) Act, 1952 and the Securities and Exchange Board of India Act, 1992 has been introduced in Parliament but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for her to take immediate action to give effect to the provisions of the Bill;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

## **CHAPTER I**

#### PRELIMINARY

1. (1) This Ordinance may be called the Forward Contracts (Regulation) Amendment Ordinance, 2008.

Short title and commencement.

of

(2) It shall come into force at once.

PART II-

# CHAPTERI

Amendments to the Forward Contracts (Regulation) Act, 1952

Amendment of long title.

2. In the Forward Contracts (Regulation) Act, 1952 (hereafter in this Chapter referred to as the principal Act), in the long title, for the words "the prohibition of options in goods", the words "and to promote the development of, and to regulate, the commodity derivatives market" shall be substituted.

Amendment of section 2.

3. In section 2 of the principal Act,---

(i) for clause (a), the following clauses shall be substituted, namely:---

'(a) "Appellate Tribunal" means the Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;

15 of 1992

(*aa*) "association" means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative:

(ab) "Chairman" means the Chairman of the Commission referred to in clause (a) of sub-section (1) of section 3A;';

(ii) after clause (b), the following clauses shall be inserted, namely:-

(ba) "commodity derivative" means-

(*i*) a contract for delivery of goods, which is not a ready delivery contract; or

(*ii*) a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Commission by the Central Government, but does not include securities;

(bb) "corporatisation" means the succession of a recognised association, being a body of individuals or a society registered under the Societies Registration Act, 1860, by another association, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in goods or commodity derivatives carried on by such individuals or society;

(bc) "demutualization" means the segregation of ownership and management from the trading rights of the members of a recognised association in accordance with a scheme approved by the Commission;";

(*iii*) in clause (c), after the words "delivery contract", the words "and includes contract for commodity derivative" shall be inserted;

(iv) after clause (c), the following clause shall be inserted, namely:---

(ca) "Fund" means the Forward Markets Commission General Fund constituted under sub-section (1) of section 4E;";

(v) after clause (e), the following clauses shall be inserted, namely:-

'(ea) "intermediary" means a member of the association, and includes a collateral manager, a clearing house, or such other person who is associated with the commodity derivatives market and is specified as such by the Central Government for the purposes of this Act;

21 of 1860.

74 of 1952

(eb) "member" means a whole-time or part-time member of the Commission and includes the Chairman;';

(vi) after clause (f), the following clauses shall be inserted, namely:----

'(*fa*) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(*fb*) "option in commodity derivative" means an agreement, by whatever name called, for trading in a commodity derivative and includes a teji, a mandi, a teji-mandi, a gali, a put, a call or a put and call in commodity derivative;";

(vii) in clause (i).---

(A) for the words "eleven days", the words "thirty days" shall be substituted;

(B) in the Explanation, in clause (i), after the word and figures "Act, 1970", the words, figures and brackets "or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980" shall be inserted;

(viii) in clause (j), for the words and figure "the Central Government under section 6 in respect of goods or classes of goods", the words and figure "the Commission under section 6 in respect of forward contract or classes of forward contracts" shall be substituted;

(ix) for clause (jj), the following clause shall be substituted, namely:-

'(jj) "regulations" means the regulations made by the Commission under this Act;';

(x) after clause (k), the following clause shall be inserted, namely:-

(*ka*) "scheme" means a scheme for corporatisation or demutualization of a recognised association which may provide for—

(A) the issue of shares for a lawful consideration and provision for trading rights in lieu of membership cards of members of a recognized association;

(B) the restrictions on voting rights;

(C) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised association, legal proceedings by, or against, the recognised association, whether in the name of the recognised association or any trustee or otherwise and any permission given to, or by, the recognised association;

(D) the transfer of employees of a recognised association to another recognised association;

(E) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised association;";

Amendment

Section 3.

of

(xi) in clause (m), for the words "forward contract which provides for", the words "forward contract which provides for, and is performed by," shall be substituted.

4. In section 3 of the principal Act, for sub-sections (2), (3), (4) and (5), the following sub-section shall be substituted, namely:—

"(2) The Commission shall be a body corporate by the name aforesaid,

40 of 1980

#### .

SEC. 1]

[Part II----

having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued."

5. After section 3 of the principal Act, the following sections shall be inserted,

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long Insertion of new sections 3A, 3B, 3C, 3E, 3F, 3G and 3H.

namely:—

Management of "3A. Commission.

#### "3A. (1) The Commission shall consist of the following members, namely:--

(a) a Chairman;

(b) two members from amongst the officials of the Ministries or Departments of the Central Government dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture or Finance;

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

(d) five other members of whom at least three shall be the whole- time members.

(2) The general superintendence, direction and management of the affairs of the Commission shall vest in a board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Commission.

(3) Save as otherwise determined, by regulations, the Chairman shall have powers of general superintendence and direction of the affairs of the Commission and may also exercise all powers and do all acts and things which may be exercised or done by the Commission.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank, respectively.

(5) The Chairman and other members referred to in clauses (a) and (d) of subsection (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commodity markets or who have special knowledge or experience of commerce or economics or law or finance or in administration or have practical experience in any matter which renders them suitable for appointment on the Commission:

Provided that every person appointed as Chairman and every other person appointed as member of the Commission and holding office as such immediately before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall, notwithstanding any order for their appointment made under sub-section (2) of section 3 as it stood before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall hold office till the Chairman or other member has been appointed in accordance with this section after such commencement and no person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

Term of office 3B. (1) The term of and conditions of service of Chairman and members of (2) Notwithstandi

Commission.

3B. (1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 3A shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 3A, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his

office, at any time before the expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

3C. The Central Government shall remove a member from office if he-

(a) is, or at any time has been, adjudicated as insolvent;

(b) is of unsound mind and stands so declared by a competent court;

(c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

(d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

3D. (1) The Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings including quorum at such meetings as may be provided by regulations.

(2) The Chairman or, if for any reason he is unable to attend the meeting of the Commission, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of votes of the members of the Commission present and voting, and in the event of an equality of votes, the Chairman or in his absence the member presiding, shall have a second or casting vote.

3E. No act or proceeding of the Commission shall be invalid merely by reason

(a) any vacancy in, or any defect in the constitution of, the Commission;

or

of-

(b) any defect in the appointment of a person acting as a member of the Commission; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case:

3F. Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Commission, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Commission, and the member shall not take any part in any deliberation or decision of the Commission with respect to that matter.

3G. The Chairman and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept any employment with any person dealing with the commodities derivatives or with any intermediary.

3H. (1) The Commission may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and conditions of service of the officers and employees of the Commission appointed under sub-section (1) shall be such as may be determined by regulations:

Removal of member from office.

Meetings Commission.

Vacancies. etc.. not to invalidate proceedings of Commissions.

Member not to participate in meetings in certain cases.

Bar on future employment of members.

Officers and employees of Commission.

## SEC. 1]

Provided that every officer and other employee holding any office under the Commission, before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall continue to hold his office as such after such commencement for the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the said Ordinance had not come into force and shall continue to do so as an officer or other employee of the Commission until the regulations are made under this sub-section or the expiry of one year from the date of such commencement or till the date on which such officer or other employee opts not to be the officer or other employee of the Commission, whichever is earlier.".

Amendment of section 4.

#### 6. In section 4 of the principal Act,—

(a) for clause (a), the following clauses shall be substituted, namely:----

"(a) to advise the Central Government in respect of matters arising out of the administration of this Act;

(aa) to grant or withdraw recognition of any association;";

(b) in clause (e), for the words "registered association or any member of such association", the words "any member of such association or any intermediary" shall be substituted;

(c) for clause (f), the following clauses shall be substituted, namely:-

"(f) to regulate the business of the associations;

(g) to regulate the functioning of members of the associations, clearing houses, warehouses and intermediaries;

(h) to levy fees for carrying out the purposes of this Act;

(i) to conduct research for the purpose of development and regulation of commodity derivatives market;

(j) to call from or furnishing to any such agencies, as may be specified by the Commission, such information as may be considered necessary by it for the efficient discharge of its functions;

(k) to protect the interests of the market participants in commodity derivatives markets;

(1) to promote and regulate self-regulatory oganisations;

(m) to prohibit fraudulent and unfair trade practices relating to commodity derivatives markets;

(n) to promote investors' education and training of intermediaries;

(o) to prohibit insider trading in commodity derivative;

(p) to advise the Central Government as to the goods in respect of which forward contract or option in goods or option in commodity derivative may be notified;

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

Amendment of section 4A.

7. In section 4A of the principal Act, in sub-section (3), -

(a) for the words and figures "the Code of Criminal Procedure, 1898", the 5 of words and figures "the Code of Criminal Procedure, 1973" shall be substituted; 2 of

5 of 1898. 2 of 1974, (b) for the word and figures "section 482", the word and figures "section 346" shall be substituted.

8. After section 4A of the principal Act, the following sections shall be inserted, namely:—

"4B. Save as otherwise provided in section 4, if after making or causing to be made an inquiry, the Commission is satisfied that it is necessary, in the interest of trade and orderly development of commodity derivatives market, it may issue directions to any intermediary or association.

4C. If the Commission finds, after causing an inquiry to be made, that any person has violated, or is likely to violate any provisions of this Act or any rules or regulations made thereunder, the Commission may pass an order requiring such person to cease and desist from committing or causing such violations."

9. After Chapter II of the principal Act, the following Chapter shall be inserted, namely:---

#### **"CHAPTER IIA**

#### FINANCE, ACCOUNTS AND AUDIT

4D. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

4E. (1) There shall be constituted a Fund to be called the Forward Markets Fund. Commission General Fund and there shall be credited thereto—

(i) all grants and fees received by the Commission under this Act;

(*ii*) all sums received by the Commission from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting-

(*i*) the salaries, allowances and other remuneration of the members, officers and other employees of the Commission;

(*ii*) the expenses of the Commission in the discharge of its functions under section 4;

(iii) the expenses on objects and for purposes authorised by this Act:

Provided that the sums authorised to be paid and applied from and out of the Consolidated Fund of India and appropriated by law made by Parliament for the services and purposes of the Commission shall continue to be paid and applied for such services and purposes of the Commission till the Fund is constituted under this section.

4F. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the

Insertion of new sections 4B and 4C. Power to issue directions by Commission:

Cease and desist proceedings.

Insertion of new Chapter IIA.

Grants by Central Government.

Accounts and audit

SEC. 1]

[Part II----

same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament."

10. In section 5 of the principal Act,—

# (a) in sub-section (1),—

(*i*) for the words "forward contracts", the words "forward contracts or option in goods or option in commodity derivative" shall be substituted;

(*ii*) for the words "Central Government", the word "Commission" shall be substituted;

(b) in sub-section (2), for the words "forward contracts", the words "forward contracts or option in goods or option in commodity derivative" shall be substituted;

(c) the following proviso shall be inserted at the end, namely:----

"Provided that the applications made to the Central Government, on or before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008 and pending with the Central Government on such date, shall be transferred to the Commission and thereafter the Commission shall dispose of such applications in accordance with the provisions of this Act.".

11. In section 6 of the principal Act,---

(a) in sub-section (1),—

(*i*) for the words "Central Government", the word "Commission" shall be substituted;

(*ii*) for the words "the goods or classes of goods with respect to which forward contracts may be entered", the words "the goods or classes of goods or commodity derivative or classes of commodity derivatives with respect to which forward contracts or options may be entered" shall be substituted;

(b) in sub-section (2),-

(*i*) for the words "Central Government", at both the places where they occur, the word "Commission" shall be substituted;

(*ii*) in clause (*b*), for the words "of not more than three persons", the words "such number of persons as the Commission may, having regard to the interest of trade in commodities and commodities derivatives, specify," shall be substituted;

(c) in sub-section (3), for the words "Central Government", the word "Commission" shall be substituted;

(d) after sub-section (4), the following proviso shall be inserted, namely:---

"Provided that the recognition granted by the Central Government, before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall be deemed to have been granted by the Commission in accordance with the provisions of this Act."

Amendment of section 6.

Amendment of

section 5.

12. For section 7 of the principal Act, the following sections shall be substituted, namely:---

(7.(1)) If the Commission is of opinion that any recognition granted to an association under the provisions of this Act should, in interest of the trade or in the public interest, be withdrawn, the Commission may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification, the recognition granted to the said association:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contract outstanding on that date.

(2) Where the recognised association has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 7B within the specified time therefor or the scheme has been rejected by the Commission under sub-section (5) of section 7B, the recognition granted to such association under section 6, shall, notwithstanding anything contained contrary to any other provision of this Act, stand withdrawn and the Commission shall publish, by notification, such withdrawal of recognition:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may, after consultation with the association, make such provisions as it deems fit, in the order rejecting the scheme published in the Official Gazette under subsection (5) of section 7B.

7A. On and from the appointed date, all recognized associations (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 7B:

Provided that different appointed dates may be appointed for different recognized associations:

Provided further that the Commission may, if it is satisfied that any recognized association was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, extend the appointed date specified in respect of that recognized association and such recognized association may continue as such before such appointed date.

*Explanation*.—For the purposes of this section, "appointed date" means the date which the Commission may, by notification, appoint.

7B. (1) All recognized associations referred to in section 7A shall, within such time as may be specified by the Commission, submit a scheme for corporatisation and demutualisation for its approval:

Provided that the Commission may, by notification, specify name of the recognised association, which had already been corporatised and demutualised, and such association shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Commission may, after making such inquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade in goods or commodity derivatives and also in the public interest, approve the scheme with or without modification.

Procedure for corporation and demutualisation.

Corporation and demutualisation of associations.

Substitution of new section for section 7. Withdrawal of recognition.

SEC. 1]

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(3) No scheme under sub-section (2) shall be approved by the Commission if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised association or payment of dividends to members have been proposed out of any reserves or assets of that association.

(4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by—

#### (a) the Commission in the Official Gazette;

(b) the recognised association in such two daily newspapers circulating in India, as may be specified by the Commission, and upon such publication, notwithstanding anything contained contrary to any other provision of this Act or in any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised association and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised association or its members.

(5) Where the Commission is satisfied that it would not be in the interest of the trade in goods or commodity derivatives and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Commission shall give a reasonable opportunity of being heard to all the persons concerned and the recognised association concerned before passing an order rejecting the scheme.

(6) The Commission may, while approving the scheme under sub-section (2), by an order in writing, restrict—

(a) the voting rights of the shareholders who are also members of the recognised association;

(b) the right of shareholders or a member of the recognised association to appoint the representatives on the governing board of the association;

(c) the maximum number of representatives of the members of the recognized association to be appointed on the governing board of the association, which shall not exceed one-fourth of the total strength of the governing board.

(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force, have full effect.

(8) Every recognised association, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2) shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Commission, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights:

Provided that the Commission may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.'. 13. In section 8 of the principal Act,---

(a) in sub-sections (1) and (2) for the words "Central Government" wherever they occur, the words "Central Government or Commission" shall respectively be substituted;

(b) in sub-section (2), in clause (c), for the words "direct the Commission", the words "direct any agency or any of its officers" shall be substituted;

(c) in sub-section (3) for the word "inquiry" wherever it occurs, the words "inquiry or inspection" shall be substituted.

14. In section 9A of the principal Act, in sub-section (2),---

(a) for the words "Central Government" wherever they occur, the words "Central Government or Commission" shall be substituted;

(b) for the words "that Government", the words "that Government or Commission" shall be substituted.

15. For section 10 of the principal Act, the following sections shall be substituted, namely:---

"10. (1) Whenever the Commission considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.

(2) If any recognized association, against whom an order is issued by the Commission under sub-section (1), fails or neglects to comply with such order within the specified period, the Commission may make the rules or amend the rules made by the recognized association, as the case may be, either in the form specified in the order or with such modification thereof as the Commission may think fit.

(3) Where, in pursuance of sub-section (2), any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India, and shall, thereupon, have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 or any other law for the time being in force, as if they had been made or amended by the recognized association concerned.

10A. (1) A recognized association may, with the prior approval of the Commission, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956, for the purposes of—

(a) the periodical settlement of contracts and differences thereunder;

(b) the delivery of, and payment for, goods;

(c) any other matter incidental to, or connected with, such transfer.

(2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Commission for its approval.

(3) The Commission may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve transfer of the duties and functions of clearing house to a clearing corporation referred to in sub-section (1).

Amendment of section 8.

11

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Amendment of

section 9A.

Substitution of new sections for section 10.

Power of Commission to direct rules to be made or to make rules.

Clearing corporation.

Sec. 1]

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16. In section 11 of the principal Act,-

(a) in sub-section (1),—

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(4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 12A, 12B and 13 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognised association.".

Amendment of section 11.

(i) for the words "Central Government", the word "Commission" shall be substituted;

(*ii*) for the words "forward contracts", the words "forward contracts or option in goods or option in commodity derivative" shall be substituted;

(b) in sub-section (2), after the word "goods" wherever it occurs, the words "or forward contracts or option in goods or option in commodity derivative" shall be inserted;

(c) in sub-section (3), in clause (aa), for the brackets, figure and letter "(3A)", the brackets and figure "(4)" shall be substituted;

(d) in sub-section (4) and the proviso, for the words "Central Government" at both the places where they occur, the word "Commission" shall be substituted.

17. For sections 12 and 12A of the principal Act, the following sections shall be substituted, namely:---

"12. (1) The Commission may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section 11 or amend any bye-laws made by such association under that section.

(2) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and shall thereupon have effect as if they had been made or amended by the recognised association.

(3) Notwithstanding anything contained in this section, where the governing body of a recognized association objects to any bye-laws made or amended under this section by the Commission on its own motion, it may, within six months of the publication thereof under sub-section (2), apply to the Commission for a revision thereof, and the Commission may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or amendment or revision of any bye-laws under this section shall in all cases be subject to such conditions in regard to the previous publications as may be prescribed:

Provided that the Commission may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

12A. Any amendment of a bye-law made under section 11 other than an amendment made in pursuance of clause (a) or clause (aa) of sub-section (3) of that section or under section 12 shall also apply to all forward contracts or option in goods or option in commodity derivative entered into before the date of its approval by the Commission or before the date of its publication in the Gazette of India, as the case may be, and remaining to be performed on or after the said date."

Substitution of new sections for sections 12 and 12A.

Power of Commission to make or amend bye-laws of recognised association.

Application of amendment of bye-laws to existing forward contracts or option in goods or option in c o m m od i t y derivative.

12

18. In section 12B of the principal Act,-

(a) in sub-section (1),—

(i) for the words "forward contract", the words "forward contract or option in goods or option in commodity derivative" shall be substituted;

(ii) the words "of any goods or class of goods" shall be omitted;

(*iii*) after the words "any such contract", the words "or option in goods or option in commodity derivatives" shall be inserted;

(b) in sub-section (3), for the words "forward contract" at both the places where they occur, the words "forward contract or option in goods or option in commodity derivative" shall be substituted.

19. For section 13 of the principal Act, the following section shall be substituted, namely:---

"13. (1) Without prejudice to any other powers vested in the Commission under this Act, where the Commission is of the opinion that the governing body of any recognised association should be superseded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may, after giving a reasonable opportunity to the governing body of the recognized association concerned to show cause why it should not be superseded, by notification, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed, may appoint one of such persons to be the chairman and another of such person to be the vice-chairman.

(2) On the publication of a notification under sub-section (1), the following consequences shall ensue, namely:—

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Confinission may, from time to time, by like notification, vary such period.

Amendment of section 12B

Substitution of new section for

section 133

Commission to supersede

governing body

of recognised association.

Power of

13

[Part II----

(4) On the determination of the period of office of any person or persons appointed under this section, the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1), shall, notwithstanding anything contained in sub-section (1), continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1), shall vest or revest, as the case may be, in the governing body so reconstituted."

**20.** In section 14 of the principal Act, for the words "Central Government" at both the places where they occur, the word "Commission" shall be substituted.

21. For Chapter IIIA of the principal Act, the following Chapter shall be substituted, namely:---

# **"CHAPTER IIIA**

#### **REGISTRATION OF MEMBERS AND INTERMEDIARIES**

14A. (1) On and from the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, no person intending to act as a member or intermediary shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration granted by the Commission in accordance with the regulations made under this Ordinance.

(2) A person, who in his capacity as a member or intermediary intends to deal in forward contract or option in goods or option in commodity derivative shall make an application for a certificate of registration to the Commission in such form along with such fee and containing such particulars as may be provided by regulations:

Provided that a person who was acting as a member or intermediary, before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, may continue to do so for a period of six months from the date of such commencement if he has made an application for registration within the said period of six months, till the disposal of such application, whichever is later:

Provided further that the Commission may, by regulations, specify different fees for a class or classes of members or intermediaries on the basis of turnover of the business of such members or intermediaries.

(3) No foreign participant or foreign intermediary associated with the commodity derivatives market, as the Commission may, by notification in this behalf, specify, shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration obtained from the Commission in accordance with the regulations made under this Ordinance:

Provided that a foreign participant or foreign intermediary dealing in forward contract or option in goods or option in commodity derivative immediately before the commencement of this Ordinance, for which no certificate of registration was required prior to such commencement, may continue to deal in forward contract or option in goods until such time as rules may be made by the Central Government for such dealings or in case no such rules have been made until permitted as such by the Commission by notification.

(4) On receipt of an application under sub-section (2), the Commission may, after making such inquiry as it considers necessary in this behalf, by order in writing,

Amendment of section 14.

Substitution of new Chapter for Chapter IIIA.

Registration of members and intermediaries.

15

grant a certificate of registration on such terms and conditions as may be specified by regulations or refuse to grant such certificate:

Provided that, before refusing to grant such certificate, the person making the application shall be given an opportunity of being heard in the matter.

14B. The Commission may, by order, suspend or cancel the certificate of registration in such manner as may be provided by regulations:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard in the matter.".

22. For sections 15, 16 and 17 of the principal Act, the following sections shall be substituted, namely:---

"15. (1) Subject to the provisions contained in sections 17 and 18, every forward contract, entered into otherwise than between members of a recognized association or through or with any such member, shall be illegal.

(2) Any forward contract entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of section 11 shall be void—

(a) as respects the rights of any member of the recognised association who has entered into contract in contravention of any such bye-law and also,

(b) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(3) Nothing in sub-section (2) shall affect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract:

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section (3) of section 11.

(4)<sup>s</sup>Any forward contract entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (*aa*) of sub-section (3) of section 11 shall be illegal.

(5) No member of a recognised association shall enter into any contract on his own account with any person other than a member of the recognised association, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the forward contract, as the case may be, on his own account:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract:

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws, the outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, forward contract or option in goods or option in commodity derivative, as the case may be, on his own account. Suspension or cancellation of certificate of registration

Substitution of new sections for sections 15, 16 and 17.

Forward contracts illegal or void in certain circumstances.

[PART II-

Consequences of contravention of section 15.

16. Notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract,—

(a) every forward contract entered into on or before the date of commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Commission may fix in this behalf and different rates may be fixed for different classes of such contracts;

(b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

17. (1) The Central Government may, by notification, declare that no person shall, save with the permission of the Central Government, deal in any forward contract or option in goods or option in commodity derivative specified in the notification, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts or options in goods or options in commodity derivative in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

(3) Where a notification has been issued under sub-section (1), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts and options in goods for the sale or purchase of any<sub>1</sub>goods specified in the notification (entered into on or before the date of the notification) and remaining to be performed after the said date."

23. In section 18 of the principal Act,-

(a) in sub-section (1),—

(i) for the words "non-transferable specific delivery contracts", the words and brackets "specific delivery contracts (both transferable and non-transferable)" shall be substituted;

(*ii*) in the proviso, for the words "non-transferable specific delivery contract", the words and brackets "specific delivery contracts (both transferable and non-transferable)" shall be substituted;

(b) sub-section (2) shall be omitted;

(c) in sub-section (3), for the words "non-transferable specific delivery contracts" at both the places where they occur, the words and brackets "specific delivery contracts (both transferable and non-transferable)" shall be substituted.

24. For section 19 of the principal Act, the following section shall be substituted, namely:----

"19. (1) Any option in goods or option in commodity derivative which has been entered into on or after the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, otherwise than between members of a recognised association or through or with any such member shall be illegal.

(2) The provisions of sub-sections (2), (3), (4) and (5) of section 15 shall apply to options in goods or option in commodity derivative as they apply in relation to a forward contract.".

Power to prohibit forward contract or options in goods or option in commodity derivative.

Amendment of section 18.

Substitution of new section for section 19.

Option in goods or option in commodity derivative illegal in certain circumstances.

**25.** In section 20 of the principal Act,—

(i) in clause (a), in sub-clause (iii), for the words "forward contract", the words "forward contract or option in goods or option in commodity derivative" shall be substituted;

(*ii*) clause (*b*) shall be omitted;

(*iii*) in clause (c), for the words "forward contract", the words "forward contract or option in goods or option in commodity derivative" shall be substituted;

(iv) after clause (d), the following clause shall be inserted, namely:--

"(*da*) fails to make or accept delivery of goods covered by nontransferable specific delivery contracts or by transferable specific contracts where rights and obligations have not been transferred, as the case may be; or";

(v) for clause (e), the following clause shall be substituted, namely:----

"(e) enters into any forward contract or option in goods or option in commodity derivative in contravention of any of the provisions contained in sub-section (1) or sub-section (4) or sub-section (5) of section 15 or section 17 or section 19,";

(vi) after the words "shall, on conviction, be punishable—" occurring , below clause (e),—

(A) in clause (i), for the words "one thousand rupees", the words "twenty-five thousand rupees but which may extend to twenty-five lakh rupees" shall be substituted;

(B) in clause (ii),---

(1) for the words, brackets and letter "under clause (d)", the words, brackets and letters "under clause (d) or under clause (da)" shall be substituted;

(11) for the words "one thousand rupees", the words "twentyfive thousand rupees" shall be substituted.

26. In section 21 of the principal Act,----

(i) in clauses (a) to (f) for the words "forward contracts" wherever they occur, the words "forward contract or option in goods or option in commodity derivative" shall be substituted;

(*ii*) in clause (g), for the words and figures "in respect of goods to which the provisions of section 15 have been made applicable", the words "in respect of goods or option in goods or option in commodity derivative" shall be substituted;

(iii) for clause (h), the following clause shall be substituted, namely:---

"(h) manipulates or attempts to manipulate prices in respect of forward contracts or option in goods or option in commodity derivative;";

(iv) after the words "shall, on conviction, be punishable—" occurring below clause (h), in clauses (i) and (ii), for the words "one thousand rupees", the words "twenty-five thousand rupees but which may extend to twenty-five lakh rupees" shall be substituted.

Amendment of section 21.

Amendment' of section 20

17

Sec. 1]

Substitution of new sections for section 21A. Penalty for failure to furnish information, return, etc. 18

27. For section 21A of the principal Act, the following sections shall be substituted, namely:---

"21A. If any person, who is required under this Act or any rules or regulations made thereunder,---

(a) to furnish any document, return or report to the Commission, fails to furnish the same, he shall be liable to a penalty of twenty thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file or furnish the same within the time specified therefor in the regulations, he shall be liable to pay a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of ten thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(d) or who was in charge of, and was responsible to, an association for the conduct of the business of the association, obstructs any officer of the Commission or any other person authorised by it to conduct inspection or to discharge any other function assigned by the Commission, such person as well as the association shall be liable to pay a fine of rupees one lakh for every occasion of such obstruction.

21B. If any person, who is registered as a member or an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of twenty thousand rupees for each such failure during which such failure continues or five lakh rupees, whichever is less.

21C. If any person, who is registered as a member or an intermediary, after having been called upon by the Commission in writing to redress the grievances of clients, fails to redress such grievances within the time specified by the Commission, he shall be liable to a penalty not exceeding two thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less.

21D. If any insider who,—

(*i*) either on his own behalf or on behalf of any other person, deals in forward contract or option in goods or option in commodity derivative on any association on the basis of any unpublished price sensitive information; or

(*ii*) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(*iii*) counsels, or procures for any other person to deal in any forward contract or option in goods or option in commodity derivative on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of insider trading, whichever is higher.

Penalty for fraudulent and unfair trade practices. 21E. If any person indulges in fraudulent and unfair trade practices relating to forward contract or option in goods or option in commodity derivative, he shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for failure by any person to enter into an agreement with clients.

Penalty for failure to redress clients grievances.

Penalty for insider trading.

PART II---

21F. If any person, who is registered as an intermediary under this Act or any regulations made thereunder,—

(a) fails to issue contract notes in the form and manner specified by the association of which such intermediary is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that intermediary;

(b) fails to deliver any goods or fails to make payment of the amount due to the client or in the manner or within the period specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues;

(c) charges an amount of brokerage which is in excess of the brokerage specified by the association, he shall be liable to a penalty of five thousand rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

21G. Any person, who fails to comply with the directions issued by the Commission under section 4B, shall be liable to pay a penalty not exceeding two lakh rupees for each day during which such failure continues which may extend to five lakh rupees.

21H. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention any of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

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

21-I. (1) For the purposes of adjudging under sections 21A to 21G, the Commission shall appoint any of its officers not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

21J. While adjudging the quantum of penalty under section 21-I, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to a client or group of clients as a result of the default;

(c) the repetitive nature of the default.

21K. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

i. . . . . .

Penalty for failure to comply with directions of Commission.

Consequences of failure to pay penalty.

Power adjudicate.

Factors to be taken into account by adjudicating officer.

Crediting sums realised by way of

Consolidated Fund of India.

to

penalties

default in case of an Intermediary.

for

Penalty

actors to be

Sec. 1]

Power of court to order forfeiture of property.

21L. Any court trying an offence punishable under this Act, may, if it thinks fit and in addition to any sentence which it may impose for such offence, direct that any money, goods or other property in respect of which the offence has been committed, shall be forfeited to the Central Government.

*Explanation*.—For the purposes of this section, property in respect of which an offence has been committed, shall include deposits in a bank where the said property is converted into such deposits.",

Amendment o section 22A.

28. In section 22A of the principal Act,—

## (a) in sub-section (1),—

(*i*) after the words "forward contracts or options in goods", the words "or option in commodity derivative" shall be inserted;

(*ii*) after the words "forward contract or option in goods", the words "or option in commodity derivative" shall be inserted;

(b) for sub-section (2), the following sub-sections shall be substituted, namely:---

"(2) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to search or seizure made under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(3) The Commission may, notwithstanding anything contained in this Act, file cases in respect of offences committed under this Act, directly to the courts having jurisdiction in respect of such offences."

**29.** In section 22B of the principal Act, in sub-section (1), after the words "or option in goods", the words "or option in commodity derivative" shall be inserted.

**30.** After section 22B of the principal Act, the following section shall be inserted, namely:—

Investigation.

section 22C

Amendment of section 22B

Insertion of new

"22C. (1) Where the Commission has reasonable grounds to believe that-

(a) the transactions in forward contracts or option in goods or option in commodity derivative are being dealt with in a manner detrimental to the commodity market or person associated with the commodity market; or

(b) any intermediary or any person associated with the commodities market has violated any of the provisions of this Act or the rules or regulations made or directions issued by the Commission thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or person associated with the commodities market and to report thereon to the Commission.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 14A, every person associated with the commodities market to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with commodities market in any manner to furnish such information to, or

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SEC. 11

produce such books, or registers, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with commodities market by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any books, registers, other documents and record if they are needed again:

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with commodities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) If any person fails without reasonable cause or refuses-

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one lakh rupees, or with both, and also with a further fine which may extend to twenty thousand rupees for every day after the first during which the failure or refusal continues.

(7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with commodities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority—

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

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[Part II-

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record, as it considers necessary for the purposes of the investigation.

(10) The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures made under that Code.".

74 of 1952.

**31.** In section 23 of the principal Act, after clause (d), the following clause shall be inserted, namely:—

"(e) an offence falling under section 21H.".

**32.** In Chapter V of the principal Act, after section 24, the following section shall be inserted, namely:—

"24A. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.".

33. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:--

#### **'CHAPTER VA**

#### JURISDICTION AND AUTHORITY OF APPELLATE TRIBUNAL

24B. (1) Save as provided in sub-section (2), any person aggrieved on or after the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, or by an order of the Commission made, or the rules or regulations made thereunder or by an order made by an adjudicating officer under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter.

(2) The Central Government shall specify, by notification, the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

(3) No appeal shall lie to the Appellate Tribunal from an order made by the Commission or an adjudicating officer with the consent of the parties.

(4) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Chairman of the Commission is received by the aggrieved person and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within that period.

Amendment of section 23.

Insertion of new section 24A.

Civil court not to have jurisdiction.

Insertion of new Chapter VA.

Appeal to Appellate Tribunal. (5) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(6) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned authority whose order has been appealed against.

(7) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

24C. The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Right to legal representation.

Explanation --- For the purposes of this section,---

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

24D. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to the Appellate Tribunal.

24E. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.".

34. After section 26 of the principal Act, the following sections shall be inserted, namely:---

"26A. (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this subsection.

38 of 1949.

56 of 1980.

23 of 1959.

36 of 1963.

SEC. 1]

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Limitation

Appeal to Supreme Court.

Insertion of new sections 26A, 26B, 26C, 26D 26E and 26F.

Power of Central Government to issue directions. (2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

Power of Central Government to supersede Commission. 26B. (1) If at any time the Central Government is of the opinion-

(a) that on account of grave emergency, the Commission is unable to discharge the functions and perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Commission has persistently made wilful default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and perform the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position<sup>s</sup> of the Commission or the administration of the Commission has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification, supersede the Commission for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Commission shall, until the Commission is reconstituted, vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Commission by fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for such appointment:

Provided that the Central Government may, at any time before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

26C. (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the commodities market, as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Commission shall, within ninety days, after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

Returns and reports.

26D. The Commission may, by general or special order in writing, delegate to any member or officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 28) as it may deem necessary.

26E. No order passed by the Commission or the adjudicating officer under this Act shall be appealable except as provided in section 24B and no civil court shall have jurisdiction in respect of any matter which the Commission or the adjudicating officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Commission or the adjudicating officer by, or under, this Act.

26F. All members, officers and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.".

35. After section 27A of the principal Act, the following section shall be inserted, namely:---

"27B. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Commission shall not be liable to pay wealthtax, income-tax or any other tax in respect of their wealth, income, profits or gains derived."

36. In section 28 of the principal Act, in sub-section (2),-

(i) clause (cc) shall be omitted;

(ii) for clause (g), the following clauses shall be substituted, namely:---

"(g) the duties and powers which may be performed or exercised by the Commission under clause (q) of section 4;

(h) the form and manner in which the annual statement of accounts shall be maintained under sub-section (1) of section 4F;

(i) the rules for dealing by foreign participant or foreign intermediary under the proviso to sub-section (3) of section 14A;

(j) the manner in which an inquiry shall be held under sub-section (1) of section 21-I;

(k) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (4) of section 24B and the fees payable in respect of such appeal;

(1) the form and the manner in which returns and report to be made to the Central Government under section 26C;

(m) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules."

37. After section 28 of the principal Act, the following sections shall be inserted, namely:---

Insertion of new sections 28A and 28B.

"28A. (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Power to make regulations.

Amendment of

section 28.

Exemption from tax on wealth and

Bar of jurisdiction.

Members, officers and employees of Commission to be public servants.

Insertion of new section 27B.

income.

Delegation.

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45 of 1860.

SEC, 1]

27 of 1957 43 of 1961 (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the time and places of meetings of the Commission and the procedure to be followed at such meetings under section 3D including quorum necessary for the transaction of business;

(b) the terms and other conditions of service of officers and employees of the Commission under sub-section (2) of section 3H;

(c) the manner in which the fresh issue of equity shares shall be made to the public under sub-section (8) of section 7B;

(d) the conditions of certificate of registration to act as a member or intermediary to deal with forward contract or option in goods or option in commodity derivative under sub-section (1) of section 14A;

(e) the fee for a class or classes of member or intermediary under the second proviso to sub-section (2) of section 14A;

(f) the terms and conditions subject to which registration may be granted under sub-section (4) of section 14A;

(g) the manner in which the certificate of registration may be suspended or cancelled under section 14B;

(h) any other matter relating to trading, clearing, settlement, and delivery of goods, forward contract, option in goods or option in commodity derivative.

(3) Every regulation made under this Act 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 regulation or both Houses agree that the regulation should not be made, the regulation 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 regulation.

Application of other laws not barred.

28B. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.".

#### CHAPTERIII

#### Amendment to the Securities and Exchange Board of India Act, 1992

Amendment of section 15U of Act 15 of 1992. **38.** In section 15U of the Securities and Exchange Board of India Act, 1992, in sub-section (2), for the words "under this Act", the words "under this Act or any other law for the time being in force" shall be substituted.

PRATIBHA DEVISINGH PATIL, President.

K. D. SINGH,

Secy. to the Govt. of India.

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

# MINISTRY OF LAW AND JUSTICE

## (Legislative Department)

New Delhi, the 5th February, 2008/Magha 16, 1929 (Saka)

# THE SUGAR DEVELOPMENT FUND (AMENDMENT) ORDINANCE, 2008

### No. 4 of 2008

Promulgated by the President in the Fifty-ninth Year of the Republic of India.

An Ordinance further to amend the Sugar Development Fund Act, 1982 and the Sugar Cess Act, 1982.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Sugar Development Fund (Amendment) Ordinance, 2008.

(2) It shall come into force at once.

2. In the Sugar Development Fund Act, 1982, in section 4, in sub-section (1), after clause (*bbb*), the following clause shall be inserted, namely:—

"(*bbbb*) for defraying expenditure for the purpose of financial assistance to sugar factories towards interest on loans given in terms of any scheme approved by the Central Government from time to time.".

Short title and commencement

Amendment of section 4.

4 of 1982.

# THE GAZETTE OF INDIA EXTRAORDINARY [PART II-Sec. 1]

Amendment of section 3.

3. In the Sugar Cess Act, 1982, in section 3, in sub-section (1),—

3 of 1982.

(a) for the words "fifteen rupees", the words "twenty-five rupees" shall be substituted:

(b) the proviso shall be omitted.

PRATIBHA DEVISINGH PATIL, President.

> K. D. SINGH, Secy. to the Govt. of India.

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REGISTERED NO. DL--(N)04/0007/2003--08



भाग 11 --- खण्ड 1

PART II - Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 7th February, 2008/Magha 18, 1929 (Saka)

# THE PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA) AMENDMENT ORDINANCE, 2008

## No. 5 of 2008

Promulgated by the President in the Fifty-ninth Year of the Republic of India.

An Ordinance further to amend the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 2008.

Short title and commencement.

(2) It shall come into force at once.

#### THE GAZETTE OF INDIA EXTRAORDINARY [PART II--Sec. 1]

Amendment of section 6.

2. In section 6 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990,---

. . .

25 of 1990.

(a) for sub-section (1), the following shall be substituted, namely:---

"(1). The Chairman shall be Part-time Member and shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Provided that any person holding office as a Chairman immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 2008, shall, in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such commencement as such Chairman and shall not be entitled to any compensation because of his ceasing to hold such office.".

(b) in sub-section (2), the words "The Executive Member," shall be omitted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:----

"(2A) The Executive Member shall be a Whole-time Member and shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:

Provided that any person holding office as an Executive Member immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 2008 shall, in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such commencement as such Executive Member and shall not be entitled to any compensation because of his ceasing to hold such office.".

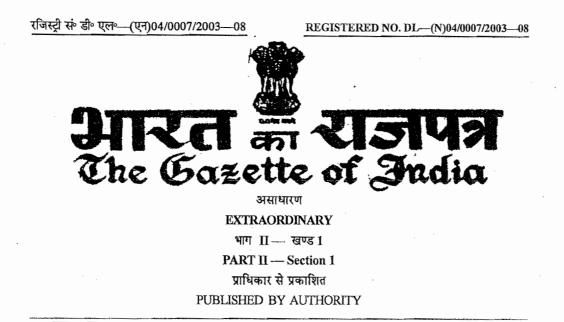
#### PRATIBHA DEVISINGH PATIL,

President.

K. D. SINGH, Secy. to the Govt. of India.

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## MINISTRY OF LAW AND JUSTICE

# (Legislative Department)

New Delhi, the 7th February, 2008/Magha 18, 1929 (Saka)

# THE FOOD SAFETY AND STANDARDS (AMENDMENT) ORDINANCE, 2008

# No. 6 of 2008

Promulgated by the President in the Fifty-ninth Year of the Republic of India.

An Ordinance to amend the Food Safety and Standards Act, 2006.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Food Safety and Standards (Amendment) Ordinance, 2008.

(2) It shall come into force at once.

34 of 2006.

2. In the Food Safety and Standards Act, 2006 (hereinafter referred to as the principal Act), in section 3, in sub-section (1), for clause (ze), the following clause shall be substituted, namely:—

'(ze) "Member" includes a part-time Member and the Chairperson of the Food Authority;'.

Short title and commencement.

Amendment of section 3.

[PART II-SEC. 1]

Amendment of section 5. 2

3. In section 5 of the principal Act, for sub-sections (4) and (5), the following sub-sections shall be substituted, namely:—

"(4) The Chairperson and the Members including part-time Members other than the *ex officio* Members of the Food Authority may be appointed by the Central Government on the recommendations of the Selection Committee.

(5) The Chairperson of the Food Authority shall not hold any other office.".

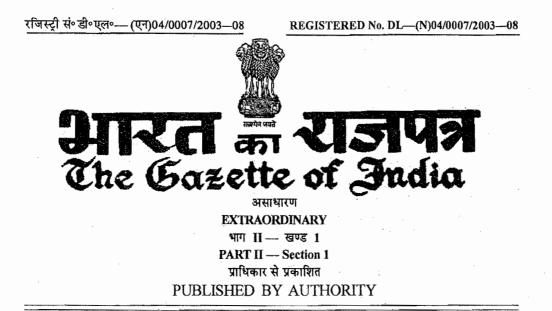
Amendment of section 7 4. In section 7 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

"Provided that the Chairperson shall not hold office as such after he has attained the age of sixty-five years.".

# PRATIBHA DEVISINGH PATIL, President.

K. D. SINGH, Secy. to the Govt. of India.

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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 3rd July, 2008/Ashadha 12, 1930 (Saka)

# THE EMPLOYEES' STATE INSURANCE (AMENDMENT) ORDINANCE, 2008

No. 7 of 2008

Promulgated by the President in the Fifty-ninth Year of the Republic of India.

An Ordinance further to amend the Employees' State Insurance Act, 1948.

WHEREAS Parliament is not in session and the President is statisfied that circumstances exist which render it necessary for her to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Employees' State Insurance (Amendment) Ordinance, 2008.

(2) It shall come into force at once.

34 of 1948.

2. In the Employees' State Insurance Act, 1948, for Chapter VA, the following Chapter shall be substituted, namely:—

#### 'CHAPTER VA

SCHEME FOR OTHER BENEFICIARIES

73A. In this Chapter,----

(a) "other beneficiaries" means persons other than the person insured under this Act;

Short title and commencement.

Substitution of new Chapter for Chapter VA.

Definitions.

[PART II—SEC. 1]

(b) "Scheme" means any Scheme framed by the Central Government from time to time under section 73B for the medical facility for other beneficiaries;

(c) "underutilised hospital" means any hospital not fully utilised by the persons insured under this Act;

(d) "user charges" means the amount which is to be charged from the other beneficiaries for medical facilities as may be notified by the Corporation in consultation with the Central Government from time to time.

73B Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, frame Scheme for other beneficiaries and the members of their families providing medical facility in any hospital established by the Corporation in any area which is underutilised hospital on payment of user charges.

73C. The user charges collected from the other beneficiaries shall be deemed to be contribution and shall form part of the Employees' State Insurance Fund.

73D. The Scheme may provide for all or any of the following matters, namely:---

(*i*) the other beneficiaries who may be covered under this Scheme;

(*ii*) the time and manner in which the medical facilities may be availed by the other beneficiaries;

(*iii*) the form in which the other beneficiary shall furnish particulars about himself and his family whenever required as may be specified by the Corporation;

(*iv*) any other matter which is to be provided for in the scheme or which may be necessary or proper for the purpose of implementing the Scheme.

73E. The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind the Scheme.

73F. Every Scheme framed under this Chapter 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 Scheme or both Houses agree that the Scheme should not be made, the Scheme 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 Scheme.'

> PRATIBHA DEVISINGH PATIL, President.

Power to frame Scheme,

Collection of user charges.

Scheme for other beneficiaries.

Power to amend Scheme.

Laying of Scheme framed under this Chapter.

GMGIPMRND-2493GI(S-5)-04.07.2008.

K. D. SINGH, Secy. to the Govt. of India.

Tote Gazette of India

# असाधारण

EXTRAORDINARY

भाग II --- खण्ड 1

PART II --- Section 1

प्राधिकार से प्रकाशित

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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 13th October, 2008/Asvina 21, 1930 (Saka)

# THE AGRICULTURAL AND PROCESSED FOOD PRODUCTS EXPORT DEVELOPMENT AUTHORITY (AMENDMENT) ORDINANCE, 2008 No 8 of 2008

Promulgated by the President in the Fifty-ninth Year of the Republic of India.

An Ordinance to amend the Agricultural and Processed Food Products Export Development Authority Act, 1985.

WHEREAS the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

**1.** (1) This Ordinance may be called the Agricultural and Processed Food Products Export Development Authority (Amendment) Ordinance, 2008.

2) It shall come into force at once.

[Part II—

2 of 1986.

Amendment of section 2.

2. In the Agricultural and Processed Food Products Export Development Authority Act, 1985 (hereinafter referred to as the principal Act), in section 2,—

- (a) in clause (g), for the words "Scheduled products", the words "Scheduled products or, as the case may be, Special products" shall be substituted;
- (b) in clause (i), for the words "the Schedule", the words "the First Schedule" shall be substituted;
- (c) after clause (i), the following clause shall be inserted, namely:---

(*j*) "Special product" means any of the agricultural or processed food products included in the Second Schedule.'

**3.** For section 3 of the principal Act, the following section shall be substituted, namely:-

"3. The Central Government may, having regard to the objects to this Act, and if it considers necessary or expedient so to do, by notification in the Official Gazette, add to, or, as the case may be, omit from, the First Schedule or the Second Schedule any agricultural or processed food product and on such addition, or as the case may be, omission, such product shall be, or shall cease to be, a Scheduled product or Special product as the case may be.".

Amendment of section 4.

4. In section 4 of the principal Act, in sub-section (4), in clause (h), for sub-clause (iii), the following sub-clause shall be substituted, namely:-

"(*iii*) other Scheduled products or Special products industries;".

5. After section 10 of the principal Act, the following section shall be inserted, namely:-

Functions in respect of special products. etc

Insertion of new

section 10A.

'10A. Without prejudice to any law for the time being in force, it shall be the duty of the Authority to undertake, by such measures as may be prescribed by the Central Government for registration and protection of the Intellectual Property rights in respect of Special products in India or outside India.

Substitution of new section for section 3.

Power to amend Schedule.

=

*Explanation.*— For the purpose of this section "Intellectual Property" means any right to intangible property, namely, trade marks, designs, patents, geographical indications or any other similar intangible property, under any law for the time being in force.

6. In section 32 of the principal Act, after clause (h), the following clause shall be inserted, namely:—

"(ha) the measures for registration and protection of the Intellectual Property rights under section 10A;".

7. The Schedule to the principal Act shall be numbered as the First Schedule and after the First Schedule as so numbered, the following Schedule shall be inserted, namely:—

## "THE SECOND SCHEDULE

[See section 2(j)]

Basmati rice.".

PRATIBHA DEVISINGH PATIL,

President.

T. K. VISWANATHAN, Secy. to the Govt. of India.

SEC. 1]

Amendment of section 32

Amendment of the

Schedule.



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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 9th January, 2009/Pausa 19, 1930 (Saka)

# THE HIGH COURT AND SUPREME COURT JUDGES (SALARIES AND CONDITIONS OF SERVICE) AMENDMENT ORDINANCE, 2009

No. 1 of 2009

Promulgated by the President in the Fifty-ninth Year of the Republic of India

An Ordinance further to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958.

WHEREAS a Bill further to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 has been introduced in the House of the People, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for her to take immediate action to give effect to the provisions of the said Bill;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

## CHAPTER I

#### PRELIMINARY

1. (1) This Ordinance may be called the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Ordinance, 2009.

Short title and commencement.

(2) Sections 2, 3, 4, 7, 8, 9, 10 and 13 shall be deemed to have come into force on the 1st day of January, 2006 and the remaining provisions of this Ordinance, shall be deemed to have come into force on the 1st day of September, 2008.

#### CHAPTER II

## AMENDMENT OF THE HIGH COURT JUDGES (SALARIES AND CONDITIONS OF SERVICE) ACT, 1954

Amendment of section 13A.

2. In the High Court Judges (Salaries and Conditions of Service) Act, 1954 (hereinafter referred to as the High Court Judges Act), in section 13A,—

(a) in sub-section (1), for the words "thirty thousand rupees per mensem", the words "ninety thousand rupees per mensem" shall be substituted;

(b) in sub-section (2), for the words "twenty-six thousand rupees per mensem", the words "eighty thousand rupees per mensem" shall be substituted.

Amendment of section 17A.

3. In section 17A of the High Court Judges Act, in sub-section (1),-

(a) the words "plus fifty per cent. of his dearness pay" shall be omitted.

(b) the words "plus thirty per cent. of his dearness pay subject to a minimum of one thousand nine hundred and thirteen rupees per month" shall be omitted;

Insertion of new section 17B.

Additional quantum of pension or family pension. "17B. Every retired Judge or after his death, the family, as the case may be, shall be entitled to an additional quantum of pension or family pension in accordance with the following scale:-

4. After section 17A of the High Court Judges Act, the following

section shall be inserted, namely :-

Age of pensioner or family pensioner	Additional quantum of pension or family pension
From eighty years to less	twenty per cent. of basic
than eighty-five years	pension or family pension
From eighty-five years to	thirty per cent. of basic pension
less than ninety years	or family pension
From ninety years to less	forty per cent. of basic pension
than ninety-five years	or family pension
From ninety-five years to	fifty per cent. of basic pension
less than hundred years	or family pension
From hundred years or	hundred per cent. of basic
more	pension or family pension
· · · ·	· · · · ·

Amendment of section 22A.

Substitution of new section for section 22C.

Sumptuary allowance.

5. In section 22A of the High Court Judges Act, in sub-section (2), the words "plus thirty per cent. of the dearness pay" shall be omitted.

6. In the High Court Judges Act, for section 22C, the following section shall be substituted, namely:-

"22C. The Chief Justice and each of the other Judges of every High Court shall be entitled to a sumptuary allowance of fifteen thousand rupees per month and twelve thousand rupees per month respectively".

28 of 1954.

7. In the First Schedule to the High Court Judges Act,-

(a) In Part I,—

(i) in paragraph 2,---

(A) in clause (a), for the letters and figures "Rs.21,945", the letters and figures "Rs.43,890" shall be substituted;

(*B*) in clause (*b*), for the letters and figures "Rs.16,725", the letters and figures "Rs.34,350" shall be substituted;

(C) in the proviso, for the letters and figures "Rs. 2,70,000" and "Rs. 2,34,000", the letters and figures "Rs. 5,40,000" and "Rs. 4,80,000" shall, respectively, be substituted;

(*ii*) in paragraph 8, for the letters and figures "Rs.2,70,000", the letters and figures "Rs.5,40,000" shall be substituted;

(*iii*) in paragraph 9, for the letters and figures "Rs.76,785", the letters and figures "Rs.1,57,670" shall be substituted;

(b) In Part II,—

(*i*) in the proviso to paragraph 2, for the letters and figures "Rs.2,70,000" and "Rs.2,34,000", the letters and figures "Rs.5,40,000" and "Rs.4,80,000" shall, respectively, be substituted;

(*ii*) in paragraph 3, for the figures "16,898", "20,280", "23,649", "27,033", "30,420" and "33,799", the figures "34,696", "41,642", "48,559", "55,508", "62,462" and "69,402" shall, respectively, be substituted;

(c) In Part III, in paragraph 2,-

(A) in clause (b), for the letters and figures "Rs.7,800", the letters and figures "Rs.16,020" shall be substituted;

(B) in the proviso, for the letters and figures "Rs.2,70,000" and "Rs.2,34,000", the letters and figures "Rs.5,40,000" and "Rs.4,80,000" shall, respectively, be substituted.

## CHAPTER III

# AMENDMENT OF THE SUPREME COURT JUDGES (SALARIES AND CONDITIONS OF SERVICE)

## ACT, 1958

Amendment of section 12A.

41 of 1958.

8. In the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 (hereinafter referred to as the Supreme Court Judges Act), in section I2A, —

(a) in sub-section (1), for the words "thirty-three thousand rupees per mensem", the words "one lakh rupees per mensem" shall be substituted;

(b) in sub-section (2), for the words "thirty thousand rupees per mensem", the words "ninety thousand rupees per mensem" Amendment of First Schedule. shall be substituted.

Amendment of section 16A.

9. In section 16A of the Supreme Court Judges Act, in sub-section (1),-

(*i*) in clause (*a*), the words "plus fifty per cent. of his dearness pay" and "plus thirty per cent. of his dearness pay" shall be omitted;

(*ii*) in clause (*b*), the words "plus thirty per cent. of his dearness pay" shall be omitted;

10. After section 16A of the Supreme Court Judges Act, the following section shall be inserted, namely:-

Additional quantum of pension or family pension.

Insertion of new

section 16B.

"16B. Every retired Judge or after his death, the family, as the case may be, shall be entitled to an additional quantum of pension or family pension in accordance with the following scale:-

Age of pensioner or family pensioner	Additional quantum of pension or family pension
and the second	and a second
From eighty years to	twenty per cent. of basic
less than eighty-five	pension or family pension
years	,
From eighty-five years	
to less than ninety	pension or family pension
years	
From ninety years to	forty per cent. of basic
less than ninety-five	pension or family pension
years	- · · ·
•	fibre non cont of basis "
From ninety-five years	fifty per cent. of basic "
to less than hundred	pension or family pension
years	
From hundred years or	hundred per cent. of basic
more	pension or family pension

Amendment of section 23.

Amendment of section 23B.

Amendment of the

Schedule.

12. In section 23B of the Supreme Court Judges Act, for the words "ten thousand" and "seven thousand five hundred", the words "twenty thousand" and "fifteen thousand" shall, respectively, be substituted.

(1A), the words "plus thirty per cent. of the dearness pay" shall be

11. In section 23 of the Supreme Court Judges Act, in sub-section

13. In the Schedule to the Supreme Court Judges Act,-

(a) in Part I,---

omitted.

(i) in paragraph 2, -

(A) in clause (b), for the letters and figures "Rs.6,030", "Rs.1,82,820" and "Rs.15,360", the letters and figures "Rs.12,180", "Rs.3,69,300" and "Rs.31,030" shall, respectively, be substituted;

(B) in the proviso, for the letters and figures "Rs.2,97,000", the letters and figures "Rs.6,00,000" shall be substituted;

[Part II-

(*ii*) in the proviso to paragraph 3, for the letters and figures "Rs.2,70,000", the letters and figures "Rs.5,40,000" shall be substituted;

(b) in Part II, in paragraph 2, in clause (b), for the letters and figures "Rs.16,898", the letters and figures "Rs.33,795" shall be substituted;

(c) in Part III, in paragraph 2,—

(A) in clause (b), for the letters and figures "Rs.7,800", the letters and figures "Rs.16,020" shall be substituted;

(B) in the proviso, for the letters and figures "Rs. 2,97,000" and "Rs.2,70,000", the letters and figures ""Rs. 6,00,000" and "Rs.5,40,000" shall, respectively, be substituted.

#### CHAPTER IV

#### TRANSITIONAL PROVISION

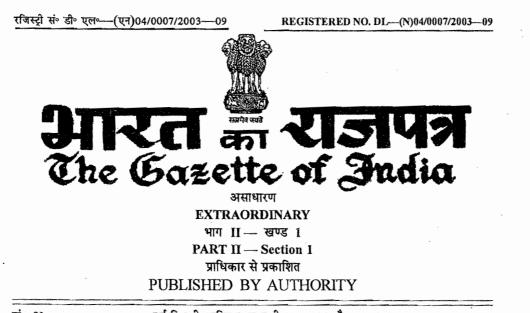
14. The difference of salary, pension and family pension payable to a Judge of High Court or to his family, as the case may be, under the High Court Judges Act or a Judge of the Supreme Court or his family, as the case may be, under the Supreme Court Judges Act as amended by this Ordinance and the salary, pension or family pension payable to such Judge or his family, as the case may be, but for this Ordinance shall be paid in two installments, the first installment of forty per cent. to be paid during the current financial year 2008-09 and the remaining sixty per cent. to be paid in the financial year 2009-10.

## PRATIBHA DEVISINGH PATIL, President.

## T. K. VISWANATHAN, Secy. to the Govt. of India.

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Arrears.



संग् १। नई दिल्ली, शनिवार, जनवरी 10, 2009/पौष 20, 1930 No. 9] NEW DELHI, SATURDAY, JANUARY 10, 2009 / PAUSA 20, 1930

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# MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 10th January, 2009/Pausa 20, 1930 (Saka)

# THE CENTRAL INDUSTRIAL SECURITY FORCE (AMENDMENT) **ORDINANCE**, 2009

No. 2 OF 2009

Promulgated by the President in the Fifty -ninth Year of the Republic of India.

An Ordinance further to amend the Central Industrial Security Force Act, 1968.

WHEREAS a Bill further to amend the Central Industrial Security Force Act, 1968 has been introduced in the Council of States, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for her to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

> 1.(1)This Ordinance may be called the Central Industrial Security Force (Amendment) Ordinance, 2009.

Short title and commencement.

(2) It shall come into force at once.

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50 of 1968.

2. In the Central Industrial Security Force Act, 1968 (hereinafter Amendment of section 2. Amendment of section 2.

(a) after clause (ca), the following clause shall be inserted, namely :-

'(cb) "joint venture" means a venture jointly undertaken by the Central Government or State Government with private industrial undertaking;';

(b) after clause (g), the following clause shall be inserted, namely:-

'(ga) "private industrial undertaking" means an industry owned, controlled or managed by a person other than the Central or State Government or any industrial undertaking in public sector;'.

**3.** In section 3 of the principal Act, in sub-section (1), after the words "industrial undertakings owned by that Government", the words ", joint venture or private industrial undertaking" shall be inserted.

Amendment of section 3.

Amendment of

Amendment of

section 7

section 4.

4. In section 4 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) The Central Government may appoint a person to be the Director-General of the Force and such other supervisory officers as considered necessary.".

5. In section 7 of the principal Act, in sub-section (2)-

- (i) for the words "an Inspector-General, a Deputy Inspector-General, a Commandant, a Deputy Commandant or an Assistant Commandant", the words "such other supervisory officers as considered necessary" shall be substituted;
- (ii) after the words "industrial undertaking", the words ", joint venture or private industrial undertaking" shall be inserted.

6. In section 10 of the principal Act,-

(i) in clause (c), after the word "safeguard", the words "any joint venture, private industrial undertaking and" shall be inserted;

(ii) in clause (h), after the words "any other duty", the words "within and outside India" shall be inserted.

Amendment of section 10.

8.

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7. In section 14 of the principal Act,-

Amendment of section 14.

(a) in the marginal heading, after the words "public sector", the words ", joint venture or private sector" shall be inserted;

(b) in sub-section (1), after the words "public sector", the words ", joint venture or private sector" shall be inserted;

(c) in the proviso to sub-section (2), for the words "one month's notice", the words "three month's notice" shall be substituted.

8. In section 15 of the principal Act, in sub-section (1), after the word "within", the words "or outside" shall be inserted.

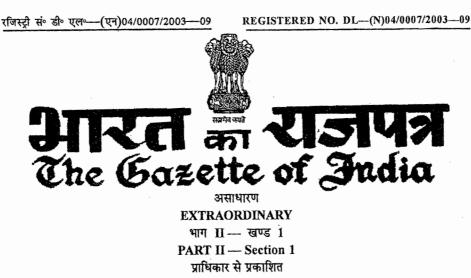
Amendment of section 15.

## PRATIBHA DEVISINGH PATIL, President.

T.K. VISWANATHAN, Secy. to the Govt. of India.

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 15th January, 2009/Pausa 25, 1930 (Saka)

## THE CENTRAL UNIVERSITIES ORDINANCE, 2009

## No. 3 OF 2009

Promulgated by the President in the Fifty-ninth Year of the Republic of India.

An Ordinance to establish and incorporate universities for teaching and research in the various States and to provide for matters connected therewith or incidental thereto.

WHEREAS a Bill to establish and incorporate universities for teaching and research in the various States and to provide for matters connected therewith or incidental thereto was introduced in the House of the People and referred to the Department-related Parliamentary Standing Committee on Human Resource Development which gave its report on the 17<sup>th</sup> day of December, 2008 but the said Bill has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Central Universities Ordinance, 2009.

Short title and commencement.

(2) It shall come into force at once.

Definitions.

2. In this Ordinance, and in all Statutes made hereunder, unless the context otherwise requires,-

(a) "Academic Council" means the Academic Council of the University;

(b) "academic staff" means such categories of staff as are designated as academic staff by the Ordinances;

(c) "Board of Studies" means the Board of Studies of a Department of the University;

(d) "College" means a college maintained by the University;

(e) "Chancellor", "Vice-Chancellor" and "Pro-Vice-Chancellor" mean, respectively, the Chancellor, Vice-Chancellor and Pro-Vice-Chancellor of the University;

(f) "Court" means the Court of the University;

(g) "Department" means a Department of Studies and includes a Centre of Studies;

(h) "distance education system" means the system of imparting education through any means of communication, such as broadcasting, telecasting, internet, correspondence courses, seminars, contact programmes or the combination of any two or more such means;

(i) "employee" means any person appointed by the University and includes teachers and other staff of the University;

(*j*) "Executive Council" means the Executive Council of the University;

(k) "Hall" means a unit of residence or of corporate life for the students of the University, or of a College or an Institution, maintained by the University;

(1) "Institution" means an academic institution, not being a College, maintained by the University;

(m) "Principal" means the Head of a College or an Institution maintained by the University and includes, where there is no Principal, the person for the time being duly appointed to act as Principal, and in the absence of the Principal, or the acting Principal, a Vice-Principal duly appointed as such;

(n) "Regulations" means the Regulations made by any authority of the University under this Ordinance for the time being in force;

(o) "School" means a School of Studies of the University;

(p) "Statutes" and "Ordinances" mean, respectively, the Statutes and the Ordinances of the University for the time being in force;

(q) "teachers of the University" means Professors, Associate Professors, Assistant Professors and such other persons as may be appointed for imparting instruction or conducting research in the University or in any College or Institution maintained by the University and are designated as teachers by the Ordinances; and

(r) "University" means a University established and incorporated as a University under this Ordinance.

Establishment of Universities. 3. (1) The Guru Ghasidas Vishwavidyalaya in the State of Chhattisgarh and Doctor Harisingh Gour Vishwavidyalaya in the State of Madhya Pradesh, established under the

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, and Hemvati Nandan Bahuguna Garhwal University in the State of Uttarakhand, established under the Uttar Pradesh State Universities Act, 1973, shall be established as bodies corporate under this Ordinance by the same names of "Guru Ghasidas Vishwavidyalaya", "Doctor Harisingh Gour Vishwavidyalaya" and "Hemvati Nandan Bahuguna Garhwal University", respectively.

(2) The headquarters of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University shall be at Bilaspur, Sagar and Srinagar, respectively.

(3) The jurisdiction of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, shall extend to the Bilaspur, Raigarh and Surguja districts of the State of Chhattisgarh, the Sagar, Tikamgarh, Chhatarpur, Panna, Chhindwara and Damoh districts of the State of Madhya Pradesh, and the Chamoli, Dehradun. Garhwal, Hardwar, Rudraprayag, Tehri Garhwal and Uttarkashi districts of the State of Uttarakhand, respectively.

(4) There shall be established, the Universities in the various States as bodies corporate, by such names and territorial jurisdiction, as specified in the First Schedule to this Ordinance.

(5) The headquarters of each of the Universities, referred to in sub-section (4), shall be such as may be specified by the Central Government by notification in the Official Gazette.

(6) The first Chancellor, the first Vice-Chancellor and the first members of the Court, the Executive Council and the Academic Council of each University, and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the University.

(7) The University shall have perpetual succession and a common seal, and shall sue and be sued by the said name.

4. On and from the date of commencement of this Ordinance, -

(a) any reference to Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, in any contract or other instrument shall be deemed as a reference to Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya, and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Ordinance;

(b) all properties, movable and immovable, of or belonging to Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, shall vest in Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, as the case may be, established under this Ordinance;

(c) all rights and liabilities of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, shall be transferred to, and be the rights and liabilities of, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Ordinance;

(d) every person employed by Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, immediately before the commencement of this Ordinance shall hold his office or service in Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Ordinance by the same tenure, at the

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Madhya Pradesh Acu 22 of 1973. President's Act 10 of 1973. SEC. 1]

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same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Ordinance had not been promulgated, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the University in accordance with the terms of the contract with the employee or, if no provision is made therein in this behalf, on payment to him by the University of compensation equivalent to three months' remuneration in case of permanent employees and one month's remuneration in the case of other employees:

Provided further that every person employed before the commencement of this Ordinance, pending the execution of a contract under section 33, shall be deemed to have been appointed in accordance with the provisions of a contract consistent with the provisions of this Ordinance and the Statutes:

Provided also that any reference, by whatever form of words, to the Vice-Chancellor and Pro-Vice-Chancellor of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, in any law for the time being in force, or in any instrument or other document, shall be construed as a reference to the Vice-Chancellor and the Pro-Vice-Chancellor of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, as the case may be, established under this Ordinance;

(e) the Vice-Chancellors of Guru Ghasidas Vishwavidyalaya and Doctor Harisingh Gour Vishwavidyalaya, appointed under the provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, and the Vice-Chancellor of Hemvati Nandan Bahuguna Garhwal University, appointed under the provisions of the Uttar Pradesh State Universities Act. 1973, shall be deemed to have been appointed as the Vice-Chancellors under this Ordinance, and shall hold office for a period of three months or till such time the first Vice-Chancellor is appointed under section 44 of the Ordinance, whichever is earlier; and

Madhya Pradesh Act 22 of 1973. President's Act 10 of 1973.

(f) all Colleges, Institutions, Schools or Faculties, and Departments affiliated to, or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University shall stand affiliated to, or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Ordinance.

Objects of University. 5. The objects of the University shall be to disseminate and advance knowledge by providing instructional and research facilities in such branches of learning as it may deem fit; to make special provisions for integrated courses in humanities, social sciences, science and technology in its educational programmes; to take appropriate measures for promoting innovations in teaching-learning process and inter-disciplinary studies and research; to educate and train manpower for the development of the country; to establish linkages with industries for the promotion of science and technology; and to pay special attention to the improvement of the social and economic conditions and welfare of the people, their intellectual, academic and cultural development.

Powers of University. 6. (1) The University shall have the following powers, namely: -

(*i*) to provide for instructions in such branches of learning like natural sciences, social sciences, humanities, engineering, technology and medicine as the University may, from time to time, determine and to make provisions for research and for the advancement and dissemination of knowledge;

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(*ii*) to grant, subject to such conditions as the University may determine, diplomas or certificates to, and confer degrees or other academic distinctions on, persons, on the basis of examinations, evaluation or any other method of testing, and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;

(iii) to organise and to undertake extramural studies, training and extension services;

(*iv*) to confer honorary degrees or other distinctions in the manner prescribed by the Statutes;

(v) to provide facilities through the distance education system to such persons as it may determine;

(vi) to institute Principalships, Professorships, Associate Professorships, Assistant Professorships and other teaching or academic positions, required by the University and to appoint persons to such Principalships, Professorships, Associate Professorships, Assistant Professorships or other teaching or academic positions;

(*vii*) to recognise an institution of higher learning for such purposes as the University may determine and to withdraw such recognition;

(*viii*) to appoint persons working in any other University or academic institution, including those located outside the country, as teachers of the University for a specified period;

(*ix*) to create administrative, ministerial and other posts and to make appointments thereto;

(x) to co-operate or collaborate or associate with any other University or authority or institution of higher learning, including those located outside the country, in such manner and for such purposes as the University may determine;

(xi) to establish such centres and specialised laboratories or other units for research and instruction as are, in the opinion of the University, necessary for the furtherance of its objects;

(xii) to institute and award fellowships, scholarships, studentships, medals and prizes;

(xiii) to establish and maintain Colleges, Institutions and Halls;

(xiv) to make provision for research and advisory services and for that purpose to enter into such arrangements with other institutions, industrial or other organisations, as the University may deem necessary;

(xv) to organise and conduct refresher courses, workshops, seminars and other programmes for teachers, evaluators and other academic staff;

(xvi) to appoint on contract or otherwise visiting Professors, Emeritus Professors, Consultants and such other persons who may contribute to the advancement of the objects of the University;

(xvii) to confer autonomous status on a College or an Institution or a Department, as the case may be, in accordance with the Statutes;

(xviii) to determine standards of admission to the University, which may include examination, evaluation or any other method of testing;

(xix) to demand and receive payment of fees and other charges;

(xx) to supervise the residences of the students of the University and to make arrangements for promoting their health and general welfare;

(xxi) to lay down conditions of service of all categories of employees, including their code of conduct;

(xxii) to regulate and enforce discipline among the students and the employees, and to take such disciplinary measures in this regard as may be deemed by the University to be necessary;

(xxiii) to make arrangements for promoting the health and general welfare of the employees;

(xxiv) to receive benefactions, donations and gifts and to acquire, hold and manage, and to dispose of, with the previous approval of the Central Government, any property, movable or immovable, including trust and endowment properties, for the purposes of the University;

(xxv) to borrow, with the previous approval of the Central Government, on the security of the property of the University, money for the purposes of the University; and

(xxvi) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of its objects.

(2) In exercising its powers referred to in sub-section (1), it shall be the endeavour of the University to maintain an all-India character and high standards of teaching and research, and, the University shall, among other measures which may be necessary for the said purpose, take, in particular, the following measures, namely:-

(i) admission of students and recruitment of faculty shall be made on all-India basis;

(*ii*) admissions of students shall be made on merit, either through Common Entrance Tests conducted individually by the University or in combination with other Universities, or on the basis of marks obtained in the qualifying examination in such courses where the intake of students is small;

(*iii*) inter-University mobility of faculty, with portable pensions and protection of seniority, shall be encouraged;

(*iv*) semester system, continuous evaluation and choice-based credit system shall be introduced and the University shall enter into agreements with other Universities and academic institutions for credit transfer and joint degree programmes;

(v) innovative courses and programmes of studies shall be introduced with a provision for periodic review and restructuring;

(vi) active participation of students shall be ensured in all academic activities of the University, including evaluation of teachers;

(vii) accreditation shall be obtained from the National Assessment and Accreditation Council or any other accrediting agency at the national level; and

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(viii) e-governance shall be introduced with an effective management information system.

7. The University shall be open to persons of either sex and of whatever caste, creed, race or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be appointed as a teacher of the University or to hold any other office therein or to be admitted as a student in the University or to graduate thereat or to enjoy or exercise any privilege thereof:

Provided that nothing in this section shall be deemed to prevent the University from making special provisions for the employment or admission of women, persons with disabilities or of persons belonging to the weaker sections of the society and, in particular, of the Scheduled Castes, the Scheduled Tribes and the other socially and educationally backward classes of citizens:

Provided further that no such special provision shall be made on the ground of domicile.

8. (1) The President of India shall be the Visitor of the University.

Visitor of University.

University open to

all castes, creed,

race or class

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(2) The Visitor may, from time to time, appoint one or more persons to review the work and progress of the University, including Colleges and Institutions maintained by it, and to submit a report thereon; and upon receipt of that report, the Visitor may, after obtaining the views of the Executive Council thereon through the Vice-Chancellor, take such action and issue such directions, as he considers necessary, in respect of any of the matters dealt with in the report and the University shall abide by such action and be bound to comply with such directions.

(3) The Visitor shall have the right to cause an inspection to be made by such person or persons, as he may direct, of the University, its buildings, libraries, laboratories and equipment, and of any College or Institution maintained by the University; and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the administration or finances of the University, Colleges or Institutions.

(4) The Visitor shall, in every matter referred to in sub-section (3), give notice of his intention to cause an inspection or inquiry to be made, to the University, and the University shall have the right to make such representations to the Visitor, as it may consider necessary.

(5) After considering the representations, if any, made by the University, the Visitor may cause to be made such inspection or inquiry as is referred to in sub-section (3).

(6) Where any inspection or inquiry has been caused to be made by the Visitor, the University shall be entitled to appoint a representative, who shall have the right to be present and be heard at such inspection or inquiry.

(7) The Visitor may, if the inspection or inquiry is made in respect of the University or any College or Institution maintained by it, address the Vice-Chancellor with reference to the result of such inspection or inquiry together with such views and advice with regard to the action to be taken thereon, as the Visitor may be pleased to offer, and on receipt of address made by the Visitor, the Vice-Chancellor shall communicate, to the Executive Council, the views of the Visitor with such advice as the Visitor may offer upon the action to be taken thereon.

(8) The Executive Council shall communicate through the Vice-Chancellor to the Visitor such action, if any, as it proposes to take or has been taken upon the result of such inspection or inquiry.

(9) Where, the Executive Council does not, within a reasonable time, take action to the satisfaction of the Visitor, the Visitor may, after considering any explanation furnished or representation made by the Executive Council, issue such directions, as he may think fit, and

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the Executive Council shall comply with such directions.

(10) Without prejudice to the foregoing provisions of this section, the Visitor may, by order in writing, annul any proceeding of the University which is not in conformity with this Ordinance, the Statutes or the Ordinances:

Provided that before making any such order, he shall call upon the Registrar to show cause why such an order should not be made, and, if any cause is shown within a reasonable time, he shall consider the same.

(11) The Visitor shall have such other powers as may be prescribed by the Statutes.

Officers of University. 9. The following shall be the officers of the University, namely:-

(1) the Chancellor;

(2) the Vice-Chancellor;

(3) the Pro-Vice-Chancellor;

(4) the Deans of Schools;

(5) the Registrar;

(6) the Finance Officer;

(7) the Controller of Examinations;

(8) the Librarian; and

(9) such other officers as may be declared by the Statutes to be the officers of the University.

Chancellor.

10. (1) The Chancellor shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.

(2) The Chancellor shall, by virtue of his office, be the head of the University and shall, if present, preside at the Convocations of the University held for conferring degrees and meetings of the Court.

Vice-Chancellor.

11. (1) The Vice-Chancellor shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.

(2) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

(3) The Vice-Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Ordinance and shall report to such authority at its next meeting the action taken by him on such matter:

Provided that if the authority concerned is of the opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final:

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to represent against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may

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confirm, modify or reverse the action taken by the Vice-Chancellor.

(4) The Vice-Chancellor, if he is of the opinion that any decision of any authority of the University is beyond the powers of the authority conferred by the provisions of this Ordinance, the Statutes or the Ordinances or that any decision taken is not in the interest of the University, may ask the authority concerned to review its decision within sixty days of such decision and if the authority refuses to review the decision either in whole or in part or no decision is taken by it within the said period of sixty days, the matter shall be referred to the Visitor whose decision thereon shall be final.

(5) The Vice-Chancellor shall exercise such other powers and perform such other duties as may be prescribed by the Statutes or the Ordinances.

12. The Pro-Vice-Chancellor shall be appointed in such manner and on such terms and <sup>1</sup> conditions of service, and shall exercise such powers and perform such duties, as may be <sup>1</sup> prescribed by the Statutes.

13. Every Dean of School shall be appointed in such manner, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

14. (1) The Registrar shall be appointed in such manner, and on such terms and conditions of  $R_{c}$  service, as may be prescribed by the Statutes.

(2) The Registrar shall have the power to enter into agreements, sign documents and authenticate records on behalf of the University, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

15. The Finance Officer shall be appointed in such manner, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

16. The Controller of Examinations shall be appointed in such manner and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

17. The Librarian shall be appointed in such manner and on such terms and conditions of service, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

18. The manner of appointment and powers and duties of other officers of the University Other o shall be prescribed by the Statutes.

19. The following shall be the authorities of the University, namely:-

(1) the Court;

(2) the Executive Council;

(3) the Academic Council;

(4) the Board of Studies;

(5) the Finance Committee; and

(6) such other authorities as may be declared by the Statutes to be the authorities of the University.

20. (1) The constitution of the Court and the term of office of its members shall be The Court. prescribed by the Statutes:

Pro Vice-Chancellors.

Deans of Schools.

Registrar.

Finance Officer.

Controller of Examinations.

Librarian.

Other officers.

Authorities of University.

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Provided that such number of members, as may be prescribed by the Statutes, shall be elected from among the teachers, employees and students of the University.

(2) Subject to the provisions of this Ordinance, the Court shall have the following powers and functions, namely:-

(a) to review, from time to time, the broad policies and programmes of the University, and to suggest measures for the improvement and development of the University;

(b) to consider and pass resolutions on the annual report and the annual accounts of the University and the audit report on such accounts;

(c) to advise the Visitor in respect of any matter which may be referred to it for advice; and

(d) to perform such other functions as may be prescribed by the Statutes.

Executive Council. **21.** (1) The Executive Council shall be the principal executive body of the University.

(2) The constitution of the Executive Council, the term of office of its members and its powers and functions shall be prescribed by the Statutes:

Provided that such number of members as may be prescribed by the Statutes shall be from among the elected members of the Court.

Academic Council. 22. (1) The Academic Council shall be the principal academic body of the University and shall, subject to the provisions of this Ordinance, the Statutes and the Ordinances, co-ordinate and exercise general supervision over the academic policies of the University.

(2) The constitution of the Academic Council, the term of office of its members and its powers and functions shall be prescribed by the Statutes:

Provided that such number of members as may be prescribed by the Statutes shall be from among the elected members of the Court.

23. The constitution, powers and functions of the Boards of Studies shall be prescribed by

Boards of Studies.

Finance

the Statutes.

the Statutes.

24. The constitution, powers and functions of the Finance Committee shall be prescribed by

**25.** The constitution, powers and functions of other authorities, as may be declared by the

Committee. Other

authorities of University.

Powers to make Statutes. 26. Subject to the provisions of this Ordinance, the Statutes may provide for all or any of the following matters, namely:-

Statutes to be the authorities of the University, shall be prescribed by the Statutes.

(a) the constitution, powers and functions of authorities and other bodies of the University, as may be constituted from time to time;

(b) the appointment and continuance in office of the members of the said authorities and bodies, the filling up of vacancies of members, and all other matters relating to those authorities and other bodies for which it may be necessary or desirable to provide;

(c) the appointment, powers and duties of the officers of the University and their emoluments;

(d) the appointment of teachers, academic staff and other employees of the University, their emoluments and conditions of service;

(e) the appointment of teachers and academic staff working in any other University or organisation for a specific period for undertaking a joint project;

(f) the conditions of service of employees including provisions for pension, insurance, provident fund, the manner of termination of service and disciplinary action;

(g) the principles governing the seniority of service of the employees of the University;

(h) the procedure for arbitration in cases of dispute between employees or students and the University;

(*i*) the procedure for appeal to the Executive Council by any employee or student against the action of any officer or authority of the University;

(*i*) the conferment of autonomous status on a College or an Institution or a Department;

(k) the establishment and abolition of Schools, Departments, Centres, Halls, Colleges and Institutions;

(*l*) the conferment of honorary degrees;

(m) the withdrawal of degrees, diplomas, certificates and other academic distinctions;

(n) the management of Colleges and Institutions established by the University;

(o) the delegation of powers vested in the authorities or officers of the University;

(p) the maintenance of discipline among the employees and students; and

(q) all other matters which by this Ordinance are to be or may be, provided for by the Statutes.

27. (1) The first Statutes are those set out in the Second Schedule to this Ordinance.

Statutes, how to be made.

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(2) The Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes referred to in sub-section (1):

Provided that the Executive Council shall not make, amend or repeal any Statutes affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion in writing on the proposed changes, and any opinion so expressed shall be considered by the Executive Council.

(3) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the assent of the Visitor who may assent thereto or withhold assent or remit to the Executive Council for re-consideration.

(4) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor.

(5) Notwithstanding anything contained in the foregoing sub-sections, the Visitor may make new or additional Statutes or amend or repeal the Statutes referred to in sub-section (1) during

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the period of three years immediately after the commencement of this Ordinance:

Provided that the Visitor may, on the expiry of the said period of three years, make, within one year from the date of such expiry, such detailed Statutes as he may consider necessary and such detailed Statutes shall be laid before both Houses of Parliament.

(6) Notwithstanding anything contained in this section, the Visitor may direct the University to make provisions in the Statutes in respect of any matter specified by him and if the Executive Council is unable to implement such direction within sixty days of its receipt, the Visitor may, after considering the reasons, if any, communicated by the Executive Council for its inability to comply with such direction, make or amend the Statutes suitably.

Power to make Ordinances. 28. (1) Subject to the provisions of this Ordinance and the Statutes, the Ordinances may provide for all or any of the following matters, namely: -

(a) the admission of students to the University and their enrolment as such;

(b) the courses of study to be laid down for all degrees, diplomas and certificates of the University;

(c) the medium of instruction and examination;

(d) the award of degrees, diplomas, certificates and other academic distinctions, the qualifications for the same and the means to be taken relating to the granting and obtaining of the same;

(e) the fees to be charged for courses of study in the University and for admission to examinations, degrees and diplomas of the University;

(f) the conditions for award of fellowships, scholarships, studentships, medals and prizes;

(g) the conduct of examinations, including the term of office and manner of appointment and the duties of examining bodies, examiners and moderators;

(h) the conditions of residence of the students of the University;

(*i*) the special arrangements, if any, which may be made for the residence and teaching of women students and the prescribing of special courses of studies for them;

(*j*) the establishment of Centres of Studies, Boards of Studies, Specialized Laboratories and other Committees;

(k) the manner of co-operation and collaboration with other Universities, institutions and other agencies including learned bodies or associations;

(1) the creation, composition and functions of any other body which is considered necessary for improving the academic life of the University;

(m) the institution of fellowships, scholarships, studentships, medals and prizes;

(n) the setting up of a machinery for redressal of grievances of employees and students; and

(o) all other matters which by this Ordinance, or, the Statutes, are to be, or, may be, provided for by the Ordinances.

(2) The first Ordinances shall be made by the Vice-Chancellor with the previous approval of

the Executive Council and the Ordinances so made may also be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes:

Provided that in the case of Guru Ghasidas Vishwavidyalaya and Doctor Harisingh Gour Vishwavidyalaya, and Hemvati Nandan Bahuguna Garhwal University, till such time as the first Ordinances are not so made, in respect of the matters that are to be provided for by the Ordinances under this Ordinance and the Statutes, the relevant provisions of the Statutes and the Ordinances made immediately before the commencement of this Ordinance under the provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, and the Uttar Pradesh State Universities Act, 1973, respectively, shall be applicable in so far as they are not inconsistent with the provisions of this Ordinance and the Statutes.

29. The authorities of the University may make Regulations, consistent with this Ordinance, the Statutes and the Ordinances, for the conduct of their own business and that of the Committees, if any, appointed by them and not provided for by this Ordinance, the Statutes or the Ordinances, in the manner prescribed by the Statutes.

**30.** (1) The annual report of the University shall be prepared under the direction of the Executive Council, which shall include, among other matters, the steps taken by the University towards the fulfilment of its objects and shall be submitted to the Court on or before such date as may be prescribed by the Statutes and the Court shall consider the report in its annual meeting.

(2) The Court shall submit the annual report to the Visitor along with its comments, if any.

(3) A copy of the annual report, as prepared under sub-section (1), shall also be submitted to the Central Government, which shall, as soon as may be, cause the same to be laid before both Houses of Parliament.

**31.** (1) The annual accounts and balance-sheet of the University shall be prepared under the direction of the Executive Council and shall, once at least every year and at intervals of not more than fifteen months, be audited by the Comptroller and Auditor-General of India or by such persons as he may authorize in this behalf.

(2) A copy of the annual accounts together with the audit report thereon shall be submitted to the Court and the Visitor along with the observations of the Executive Council.

(3) Any observations made by the Visitor on the annual accounts shall be brought to the notice of the Court and the observations of the Court, if any, shall, after being considered by the Executive Council, be submitted to the Visitor.

(4) A copy of the annual accounts together with the audit report, as submitted to the Visitor, shall also be submitted to the Central Government, which shall, as soon as may be, cause the same to be laid before both Houses of Parliament.

(5) The audited annual accounts after having been laid before both Houses of Parliament shall be published in the Gazette of India.

**32.** The University shall furnish to the Central Government such returns or other information with respect to its property or activities as the Central Government may, from time to time, require, within such period as may be specified by the Central Government.

Returns and information

Annual accounts

Regulation

Annual report

Regulations.

SEC. 1]

1 Act 973.

nt's of

service of employees

33. (1) Every employee of the University shall be appointed under a written contract, which shall be lodged with the University and a copy of which shall be furnished to the employee concerned.

(2) Any dispute arising out of the contract between the University and any employee shall, at the request of the employee, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the employee concerned and an umpire appointed by the Visitor.

(3) The decision of the Tribunal shall be final and no suit shall lie in any civil court in respect of the matters decided by the Tribunal:

Provided that nothing in this sub-section shall preclude the employee from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

(4) Every request made by the employee under sub-section (2) shall be deemed to be a submission to arbitration upon the terms of this section within the meaning of the Arbitration and Conciliation Act, 1996.

26 of 1996

19 of 1925.

PARTI

(5) The procedure for regulating the work of the Tribunal shall be prescribed by the Statutes.

34. (1) Any student or candidate for an examination whose name has been removed from the rolls of the University by the orders or resolution of the Vice-Chancellor, Discipline Committee or Examination Committee, as the case may be, and who has been debarred from appearing at the examinations of the University for more than one year, may, within ten days of the date of receipt of such orders or copy of such resolution by him, appeal to the Executive Council and the Executive Council may confirm, modify or reverse the decision of the Vice-Chancellor or the Committee, as the case may be.

(2) Any dispute arising out of any disciplinary action taken by the University against a student shall, at the request of such student, be referred to a Tribunal of Arbitration and the provisions of sub-sections (2), (3), (4) and (5) of section 33 shall, as far as may be, apply to a reference made under this sub-section.

35. Every employee or student of the University or of a College or Institution maintained by the University shall, notwithstanding anything contained in this Ordinance, have a right to appeal within such time as may be prescribed by the Statutes, to the Executive Council against the decision of any officer or authority of the University, or, the Principal or the management of any College or an Institution, as the case may be, and thereupon the Executive Council may confirm, modify or reverse the decision appealed against.

Provident and pension funds.

Right to

appeal.

Procedure of

arbitration in

disciplinary

cases against students.

appeal and

36. (1) The University shall constitute for the benefit of its employees such provident or pension fund or provide such insurance schemes as it may deem fit in such manner and subject to such conditions as may be prescribed by the Statutes.

(2) Where such provident fund or pension fund has been so constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925, shall apply to such fund, as if it were a Government provident fund.

Disputes as to constitution of authorities and bodies

37. If any question arises as to whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Visitor whose decision thereon shall be final.

Conditions of

1 of 1872.

#### THE GAZETTE OF INDIA EXTRAORDINARY

**38.** All casual vacancies among the members (other than *ex officio* members) of any authority or other body of the University shall be filled, as soon as may be, by the person or body who appoints, elects or co-opts the member whose place has become vacant and the person appointed, elected or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

**39**. No act or proceedings of any authority or other body of the University shall be invalid merely by reason of the existence of a vacancy or vacancies among its members.

**40**. No suit or other legal proceedings shall lie against any officer or other employee of the University for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Ordinance, the Statutes or the Ordinances.

**41**. Notwithstanding anything contained in the Indian Evidence Act, 1872 or in any other law for the time being in force, a copy of any receipt, application, notice, order, proceeding or resolution of any authority or other body of the University, or any other document in possession of the University, or any entry in any register duly maintained by the University, if certified by the Registrar, shall be received as *prima facie* evidence of such receipt, application, notice, order, proceeding, resolution or document or the existence of entry in the register and shall be admitted as evidence of the matters and transactions therein where the original thereof would, if produced, have been admissible in evidence.

**42.** (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Ordinance.

(2) Every order made under sub-section (1) 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 order or both Houses agree that the order should not be made, the 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 order.

**43.** (1) Every Statute, Ordinances or Regulation made under this Ordinance shall be published in the Official Gazette.

(2) Every Statute, Ordinances or Regulation made under this Ordinance, 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 Statute, Ordinances or Regulation or both Houses agree that the Statute, Ordinances or Regulation should not be made, the Statute, Ordinances or Regulation shall thereafter have effect only in such modification or annulment shall be without prejudice to the validity of anything previously done under that Statute, Ordinances or Regulation.

Statutes, Ordinances and Regulations to be published in the Official Gazette and to be laid before Parliament.

Filling of casual vacancies.

Proceedings of authorities or bodies not invalidated by vacancies.

Protection of action taken in good faith.

Mode of proof of University record.

Power to remove difficulties.

PART II----

(3) The power to make Statutes, Ordinances or Regulations shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Ordinance, to the Statute, Ordinances or Regulations or any of them but no retrospective effect shall be given to any Statute, Ordinances or Regulations so as to prejudicially affect the interests of any person to whom such Statute, Ordinances or Regulations may be applicable.

Transitional provisions. 44. Notwithstanding anything contained in this Ordinance and the Statutes, -

(a) the first Chancellor and the first Vice-Chancellor shall be appointed by the Visitor in such manner and on such conditions as may be deemed fit and each of the said officers shall hold office for such term, not exceeding five years, as may be specified by the Visitor;

(b) the first Registrar and the first Finance Officer shall be appointed by the Visitor and each of the said officers shall hold office for a term of three years;

(c) the first Court and the first Executive Council shall consist of not more than thirtyone members and eleven members, respectively, who shall be nominated by the Central Government and shall hold office for a term of three years; and

(d) the first Academic Council shall consist of not more than twenty-one members, who shall be nominated by the Central Government and shall hold office for a term of three years:

Provided that if any vacancy occurs in the above offices or authorities, the same shall be filled by appointment by the Visitor or nomination by the Central Government, as the case may be, and the person so appointed or nominated shall hold office for so long as the officer or member in whose place he is appointed or nominated would have held office, if such vacancy had not occurred.

Amendment of Madhya Pradesh Act 22 of 1973. 45. (1) In the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, in the Second Schedule, the entries relating to Guru Ghasidas Vishwavidyalaya and Doctor Harisingh Gour Vishwavidyalaya shall be omitted.

(2) Notwithstanding such omission,-

(a) all appointments made, orders issued, degrees and other academic distinctions conferred, diplomas and certificates awarded, privileges granted, or other things done under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, shall be deemed to have been respectively made, issued, conferred, awarded, granted or done under the corresponding provisions of this Ordinance and, except as otherwise provided by this Ordinance or the Statutes, continue in force unless and until they are superseded by any order made under this Ordinance or the Statutes; and

(b) all proceedings of Selection Committees for the appointment or promotion of teachers that took place before the commencement of this Ordinance and all actions of the Executive Council in respect of the recommendations of such Selection Committees where no orders of appointment on the basis thereof were passed before the commencement of this Ordinance shall, notwithstanding that the procedure for selection has been modified by this Ordinance, be deemed to have been valid but further proceeding in connection with such pending selections shall be taken in accordance with the provisions of this Ordinance and be continued from the stage where they stood immediately before such commencement, except if the concerned authorities take, with the approval of the Visitor, a decision to the contrary.

46. (1) In the Uttar Pradesh State Universities Act, 1973,-

Amendment of President's Act 10 of 1973.

(a) in sub-section (1) of section 4, the words, figures and brackets "and a University of Garhwal which shall from April 25, 1989 be called the Hemvati Nandan Bahuguna Garhwal

Madhya Pradesh Act 22 of 1973.

University at Srinagar (District Garhwal)" shall be omitted;

(b) in clause (d) of sub-section (1) of section 20, the words "the Hemvati Nandan Bahuguna Garhwal University" shall be omitted;

(c) in sub-section (2) of section 52, for the words "the Universities of Kumaun and Garhwal", the words "the University of Kumaun" shall be substituted;

(d) section 72-B shall be omitted;

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(e) in the Schedule, Serial No.8 and the entries relating thereto shall be omitted.

(2) Notwithstanding the omission and substitution referred to in sub-section (1),-

(a) all appointments made, orders issued, degrees and other academic distinctions conferred, diplomas and certificates awarded, privileges granted, or other things done under the Uttar Pradesh State Universities Act, 1973, shall be deemed to have been respectively made, issued, conferred, awarded, granted or done under the corresponding provisions of this Ordinance and, except as otherwise provided by this Ordinance or the Statutes, continue in force unless and until they are superseded by any order made under this Ordinance or the Statutes; and

(b) all proceedings of Selection Committees for the appointment or promotion of teachers that took place before the commencement of this Ordinance and all actions of the Executive Council in respect of the recommendations of such Selection Committees where no orders of appointment on the basis thereof were passed before the commencement of this Ordinance shall, notwithstanding that the procedure for selection has been modified by this Ordinance, be deemed to have been valid but further proceeding in connection with such pending selections shall be taken in accordance with the provisions of this Ordinance and be continued from the stage where they stood immediately before such commencement, except if the concerned authorities take, with the approval of the Visitor, a decision to the contrary.

President's Act 10 of 1973.

[PART II—

# THE FIRST SCHEDULE

# [See section 3(4)]

Serial number	Name of the State	Name of the University	Territorial jurisdiction
1.	Bihar	Central University of Bihar	Whole of the State of Bihar
2.	Gujarat	Central University of Gujarat	Whole of the State of Gujarat
3.	Haryana	Central University of Haryana	Whole of the State of Haryana
4.	Himachal Pradesh	Central University of Himachal Pradesh	Whole of the State of Himachal Pradesh
5.	Jammu and Kashmir	Central University of Jammu and Kashmir	Whole of the State of Jammu and Kashmir
6.	Jharkhand	Central University of Jharkhand	Whole of the State of Jharkhand
7.	Karnataka	Central University of Karnataka	Whole of the State of Karnataka
8.	Kerala	Central University of Kerala	Whole of the State of Kerala
9.	Orissa	Central University of Orissa	Whole of the State of Orissa
10.	Punjab	Central University of Punjab	Whole of the State of Punjab
11.	Rajasthan	Central University of Rajasthan	Whole of the State of Rajasthan
12.	Tamil Nadu	Central University of Tamil Nadu	Whole of the State of Tamil Nadu

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#### THE SECOND SCHEDULE

### (See section 27)

## The Statutes of the University

1. (1) The Chancellor shall be appointed by the Visitor from a panel of not less than three persons recommended by the Executive Council from amongst persons of eminence in the academic or public life of the country:

Provided that if the Visitor does not approve of any of the persons so recommended, he may call for fresh recommendations from the Executive Council.

(2) The Chancellor shall hold office for a term of five years and shall not be eligible for reappointment:

Provided that notwithstanding the expiry of his term of office, the Chancellor shall continue to hold office until his successor enters upon his office.

2. (1) The Vice-Chancellor shall be appointed by the Visitor from out of a panel recommended by a Committee as constituted under clause (2):

Provided that if the Visitor does not approve any of the persons included in the panel, he may call for an extended fresh panel.

(2) The Committee referred to in clause (1) shall consist of five persons, out of whom three shall be nominated by the Executive Council and two by the Visitor, and one of the nominees of the Visitor shall be the convener of the Committee:

Provided that none of the members of the Committee shall be an employee of the University or a College or an Institution maintained by the University or a member of any authority of the University.

(3) The Vice-Chancellor shall be a whole-time salaried officer of the University.

(4) The Vice-Chancellor shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier, and he shall not be eligible for re-appointment:

Provided that notwithstanding the expiry of the said period of five years, he shall continue in office until his successor is appointed and enters upon his office:

Provided further that the Visitor may direct any Vice-Chancellor after his term has expired, to continue in office for such period, not exceeding a total period of one year, as may be specified by him.

(5) Notwithstanding anything contained in clause (4), the Visitor may, at any time after the Vice-Chancellor has entered upon his office, by order in writing, remove the Vice-Chancellor from office on grounds of incapacity, misconduct or violation of statutory provisions:

Provided that no such order shall be made by the Visitor unless the Vice-Chancellor has been given a reasonable opportunity of showing cause against the action proposed to be taken against him:

Provided further that the Visitor shall consult the Chancellor also before making such order:

Vice-Chancellor.

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Provided also that the Visitor may, at any time before making such order, place the Vice-Chancellor under suspension, pending enquiry.

(6) The emoluments and other conditions of service of the Vice-Chancellor shall be as follows: -

(*i*) the Vice-Chancellor shall be paid a monthly salary and allowances, other than house rent allowance, at the rates fixed by the Central Government from time to time and he shall be entitled, without payment of rent, to use a furnished residence throughout his term of office and no charge shall fall on the Vice-Chancellor in respect of the maintenance of such residence.

(*ii*) the Vice-Chancellor shall be entitled to such terminal benefits and allowances as may be fixed by the Central Government from time to time:

Provided that where an employee of the University, or a College or an Institution maintained by the University, or of any other University or any College or Institution maintained by or admitted to the privileges of, such other University, is appointed as the Vice-Chancellor, he may be allowed to continue to contribute to any provident fund of which he is a member and the University shall contribute to the account of such person in that provident fund at the same rate at which the person had been contributing immediately before his appointment as the Vice-Chancellor:

Provided further that where such employee had been a member of any pension scheme, the University shall make the necessary contribution to such scheme.

(*iii*) The Vice-Chancellor shall be entitled to travelling allowance at such rates as may be fixed by the Executive Council.

(*iv*) The Vice-Chancellor shall be entitled to leave on full pay at the rate of thirty days in a calendar year and the leave shall be credited to his account in advance in two half-yearly instalments of fifteen days each on the first day of January and July every year:

Provided that if the Vice-Chancellor assumes or relinquishes charge of the office of the Vice-Chancellor during the currency of a half year, the leave shall be credited proportionately at the rate of two and-a-half days for each completed month of service.

(v) In addition to the leave referred to in sub-clause (*iv*), the Vice-Chancellor shall also be entitled to half-pay leave at the rate of twenty days for each completed year of service, and half-pay leave may also be availed of as commuted leave on full pay on medical certificate:

Provided that when such commuted leave is availed of, twice the amount of half-pay leave shall be debited against half-pay leave due.

(7) If the office of the Vice-Chancellor becomes vacant due to death, resignation or otherwise, or if he is unable to perform his duties due to ill-health or any other cause, the Pro-Vice-Chancellor shall perform the duties of the Vice-Chancellor:

Provided that if the Pro-Vice-Chancellor is not available, the senior most Professor shall perform the duties of the Vice-Chancellor until a new Vice-Chancellor assumes office or the existing Vice-Chancellor resumes the duties of his office, as the case may be.

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**3.** (1) The Vice-Chancellor shall be *ex officio* Chairman of the Executive Council, the Academic Council and the Finance Committee and shall, in the absence of the Chancellor, preside at the Convocations held for conferring degrees and at meetings of the Court.

(2) The Vice-Chancellor shall be entitled to be present at, and address, any meeting of any authority or other body of the University, but shall not be entitled to vote thereat unless he is a member of such authority or body.

(3) It shall be the duty of the Vice-Chancellor to see that this Ordinance, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all the powers necessary to ensure such observance.

(4) The Vice-Chancellor shall have all the powers necessary for the proper maintenance of discipline in the University and he may delegate any such powers to such person or persons as he deems fit.

(5) The Vice-Chancellor shall have the power to convene or cause to be convened the meetings of the Executive Council, the Academic Council and the Finance Committee.

**4.** (1) The Pro-Vice-Chancellor shall be appointed by the Executive Council on the recommendation of the Vice-Chancellor:

Provided that where the recommendation of the Vice-Chancellor is not accepted by the Executive Council, the matter shall be referred to the Visitor who may either appoint the person recommended by the Vice-Chancellor or ask the Vice-Chancellor to recommend another person to the Executive Council:

Provided further that the Executive Council may, on the recommendation of the Vice-Chancellor, appoint a Professor to discharge the duties of the Pro-Vice-Chancellor in addition to his own duties as a Professor.

(2) The term of office of the Pro-Vice-Chancellor shall be such as may be decided by the Executive Council but it shall not in any case exceed five years or until the expiration of the term of office of the Vice-Chancellor, which ever is earlier:

Provided that the Pro-Vice-Chancellor whose term of office has expired shall be eligible for re-appointment:

Provided further that, in any case, the Pro-Vice-Chancellor shall retire on attaining the age of seventy years:

Provided also that the Pro-Vice-Chancellor shall, while discharging the duties of the Vice-Chancellor under clause (7) of Statute 2, continue in office notwithstanding the expiration of his term of office as Pro-Vice-Chancellor, until the Vice-Chancellor resumes office or a new Vice-Chancellor assumes office, as the case may be.

(3) The emoluments and other terms and conditions of service of the Pro-Vice-Chancellor shall be such as may be prescribed by the Ordinances.

(4) The Pro-Vice-Chancellor shall assist the Vice-Chancellor in respect of such matters as may be specified by the Vice-Chancellor in this behalf, from time to time, and shall also exercise such powers and perform such duties as may be assigned or delegated to him by the Vice-Chancellor.

**5.** (1) Every Dean of School shall be appointed by the Vice-Chancellor from amongst the Professors in the School by rotation in the order of seniority for a period of three years:

Deans of Schools.

Pro-Vice-Chancellor

Powers and duties of Vice-Chancellor. Provided that in case there is only one Professor or no Professor in a School, the Dean shall be appointed, for the time being, from amongst the Professor, if any, and the Associate Professors in the School by rotation in the order of seniority:

Provided further that a Dean on attaining the age of sixty-five years shall cease to hold office as such.

(2) When the office of the Dean is vacant or when the Dean is, by reason of illness, absence or any other cause, unable to perform duties of his office, the duties of the office shall be performed by the senior-most Professor or Associate Professor, as the case may be, in the School.

(3) The Dean shall be the Head of the School and shall be responsible for the conduct and maintenance of the standards of teaching and research in the School and shall have such other functions as may be prescribed by the Ordinances.

(4) The Dean shall have the right to be present and to speak at any meeting of the Boards of Studies or Committees of the School, as the case may be, but shall not have the right to vote thereat unless he is a member thereof.

6. (1) The Registrar shall be appointed by the Executive Council on the recommendation of a Selection Committee constituted for the purpose and shall be a whole-time salaried officer of the University.

(2) He shall be appointed for a term of five years and shall be eligible for re-appointment.

(3) The emoluments and other terms and conditions of service of the Registrar shall be such as may be prescribed by the Executive Council from time to time:

Provided that the Registrar shall retire on attaining the age of sixty-two years.

(4) When the office of the Registrar is vacant or when the Registrar is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(5) (a) The Registrar shall have power to take disciplinary action against such of the employees, excluding teachers and other academic staff, as may be specified in the order of the Executive Council and to suspend them pending inquiry, to administer warnings to them or to impose on them the penalty of censure or the withholding of increment:

Provided that no such penalty shall be imposed unless the person has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(b) An appeal shall lie to the Vice-Chancellor against any order of the Registrar imposing any of the penalties specified in sub-clause (a).

(c) In a case where the inquiry discloses that a punishment beyond the power of the Registrar is called for, the Registrar shall, upon the conclusion of the inquiry, make a report to the Vice-Chancellor along with his recommendations:

Provided that an appeal shall lie to the Executive Council against an order of the Vice-Chancellor imposing any penalty.

(6) The Registrar shall be *ex officio* Secretary of the Executive Council and the Academic Council, but shall not be deemed to be a member of either of these authorities and he shall be *ex officio* Member-Secretary of the Court.

Registrar.

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(7) It shall be the duty of the Registrar ----

(a) to be the custodian of the records, the common seal and such other property of the University as the Executive Council shall commit to his charge;

(b) to issue all notices convening meetings of the Court, the Executive Council, the Academic Council and of any Committees appointed by those authorities;

(c) to keep the minutes of all the meetings of the Court, the Executive Council, the Academic Council and of any Committees appointed by those authorities;

(d) to conduct the official correspondence of the Court, the Executive Council and the Academic Council;

(e) to supply to the Visitor, copies of the agenda of the meetings of the authorities of the University as soon as they are issued and the minutes of such meetings;

(f) to represent the University in suits or proceedings by or against the University, sign powers of attorney and verify pleadings or depute his representative for the purpose; and

(g) to perform such other duties as may be specified in the Statutes, the Ordinances or the Regulations or as may be required from time to time by the Executive Council or the Vice-Chancellor.

7. (1) The Finance Officer shall be appointed by the Executive Council on the recommendations of a Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University.

(2) The Finance Officer shall be appointed for a term of five years and shall be eligible for re-appointment.

(3) The emoluments and other terms and conditions of service of the Finance Officer shall be such as may be prescribed by the Executive Council from time to time:

Provided that the Finance Officer shall retire on attaining the age of sixty-two years.

(4) When the office of the Finance Officer is vacant or when the Finance Officer is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(5) The Finance Officer shall be *ex officio* Secretary of the Finance Committee, but shall not be deemed to be a member of such Committee.

(a) exercise general supervision over the funds of the University and shall advise it as regards its financial policy; and

(b) perform such other financial functions as may be assigned to him by the Executive Council or as may be prescribed by the Statutes or the Ordinances.

(7) Subject to the control of the Executive Council, the Finance Officer shall ---

(a) hold and manage the property and investments of the University including trust and endowed property;

Finance Officer

[PART II—

(b) ensure that the limits fixed by the Executive Council for recurring and non-recurring expenditure for a year are not exceeded and that all moneys are expended on the purpose for which they are granted or allotted;

(c) be responsible for the preparation of annual accounts and the budget of the University and for their presentation to the Executive Council;

(d) keep a constant watch on the state of the cash and bank balances and on the state of investments;

(e) watch the progress of the collection of revenue and advise on the methods of collection employed;

(f) ensure that the registers of buildings, land, furniture and equipment are maintained upto-date and that stock-checking is conducted, of equipment and other consumable materials in all offices, Departments, Centres and Specialised Laboratories;

(g) bring to the notice of the Vice-Chancellor unauthorised expenditure and other financial irregularities and suggest disciplinary action against persons at fault; and

(*h*) call for from any office, Department, Centre, Laboratory, College or Institution maintained by the University any information or returns that he may consider necessary for the performance of his duties.

(8) Any receipt given by the Finance Officer or the person or persons duly authorised in this behalf by the Executive Council for any money payable to the University shall be sufficient discharge for payment of such money.

Controller of Examinations. 8. (1) The Controller of Examinations shall be appointed by the Executive Council on the recommendations of a Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University.

(2) The Controller of Examinations shall be appointed for a term of five years and shall be eligible for re-appointment.

(3) The emoluments and other terms and conditions of service of the Controller of Examinations shall be such as may be prescribed by the Executive Council from time to time:

Provided that the Controller of Examinations shall retire on attaining the age of sixty-two years.

(4) When the office of the Controller of Examinations is vacant or when the Controller of Examinations is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(5) The Controller of Examinations shall arrange for and superintend the examinations of the University in the manner prescribed by the Ordinances.

Librarian.

9. (1) The Librarian shall be appointed by the Executive Council on the recommendations of the Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University.

(2) The Librarian shall exercise such powers and perform such duties as may be assigned to him by the Executive Council.

#### SEC. 1] THE GAZETTE OF INDIA EXTRAORDINARY

10. (1) An annual meeting of the Court shall be held on a date to be fixed by the Executive Council unless some other date has been fixed by the Court in respect of any year.

(2) At an annual meeting of the Court, a report on the working of the University during the previous year, together with a statement of the receipts and expenditure, the balance sheet as audited, and the financial estimates for the next year shall be presented.

(3) A copy of the statement of receipts and expenditure, the balance sheet and the financial estimates referred to in clause (2) shall be sent to every member of the Court at least seven days before the date of the annual meeting.

(4) Special meetings of the Court may be convened by the Executive Council or the Vice-Chancellor or if there is no Vice-Chancellor, the Pro-Vice-Chancellor or if there is no Pro-Vice-Chancellor, by the Registrar.

(5) Eleven members of the Court shall form a quorum for a meeting of the Court.

11. Seven members of the Executive Council shall form a quorum for a meeting of the Executive Council.

12. (1) The Executive Council shall have the power of management and administration of the revenues and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(2) Subject to the provisions of this Ordinance, the Statutes and the Ordinances, the Executive Council shall, in addition to all other powers vested in it, have the following powers, namely:-

(*i*) to create teaching and other academic posts including Chairs, to determine the number and emoluments of such posts and to define the duties and conditions of service of Professors, Associate Professors, Assistant Professors and other academic staff:

Provided that no action shall be taken by the Executive Council in respect of the number and qualifications of teachers and other academic staff otherwise than after consideration of the recommendations of the Academic Council;

(*ii*) to appoint such Professors, Associate Professors, Assistant Professors and other academic staff including Chairs, as may be necessary, on the recommendation of the Selection Committee constituted for the purpose and to fill up temporary vacancies therein;

*(iii)* to promote inter-facial research by making joint appointments of teaching staff in different Schools, Departments and Centres;

*(iv)* to create administrative, ministerial and other necessary posts and to define their duties and conditions of their service and to make appointments thereto in the manner prescribed by the Ordinances;

( $\nu$ ) to grant leave of absence to any officer of the University other than the Chancellor and the Vice-Chancellor, and to make necessary arrangements for the discharge of the functions of such officer during his absence;

(vi) to regulate and enforce discipline among employees in accordance with the Statutes and the Ordinances;

(vii) to manage and regulate the finances, accounts, investments, property, business and

meeting of Executive Council.

Quorum for

Powers and functions of Executive Council.

Meetings of Court.

all other administrative affairs of the University and for that purpose to appoint such agents as it may think fit;

(viii) to fix limits on the total recurring and the total non-recurring expenditure for a year on the recommendation of the Finance Committee;

(*ix*) to invest any money belonging to the University, including any unapplied income, in such stocks, funds, share or securities, from time to time, as it may think fit or in the purchase of immovable property in India, with the like powers of varying such investment from time to time;

(x) to transfer or accept transfers of any movable or immovable property on behalf of the University;

(xi) to provide buildings, premises, furniture and apparatus and other means needed for carrying on the work of the University;

(xii) to enter into, vary, carry out and cancel contracts on behalf of the University;

(*xiii*) to entertain, adjudicate upon, and if thought fit, to redress any grievances of the employees and students of the University who may, for any reason, feel aggrieved;

(*xtv*) to appoint examiners and moderators and, if necessary, to remove them, and to fix their fees, emoluments and travelling and other allowances, after consulting the Academic Council;

(xv) to select a common seal for the University and provide for the use of such seal;

(xvi) to make such special arrangements as may be necessary for the residence of women students;

(xvii) to institute fellowships, scholarships, studentships, medals and prizes;

(xviii) to provide for the appointment of Visiting Professors, Emeritus Professors, Consultants and Scholars and determine the terms and conditions of such appointments;

(xix) to enter into partnership with industry and non-governmental agencies for the advancement of knowledge and establish a corpus of funds out of the profits of such partnership; and

(xx) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Ordinance or the Statutes.

13. Nine members of the Academic Council shall form a quorum for a meeting of the Academic Council.

14. Subject to the provisions of this Ordinance, the Statutes and the Ordinances, the Academic Council shall, in addition to all other powers vested in it, have the following powers, namely:-

(a) to exercise general supervision over the academic policies of the University and to give directions regarding methods of instruction, co-ordination of teaching among the Colleges and the Institutions, evaluation of research and improvement of academic standards;

Quorum of meeting of Academic Council.

Powers and functions of Academic Council. SEC. 1]

#### THE GAZETTE OF INDIA EXTRAORDINARY

(b) to bring about and promote inter-School co-ordination and to establish or appoint such committees or boards as may be deemed necessary for the purpose;

(c) to consider matters of general academic interest either on its own initiative, or on a reference by a School or the Executive Council, and to take appropriate action thereon; and

(*d*) to frame such Regulations and rules consistent with the Statutes and the Ordinances regarding the academic functioning of the University, discipline, residence, admissions, award of fellowships and studentships, fees, concessions, corporate life and attendance.

15. (1) The University shall have such Schools of Studies as may be specified in the Statutes.

(2) Every School shall have a School Board and the members of the first School Board shall be nominated by the Executive Council for a period of three years.

(3) The composition, powers and functions of a School Board shall be prescribed by the Ordinances.

(4) The conduct of the meetings of a School Board and the quorum required for such meetings shall be prescribed by the Ordinances.

(5) (a) Every School shall consist of such Departments as may be assigned to it by the Ordinances:

Provided that the Executive Council may, on the recommendation of the Academic Council, establish Centres of Studies to which may be assigned such teachers of the University as the Executive Council may consider necessary.

(b) Each Department shall consist of the following members, namely:-

(*i*) teachers of the Department;

(ii) persons conducting research in the Department;

(*iii*) Dean of the School;

(iv) Honorary Professors, if any, attached to the Department; and

( $\nu$ ) such other persons as may be members of the Department in accordance with the provisions of the Ordinances.

**16.** (1) Each Department shall have a Board of Studies.

(2) The constitution of the Board of Studies and the term of office of its members shall be prescribed by the Ordinances.

(3) Subject to the overall control and supervision of the Academic Council, the functions of a Board of Studies shall be to approve subjects for research for various degrees and other requirements of research degrees and to recommend to the concerned School Board in the manner prescribed by the Ordinances -

(a) courses of studies and appointment of examiners for courses, but excluding research degrees;

(b) appointment of supervisors for research; and

(c) measures for the improvement of the standard of teaching and research:

Board of Studies.

Schools of Studies and Departments.

Provided that the above functions of a Board of Studies shall, during the period of three years immediately after the promulgation of this Ordinance, be performed by the Department.

17. (1) The Finance Committee shall consist of the following members, namely:-

(*i*) the Vice-Chancellor;

(ii) the Pro-Vice-Chancellor;

(iii) one person to be nominated by the Court;

(*iv*) three persons to be nominated by the Executive Council, out of whom at least one shall be a member of the Executive Council; and

(v) three persons to be nominated by the Visitor.

(2) Five members of the Finance Committee shall form a quorum for a meeting of the Finance Committee.

(3) All the members of the Finance Committee, other than *ex officio* members, shall hold office for a term of three years.

(4) A member of the Finance Committee shall have the right to record a minute of dissent if he does not agree with any decision of the Finance Committee.

(5) The Finance Committee shall meet at least thrice every year to examine the accounts and to scrutinise proposals for expenditure.

(6) All proposals relating to creation of posts, and those items which have not been included in the Budget, shall be examined by the Finance Committee before they are considered by the Executive Council.

(7) The annual accounts and the financial estimates of the University prepared by the Finance Officer shall be laid before the Finance Committee for consideration and comments and thereafter submitted to the Executive Council for approval.

(8) The Finance Committee shall recommend limits for the total recurring expenditure and the total non-recurring expenditure for the year, based on the income and resources of the University (which, in the case of productive works, may include the proceeds of loans).

18. (1) There shall be Selection Committees for making recommendations to the Executive Council for appointment to the posts of Professor, Associate Professor, Assistant Professor, Registrar, Finance Officer, Controller of Examinations, Librarian and Principals of Colleges and Institutions maintained by the University.

(2) The Selection Committee for appointment to the posts specified in Column 1 of the Table below shall consist of the Vice-Chancellor, a nominee of the Visitor and the persons specified in the corresponding entry in Column 2 of the said Table:

TABLE

	1	. 2	
Professor		(i) The Dean of the School.	

(ii) The Head of the Department, if he is a Professor.

(*iii*) Three persons not in the service of the University, nominated by the Executive Council, out of a panel of

Selection Committees

Finance

Committee

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		names recommended by the Academic Council for their special knowledge of, or interest in, the subject with which the Professor will be concerned.
Associate Pro Professor	fessor/ Assistant	(i) The Head of the Department.
Professor		(ii) One Professor nominated by the Vice-Chancellor.
		( <i>iii</i> ) Two persons not in the service of the University, nominated by the Executive Council, out of a panel of names recommended by the Academic Council for their special knowledge of, or interest in, the subject with which the Associate Professor or Assistant Professor will be concerned.
Registrar/Fina Controller of H		(i) Two members of the Executive Council nominated by it.
		( <i>ii</i> ) One person not in the service of the University nominated by the Executive Council.
Librarian		(i) Two persons not in the service of the University who have special knowledge of the subject of the Library Science or Library Administration nominated by the Executive Council.
		( <i>ii</i> ) One person not in the service of the University nominated by the Executive Council.
Principal of Co Institution main University.		Three persons not in the service of the University of whom two shall be nominated by the Executive Council and one by the Academic Council for their special knowledge of, or interest in, a subject in which instruction is being provided by the College or Institution.
Note 1.		intment is being made for an inter-disciplinary project, the ect shall be deemed to be the Head of the Department
Note 2.	concerned with Vice-Chancellor	be nominated by the Vice-Chancellor shall be a Professor the speciality for which the selection is being made and the shall consult the Head of the Department and the Dean of minaling the Professor.

(3) The Vice-Chancellor, or in his absence the Pro-Vice-Chancellor, shall convene and preside at the meeting of the Selection Committee:

Provided that the meeting of the Selection Committee shall be fixed after prior consultation with, and subject to the convenience of Visitor's nominee and the experts nominated by the Executive Council:

Provided further that the proceedings of the Selection Committee shall not be valid unless,-

(a) where the number of Visitor's nominee and the persons nominated by the Executive Council is four in all, at least three of them attend the meeting; and

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(b) where the number of Visitor's nominee and the persons nominated by the Executive Council is three in all, at least two of them attend the meeting.

(4) The procedure to be followed by the Selection Committee shall be laid down in the Ordinances.

(5) If the Executive Council is unable to accept the recommendations made by the Selection Committee, it shall record its reasons and submit the case to the Visitor for final orders.

(6) Appointments to temporary posts shall be made in the manner indicated below: ----

(*i*) If the temporary vacancy is for duration longer than one academic session, it shall be filled on the advice of the Selection Committee in accordance with the procedure indicated in the foregoing clauses:

Provided that if the Vice-Chancellor is satisfied that in the interests of work it is necessary to fill the vacancy, the appointment may be made on a purely temporary basis on the advice of a local Selection Committee referred to in sub-clause (ii) for a period not exceeding six months.

(*ii*) If the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a local Selection Committee consisting of the Dean of the School concerned, the Head of the Department and a nominee of the Vice-Chancellor:

Provided that if the same person holds the offices of the Dean and the Head of the Department, the Selection Committee may contain two nominees of the Vice-Chancellor:

Provided further that in the case of sudden casual vacancies of teaching posts caused by death or any other reason, the Dean may, in consultation with the Head of the Department concerned, make a temporary appointment for a month and report to the Vice-Chancellor and the Registrar about such appointment.

(*iii*) No teacher appointed temporarily shall, if he is not recommended by a regular Selection Committee for appointment under the Statutes, be continued in service on such temporary employment, unless he is subsequently selected by a local Selection Committee or a regular Selection Committee, for a temporary or permanent appointment, as the case may be.

Special mode of appointment. 19. (1) Notwithstanding anything contained in Statute 18, the Executive Council may invite a person of high academic distinction and professional attainments to accept a post of Professor or Associate Professor or any other equivalent academic post in the University on such terms and conditions as it deems fit and on the person agreeing to do so appoint him to the post:

Provided that the Executive Council may also create supernumerary posts for a specified period for appointment of such persons:

Provided further that the number of supernumerary posts so created should not exceed five per cent of the total posts in the University.

(2) The Executive Council may appoint a teacher or any other academic staff working in any other University or organisation for undertaking a joint project in accordance with the manner laid down in the Ordinances.

SEC. 1]

20. The Executive Council may appoint a person selected in accordance with the procedure laid down in Statute 18 for a fixed tenure on such terms and conditions as it deems fit.

21. (1) An authority of the University may appoint as many standing or special Committees as it may deem fit, and may appoint to such Committees persons who are not members of such authority.

(2) A Committee appointed under clause (1) may deal with any subject delegated to it subject to subsequent confirmation by the authority appointing it.

22. (1) All the teachers and other academic staff of the University shall, in the absence of any agreement to the contrary, be governed by the terms and conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the Regulations.

(2) The emoluments of members of the academic staff shall be such as may be prescribed by the Ordinances.

(3) Every teacher and member of the academic staff of the University shall be appointed on a written contract, the form of which shall be prescribed by the Ordinances.

(4) A copy of every contract referred to in clause (3) shall be deposited with the Registrar.

23. (1) All the employees of the University, other than the teachers and other academic staff Terms and shall, in the absence of any contract to the contrary, be governed by the terms and conditions of conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the conduct of other Regulations.

(2) The manner of appointment and emoluments of employees, other than the teachers and other academic staff, shall be such as may be prescribed by the Ordinances.

24. (1) Whenever, in accordance with the Statutes, any person is to hold an office or be a member of an authority of the University by rotation according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade and in accordance with such other principles as the Executive Council may, from time to time, prescribe.

(2) It shall be the duty of the Registrar to prepare and maintain in respect of each class of persons to whom the provisions of these Statutes apply, a complete and up-to-date seniority list in accordance with the provisions of clause (1).

(3) If two or more persons have equal length of continuous service in a particular grade or the relative seniority of any person or persons is otherwise in doubt, the Registrar may, on his own motion and shall, at the request of any such person, submit the matter to the Executive Council whose decision thereon shall be final.

25. (1) Where there is an allegation of misconduct against a teacher, a member of the academic staff or other employee of the University, the Vice-Chancellor, in the case of the teacher or a member of the academic staff, and the authority competent to appoint (hereinafter referred to as the appointing authority) in the case of other employee may, by order in writing, place such teacher, member of the academic staff or other employee, as the case may be, under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made:

Provided that the Executive Council may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the teacher or a member of the academic staff, revoke such order.

Removal of employees of University.

service and code of employees.

Seniority list.

Terms and conditions of service and code

of conduct of teachers, etc.

Appointment for

fixed tenure.

Committees

[PART II---

(2) Notwithstanding anything contained in the terms of the contract of appointment or of any other terms and conditions of service of the employees, the Executive Council in respect of teachers and other academic staff, and the appointing authority in respect of other employees, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.

(3) Save as aforesaid, the Executive Council, or as the case may be, the appointing authority, shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and after giving three months' notice or on payment of three months' salary in lieu thereof.

(4) No teacher, member of the academic staff or other employee shall be removed under clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(5) The removal of a teacher, member of the academic staff or other employee shall take effect from the date on which the order of removal is made:

Provided that where the teacher, member of the academic staff or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.

(6) Notwithstanding anything contained in the foregoing provisions of this Statute, a teacher, member of the academic staff or other employee may resign —

(a) if he is a permanent employee, only after giving three months' notice in writing to the Executive Council or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof;

(b) if he is not a permanent employee, only after giving one month's notice in writing to the Executive Council or, as the case may be, the appointing authority or by paying one month's salary in lieu thereof:

Provided that such resignation shall take effect only on the date on which the resignation is accepted by the Executive Council or the appointing authority as the case may be.

Honorary degrees.

**26.** (1) The Executive Council may, on the recommendation of the Academic Council and by a resolution passed by a majority of not less than two-thirds of the members present and voting, make proposals to the Visitor for the conferment of honorary degrees:

Provided that in case of emergency, the Executive Council may, on its own motion, make such proposals.

(2) The Executive Council may, by a resolution passed by a majority of not less than twothirds of the members present and voting, withdraw, with the previous sanction of the Visitor, any honorary degree conferred by the University.

Withdrawal of degrees, etc. 27. The Executive Council may, by a resolution passed by a majority of not less than twothirds of the members present and voting, withdraw a degree or academic distinction conferred on, or any certificate or diploma granted to, any person by the University for good and sufficient cause:

Provided that no such resolution shall be passed until a notice in writing has been given to that person calling upon him to show cause within such time as may be specified in the notice

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as to why such a resolution should not be passed and until his objections, if any, and any evidence he may produce in support of them, have been considered by the Executive Council.

**28.** (1) All powers relating to the maintenance of discipline and disciplinary action in relation to the students of the University shall vest in the Vice-Chancellor.

(2) There shall be a Proctor of the University to assist the Vice-Chancellor in the exercise of the powers referred to in clause (1), who shall be appointed by the Executive Council from amongst the Professors and Associate Professors in the manner prescribed by the Ordinances.

(3) The Vice-Chancellor may delegate all or any of the powers referred to in clause (1), as he deems proper, to the Proctor and to such other officers as he may specify in this behalf.

(4) Without prejudice to the generality of his powers relating to the maintenance of discipline and taking such action, as may seem to him appropriate for the maintenance of discipline, the Vice-Chancellor may, in exercise of such powers, by order, direct that any student or students be expelled or rusticated, for a specified period, or be not admitted to a course or courses of study in a College, Institution or Department or a School of the University for a stated period, or be punished with fine for an amount to be specified in the order, or be debarred from taking an examination or examinations conducted by the University, College, Institution or Department or a School for one or more years, or that the results of the student or students concerned in the examination or examinations in which he or they have appeared be withheld or cancelled.

(5) The Principals of Colleges, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University shall have the authority to exercise all such disciplinary powers over the students in their respective Colleges, Institutions, Schools and teaching Departments in the University, as may be necessary for the proper conduct of such Colleges, Institutions, Schools and teaching Departments.

(6) Without prejudice to the powers of the Vice-Chancellor and the Principals and other persons specified in clause (5), detailed rules of discipline and proper conduct shall be made by the University and the Principals of Colleges, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University may also make such supplementary rules as they deem necessary for the purposes stated therein.

(7) At the time of admission, every student shall be required to sign a declaration to the effect that he submits himself to the disciplinary jurisdiction of the Vice-Chancellor and other authorities of the University.

**29.** Convocations of the University for the conferring of degrees or for other purposes shall be held in such manner as may be prescribed by the Ordinances.

**30.** Where no provision is made for a President or Chairman to preside over a meeting of any authority of the University or any Committee of such authority or when the President or Chairman so provided for is absent, the members present shall elect one from among themselves to preside at such meeting.

**31.** Any member, other than an *ex officio* member of the Court, the Executive Council, the Academic Council or any other authority of the University or any Committee of such authority may resign by letter addressed to the Registrar and the resignation shall take effect as soon as such letter is received by the Registrar.

Maintenance of discipline amongst students of University.

Convecations.

Acting Chairman of meetings.

Resignation.

Disqualification

**32.** (1) A person shall be disqualified for being chosen as, and for being, a member of any of the authorities, or for being appointed as, and for being, an officer, of the University if -

(*i*) he is of unsound mind; or

(*ii*) he is an undischarged insolvent; or

(*iii*) he has been convicted by a court of law of an offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months.

(2) If any question arises as to whether a person is or had been subjected to any of the disqualifications mentioned in clause (1), the question shall be referred to the Visitor and his decision shall be final and no suit or other proceeding shall lie in any civil court against such decision.

**33.** Notwithstanding anything contained in the Statutes, a person who is not ordinarily resident in India shall not be eligible to be an officer of the University or a member of any authority of the University.

**34.** Notwithstanding anything contained in the Statutes, a person who holds any post in the University or is a member of any authority or body of the University in his capacity as a member of a particular authority or body or as the holder of a particular appointment shall hold such office or membership only for so long as he continues to be a member of that particular authority or body or the holder of that particular appointment, as the case may be.

35. (1) There shall be an Alumni Association for the University.

(2) The subscription for membership of the Alumni Association shall be prescribed by the Ordinances.

(3) No member of the Alumni Association shall be entitled to vote or stand for election unless he has been a member of the Association for at least one year prior to the date of election and is a degree holder of the University of at least five years standing:

Provided that the condition relating to the completion of one year's membership shall not apply in the case of the first election.

Students Council.

36. (1) There shall be constituted in the University, a Students' Council for every academic year, consisting of -

(*i*) the Dean of Students' Welfare who shall be the Chairman of the Students' Council;

(*ii*) twenty students to be nominated by the Academic Council on the basis of merit in studies, sports and extra-curricular activities; and

(*iii*) twenty students to be elected by the students  $\iota \circ$  their representatives:

Provided that any student of the University shall have 'e right to bring up any matter concerning the University before the Students' Council, if so pointed by the Chairman, and he shall have the right to participate in the discussions at any meet. when the matter is taken up for consideration.

(2) The functions of the Students' Council shall be to make suggestions to the appropriate authorities of the University in regard to the programmes of studies, students' welfare and other matters of importance, in regard to the working of the University in general and such suggestions shall be made on the basis of consensus of opinion.

Residence condition for membership and office.

Membership of authorities by virtue of membership of other bodies.

Alumni Association

#### SEC. 1] THE GAZETTE OF INDIA EXTRAORDINARY

(3) The Students' Council shall meet at least twice in every academic year and the first meeting of the Council be held in the beginning of the academic session.

37. (1) The first Ordinances made under sub-section (2) of section 28 may be amended, repealed or added to at any time by the Executive Council in the manner specified in the following sub-clauses.

(2) No Ordinances in respect of the matters enumerated in sub-section (1) of section 28 of this Ordinance shall be made by the Executive Council unless a draft of such Ordinances has been proposed by the Academic Council.

(3) The Executive Council shall not have power to amend any draft of any Ordinances proposed by the Academic Council under clause (2), but may reject the proposal or return the draft to the Academic Council for re-consideration, either in whole or in part, together with any amendment which the Executive Council may suggest.

(4) Where the Executive Council has rejected or returned the draft of an Ordinances proposed by the Academic Council, the Academic Council may consider the question afresh and in case the original draft is reaffirmed by a majority of not less than two-thirds of the members present and voting and more than half the total number of members of the Academic Council, the draft may be sent back to the Executive Council which shall either adopt it or refer it to the Visitor whose decision shall be final.

(5) Every Ordinances made by the Executive Council shall come into effect immediately.

(6) Every Ordinances made by the Executive Council shall be submitted to the Visitor within two weeks from the date of its adoption.

(7) The Visitor shall have the power to direct the University to suspend the operation of any Ordinance.

(8) The Visitor shall inform the Executive Council about his objection to the Ordinances referred to in clause (7) and may, after receiving the comments of the University, either withdraw the order suspending the Ordinances or disallow the Ordinances, and his decision shall be final.

**38.** (1) The authorities of the University may make Regulations consistent with this Regulations Ordinance, the Statutes and the Ordinances for the following matters, namely: -

(i) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;

(*ii*) providing for all matters which are required by this Ordinance, the Statutes or the Ordinances to be prescribed by Regulations; and

(*iii*) providing for all other matters solely concerning such authorities or committees appointed by them and not provided for by this Ordinance, the Statutes or the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meeting and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment in such manner as it may specify of any Regulation made under the Statutes or the annulment of any such Regulation.

Ordinances, how to be made.

[PART II-SEC. 1]

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Delegation of Powers.

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**39.** Subject to the provisions of this Ordinance and the Statutes, any officer or authority of the University may delegate his or its powers to any other officer or authority or person under his or its respective control and subject to the condition that overall responsibility for the exercise of the powers so delegated shall continue to vest in the officer or authority delegating such powers.

## PRATIBHA DEVISINGH PATIL, President.

#### T. K. VISWANATHAN, Secy. to the Govt. of India.

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GMGIPMRND-170GI (CRC)-15-01-2009.



PART II — Section 1 प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं॰ 31] नई दिल्ली, मंगलवार, मार्च 31, 2009 /10 चैत्र, 1931 No. 31] NEW DELHI, TUESDAY, MARCH 31, 2009 / 10 Chaitra, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

### MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 31st March, 2009/Chaitra 10, 1931 (Saka)

THE MEGHALAYA APPROPRIATION (VOTE ON ACCOUNT) ORDINANCE, 2009

#### No. 4 OF 2009

Promulgated by the President in the Sixtieth Year of the Republic of. India.

An Ordinance to provide for the withdrawal of certain sums from and out of the Consolidated Fund of the State of Meghalaya for the services of a part of the financial year 2009-2010.

WHEREAS by a proclamation issued on the 19<sup>th</sup> March, 2009 by the President under article 356 of the Constitution, the powers of the Legislature of the State of Meghalaya have been declared to be exercisable by or under the authority of Parliament;

AND WHEREAS the Parliament is not in session and the President is satisfied that circumstances exist which rendered it necessary for her to take immediate action for the purpose of the timely compliance of financial business of the State of Meghalaya;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Meghalaya Appropriation (Vote on Account) Ordinance, 2009.

Short title and Commencement.

(2) It shall come into force on the 1st day of April, 2009.

Withdrawal of Rs.1540,87,09,025 from and out of the Consolidated Fund of State of Meghalaya.

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2. From and out of the Consolidated Fund of the State of Meghalaya there may be withdrawn sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of one thousand five hundred forty crore, eighty-seven lakh, nine thousand twenty-five rupees towards defraying the several charges which will come in course of payment during the financial year 2009-2010 in respect of the services specified in column 2 of the Schedule.

Appropriation

3. The sums authorised to be withdrawn from and out of the Consolidated Fund of the State of Meghalaya by this Ordinance shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

Deleg: of Pov [PART II—

SEC. 1]

3

	(See sections 2 and 3)				
1	2		3		
No. of		Sums not exceeding			
Vote / Appro- priatio M	Services and purposes	Voted by Parliament	Charged on the Consolidated Fund	Total	
		Rs.	Rs.	Rs.	
	Revenue				
01	2011- Parliamentary/State/Union territory Legislature	7,51,62,667	26,83,000	7,78,45,667	
	2058- Stationery and Printing	41,93,333		41,93,333	
	Total Revenue	7,93,56,000	26,83,000	8,20,39,000	
	Capital				
	4058- Capital Outlay on Stationery and Printing	16,00,000		16,00,000	
	Total Capital	16,00,000		16,00,000	
	Revenue				
02	2012- Governor	1,16,667	1,58,50,000	1,59,66,667	
	Total Revenue	1,16,667	1,58,50,000	1,59,66,667	
	Revenue				
03	2013 -Council of Ministers	2,56,72,000		2,56,72,000	
	Total Revenue	2,56,72,000		2,56,72,000	
04	2014- Administration of Justice	2,05,33,332	88,33,333	2,93,66,665	
	Total Revenue	2,05,33,332	88,33,333	2,93,66,665	
05	2015- Elections	5,43,00,000		5,43,00,000	
	Total Revenue	5,43,00,000		5,43,00,000	
1	Revenue	• .		*****	
06	2029- Land Revenue	2,72,00,000		2,72,00,000	
	2245- Relief on account of Natural Calamities	4,32,33,333	•••	4,32,33,333	
	2250 -Other Social Services	16,667		16,667	
	Total Revenue	7,04,50,000		7,04,50,000	
	Revenue	,	*****		
07	2030- Stamps and Registration	44,66,667		44,66,667	
	Total Revenue	44,66,667	****	44,66,667	
	Revenue				
08	2039- State Excise	3,65,42,667	••••	3,65,42,667	
	Total Revenue	3,65,42,667		3,65,42,667	

# THE SCHEDULE (See sections 2 and 3)

[PART II---

1	2	-	3	
No. of Vote / Appro- priatio	Services and purposes	Su	ms not exceeding	۰.
-		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs	Rs.	Rs.
······	Revenue			
09	2040 -Taxes on Sales, Trade, etc.	3,30,46,000		3,30,46,000
	2045- Other Taxes and Duties on Commodities and Services	1,33,333	•••	1,33,333
-	Total Revenue	3,31,79,333	•••	3,31,79,333
	Revenue			
10	2041 -Taxes on vehicles	3,36,66,667		3,36,66,667
	2070- Other Administrative Services	4,12,00,000		4,12,00,000
	Total Revenue	7,48,66,667		7,48,66,667
	Capital			
	5053 -Capital Outlay on Civil Aviation	10,66,667		10,66,667
·· .	5055- Capital Outlay on Road Transport	1,77,66,667		1,77,66,667
	Total Capital	1,88,33,333		1,88,33,333
11. T	Revenue	· · · · · · · · · · · · · · · · · · ·		
11	2045- Other Taxes and Duties on Commodities and Services	30,00,000	•••	30,00,000
	2501- Special programmes for rural development	56,66,667	••••	56,66,667
1419 1	2801- Power	89,73,33,333		89,73,33,333
	2810 -New and Renewable Energy	80,00,000		80,00,000
	Total Revenue	91,40,00,000		91,40,00,000
	Capital	······································		
	6801- Loans for power projects	9,42,66,667		9,42,66,667
	Total Capital	9,42,66,667		9,42,66,667

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## SEC. 1]

THE GAZETTE OF INDIA EXTRAORDINARY

	2		· 3	
		Sur	ns not exceeding	i
No. of Vote/ Appro- pria-	Services and purposes			· · ·
tion.		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs	Rs.	Rs.
	Revenue			
12	2047 -Other Fiscal services-	9,28,333	•••	9,28,333
	Total Revenue	9,28,333	•••	9,28,333
	Revenue			
	2048- Appropriation for reduction or avoidance of debt	••••	4,69,66,667	4,69,66,667
	Total Revenue		4,69,66,667	4,69,66,667
	Revenue			
· · · ·	2049- Interest Payments		82,00,95,333	82,00,95,333
	Total Revenue		82,00,95,333	82,00,95,333
	Revenue			-
	2051- Public Service Commission	•••	72,66,667	72,66,667
`	Total Revenue	•••	72,66,667	72,66,667
	Revenue			,
3	2052- Secretariat General Services	18,15,43,333	•••	18,15,43,333
	2251- Secretariat Social Services	2,24,83,333	• • •	2,24,83,333
	3451- Secretariat Economic Services	5,80,35,667	** •	5,80,35,667
	Total Revenue	26,20,62,333	•••	26,20,62,333
	Revenue			
	2053- District Administration	5,88,66,667	••••	5,88,66,667
	Total Revenue	5,88,66,667	•••	5,88,66,667
	Revenue			· · · · · · · · · · · · · · · · · · ·
	2054 Treasury and accounts administration	4,98,66,667		4,98,66,667
	Total Revenue	4,98,66,667	•••	4,98,66,667
	Revenue		· · .	
	2055 -Police	70,66,66,667	3,33,333	70,70,00,000
	2070 -Other Administrative Services	6,83,36,098	1,667	6,83,37,765
	2216 -Housing	50,00,000		50,00,000
	Total Revenue	78,00,02,765	3,35,000	78,03,37,765
	Capital			
	4055- Capital Outlay on Police	4,16,66,667	· · · ·	4,16,66,667
	Total Capital	4,16,66,667		4,16,66,667
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## THE GAZETTE OF INDIA EXTRAORDINARY

[PART II-

1	2		3	
No. of Vote / Appro- priatio •	Services and purposes	Su	ims not exceeding	
		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
	Revenue			
17	2056- Jails	2,52,00,000		2,52,00,000
	Total Revenue	2,52,00,000		2,52,00,000
	Revenue			, , ,
18	2058- Stationery and Printing	5,34,51,667		5,34,51,667
	Total Revenue	5,34,51,667		5,34,51,667
	Capital			
	4058- Capital Outlay on Stationery and Printing	18,33,333		18,33,333
	4216 -Capital Outlay on Housing	6,15,000	•••	6,15,000
	Total Capital	24,48,333		24,48,333
	Revenue	······		
19	2052 -Secretariat General Services	1,17,80,000	•••	1,17,80,000
	2059 -Public Works	39,91,94,000	1,91,667	39,93,85,667
	2216 -Housing	1,80,66,663		1,80,66,663
	Total Revenue	42,90,40,663	1,91,667	42,92,32,330
	Capital			
	4059 -Capital Outlay on Public Works	17,39,83,333		17,39,83,333
	4202 -Capital Outlay on Education, Sports, Art and Culture	86,00,000		86,00,000
	4216 -Capital Outlay on Housing	1,45,00,000		1,45,00,000
	Total Capital	19,70,83,333		19,70,83,333
۲.	Revenue			
20 ,	2070 -Other Administrative Services	7,65,33,333		7,65,33,333
	Total Revenue	7,65,33,333		7,65,33,333
21	Revenue	e .		
	2075 -Miscellaneous General Services	25,000		25,000
	2202 -General Education	198,21,95,667		198,21,95,667
	2203 -Technical Education	4,52,33,333		4,52,33,333
	2204 -Sports and Youth Services	6,65,71,000	• • • •	6,65,71,000
	2205 -Art and Culture	7,26,56,667		7,26,56,667

SEC. 1]

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## THE GAZETTE OF INDIA EXTRAORDINARY

1	2		3	
No. of Vote / Appro- priatio	Services and purposes	Sums not exceeding		
		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
	3425 -Other Scientific Research	13,43,333	···	13,43,333
	3454 -Census, Survey and Statistics	21,75,000		21,75,000
	Total Revenue	217,02,00,000		217,02,00,000
	Capital			· · · · · · · · · · · · · · · · · · ·
	4202 -Capital Outlay on Education, Sports, Art and Culture	16,66,667		16,66,667
	Total Capital	16,66,667	·	16,66,667
	Revenue			
22	2070 -Other Administrative Services	3,56,21,000		3,56,21,000
	2216 -Housing	1,52,33,333		1,52,33,333
	Total-Revenue	5,08,54,333		5,08,54,333
	Revenue			
23	2070 -Other Administrative Services	69,66,667	•••	69,66,667
	Total Revenue	69,66,667		69,66,667
	Revenue			
24	2071-Pensions and other Retirement Benefits	58,66,66,667		58,66,66,667
	Total Revenue	58,66,66,667		58,66,66,667
·	Revenue			
5	2075 - Miscellaneous General Services	27,00,000		27,00,000
:	Total Revenue	27,00,000		27,00,000
	Revenue			
	2210 -Medical and Public Health	58,81,37,667	•••	58,81,37,667
	2211 -Family Welfare	5,89,59,333	••••	5,89,59,333
	Total Revenue	64,70,97,000	**	64,70,97,000
	Capital			
	4210 -Capital Outlay on Medical and Public Health	7,62,44,333	•••	7,62,44,333
	4211 -Capital Outlay on Family Welfare	16,66,667		16,66,667
	Total Capital	7,79,11,000 -		7,79,11,000

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## THE GAZETTE OF INDIA EXTRAORDINARY

[PART II-

1	2		3	-
No. of Vote / Appro- priatio m	Services and purposes	Sums not exceeding		
		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
	Revenue			ſ
27	2215 -Water Supply and Sanitation	34,93,00,000		34,93,00,00
	2216 -Housing	10,66,667		10,66,667
	Total Revenue	35,03,66,667		35,03,66,66
	Capital	1		
	4215 -Capital Outlay on Water Supply and Sanitation	62,69,66,667		62,69,66,66
	4216 -Capital Outlay on Housing	60,00,000		60,00,000
•	Total Capital	63,29,66,667		63,29,66,66
	Revenue	· · · · · · · · · · · · · · · · · · ·		
28	2216 -Housing	5,32,82,000	· · ·	5,32,82,000
	Total Revenue	5,32,82,000		5,32,82,000
	Capital			
	4216 -Capital Outlay on Housing	31,63,333		31,63,333
· ·	Total Capital	31,63,333		31,63,333
	Revenue	-		
29	2217 -Urban Development	15,28,48,667		15,28,48,66
	Total Revenue	15,28,48,667	••••	15,28,48,66
-	Capital			
	4216 -Capital Outlay on Housing	3,33,333		3,33,333
· ·	4217 -Capital Outlay on Urban Development	34,39,80,000		34,39,80,00
	Total Capital	34,43,13,333		34,43,13,33
]	Revenue	. 1		
30	2220 - Information and Publicity	3,06,33,333	•••	3,06,33,33
	Total Revenue	3,06,33,333		3,06,33,33
	Revenue	******		
31	2230 -Labour and Employment	5,10,80,000	••••	5,10,80,00
+	Total Revenue	5,10,80,000		5,10,80,00

SEC. 1]

		T	3	
Land I.	2			
No. of Vote / Appro- priation	Services and purposes	Su	ms not exceeding	• •
		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
	Revenue			an a
32	3456 -Civil Supplies	2,85,66,667		2,85,66,667
	Total Revenue	2,85,66,667		2,85,66,667
	Capital			
33	6235-Louns for Social Security and Welfare	3,33,333		3,33,333
	Total Capital	3,33,333	••••	3,33,333
	Revenue			
34	2225 -Welfare of Scheduled Castes, Scheduled Tribes and OBCs.	11,46,66,000		11,46,66,000
	2235 -Social Security and Welfare	14,55,20,000		14,55,20,000
	2236 -Nutrition	33,97,43,143	••	33,97,43,143
	Total Revenue	59,99,29,143	•••	<b>\$9,99</b> ,29,143
	Capital			
	4235 -Capital Outlay on Social Security and Welfare	4,73,30,000		4,73,30,000
	Total Capital	4,73,30,000		4,73,30,000
	Revenue			
35	2235 -Social Security and Welfare	20,38,667	•••	20,38,667
	Total Revenue	20,38,667		20,38,667
	Revenue			
6	2075 -Miscellaneous General Services	86,667		86,667
	2235 -Social Security and Welfare	58,61,667	2,18,333	60,80,000
	Total Revenue	59,48,334	2;18,333	61,66,667
	Revenue			
	2250 -Other Social Services	16,667		16,667
	Total Revenue	16,667		16,667
	Revenue		-	
	3451 -Secretariat Economic Services	13,71,83,333		13,71,83,333
	Total Revenue	13,71,83,333	•••	13,71,83,333

9

Automation of State

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## THE GAZETTE OF INDIA EXTRAORDINARY

[Part II—

1.	2	3			
No. of Vote / Appro- priatio	Services and purposes	Sums not exceeding			
		Voted by Parliament	Charged on the Consolidated Fund	Total	
		Rs.	Rs.	Rs.	
	Revenue				
39	2425 -Co-operation	5,56,84,667		5,56,84,667	
	Total Revenue	5,56,84,667		5,56,84,667	
	Capital				
	4425 -Capital Outlay on Co-operation	2,05,28,333		2,05,28,333	
	4435 -Capital Outlay on other Agriculture Programmes	8,33,333		8,33,333	
	6425 -Loans for Co-operation	43,70,000		43,70,000	
	Total Capital	2,57,31,667		2,57,31,667	
	Revenue				
40	2552 -North Eastern Areas (Special Areas Programme)	12,32,91,667		12,32,91,667	
	Total Revenue	12,32,91,667		12,32,91,667	
	Capital	• • • • • • • • • • • • • • • • • • •			
	4552 -Capital Outlay on North Eastern Areas	16,00,41,667		16,00,41,667	
	Total Capital	16,00,41,667		16,00,41,667	
	Revenue				
41	3454 -Census, Survey and Statistics	3,05,00,000		3,05,00,000	
	Total Revenue	3,05,00,000		3,05,00,000	
	Revenue				
42	2216 -Housing	1,33,333		1,33,333	
	3475 -Other General Economic Services	90,66,667		90,66,667	
	Total Revenue	92,00,000	•••	92,00,000	
	Revenue				
43	2216 -Housing	46,33,333		46,33,333	
	2401 -Crop Husbandry	57,34,87,331	3,33,333	57,38,20,664	
	2415 -Agricultural Research and Education	1,36,33,333		1,36,33,333	
	2435 -Other Agricultural Programmes	1,11,33,333	••	1,11,33,333	
	2702 -Minor Irrigation	11,42,00,000		11,42,00,000	
	Total Revenue	71,70,87,330	3,33,333	71,74,20,663	

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THE GAZETTE OF INDIA EXTRAORDINARY

2		3	
Services and purposes	Su	ms not exceeding	1
	Voted by Parliament	Charged on the Consolidated Fund	Total
	Rs.	Rs. '	Rs.
Capital			
216 -Capital Outlay on Housing	30,00,000		30,00,000
401 -Capital Outlay on Crop Husbandry	3,48,66,667		3,48,66,667
1416 -Investments in Agricultural Financial Institutions	5,00,000		5,00,000
4702 -Capital Outlay on Minor Irrigation	21,07,00,000		21,07,00,000
Total Capital	24,90,66,667		24,90,66,667
Revenue			
2711 -Flood Control and Drainage	25,00,000		25,00,000
Total Revenue	25,00,000	· · · ·	25,00,000
Capital			
4701 -Capital Outlay on Medium Irrigation	16,66,667		16,66,667
4711 -Capital Outlay on Flood Control Projects	1,16,66,667	•••	1,16,66,667
Total Capital	1,33,33,333		1,33,33,333
Revenue			
2216 -Housing	19,86,333		19,86,333
2402 -Soil and Water Conservation	27,46,79,000		27,46,79,000
2415 - Agricultural Research and Education	9,40,000		9,40,000
Total Revenue	27,76,05,333		27,76,05,333
Revenue			· · ·
2501 -Special Programmes for Rural Development	8,14,00,000		8,14,00,000
Total Revenue	8,14,00,000	•••	8,14,00,000
Revenue			
2216 -Housing	97,42,000		97,42,000
2403 -Animal Husbandry	18,77,62,667		18,77,62,667
2415 - Agricultural Research and Education	49,28,667		49,28,667
Total Revenue	20,24,33,333		20,24,33,333
Revenue			
2216 -Housing	6,67,333		6,67,333
2404 Dairy Development	3,51,99,333	····	3,51,99,333
Total Revenue	3,58,66,667		3,58,66,667

[PART II----

1	, 2	3			
No. of Vote / Appro- priatio <del>n</del>	Services and purposes	Sums not exceeding			
		Voted by Parliament	Charged on the Consolidated Fund	Total	
		Rs.	Rs.	Rs.	
	Revenue,				
49	2216 -Housing	3,66,667		3,66,667	
	2405 -Fisheries	5,60,94,283		5,60,94,283	
	2415 - Agricultural Research and Education	20,36,667		20,36,667	
	Total Revenue	5,84,97,617		5,84,97,617	
	Capital				
· · · ·	4216 - Capital Outlay on Housing	6,66,667		6,66,667	
	4405 - Capital Outlay on Fisheries	16,66,667		16,66,667	
	Total Capital	23,33,333		23,33,333	
	Revenue				
50	2406 -Forestry and Wildlife	25,74,00,333	3,41,667	25,77,42,000	
	2415 - Agricultural Research and Education	56,53,333		56,53,333	
	Total Revenue	26,30,53,66 <b>6</b>	3,41,667	26,33,95,333	
	Capital	· · · · · · · · · · · · · · · · · · ·			
	4406 -Capital Outlay on Forestry and Wild Life	7,70,38,000		7,70,38,000	
	Total Capital	7,70,38,000		7,70,38,000	
	Revenue	· · · · · · · · · · · · · · · · · · ·			
51	2216 -Housing	17,66,667		17,66,667	
	2401 -Crop Husbandry	70,00,000		70,00,000	
	2501 -Special Programmes for Rural Development	1,32,66,667		1,32,66,667	
	2505 -Rural Employment	10,83,33,333.		10,83,33,333	
	2515 -Other Rural Development Programmes	47,31,00,000		47,31,00,000	
	Total Revenue	60,34,66,667		60,34,66,667	
	Capital				
	4216 -Capital Outlay on Housing	5,00,000		5,00,000	
	4515 -Capital Outlay on Other Rural Development Programmes	11,00,000		11,00,000	
	Total Capital	16,00,000		16,00,000	

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2	3			
, 	Sums not exceeding			
Services and purposes				
	Voted by Parliament	Charged on the	Total	
	voice by ramament	Consolidated Fund	Total	
	Rs.	Rs.	Rs.	
nue				
-Industries	1,79,60,000		1,79,60,000	
Total Revenue	1,79,60,000	•••	1,79,60,000	
al				
-Capital Outlay on Cement	4,33,33,333		4,33,33,333	
-Capital Outlay on Industries and rals	90,66,667		90,66,667	
Total Capital	5,24,00,000	•••	5,24,00,000	
nue	,			
-Village and Small Industries	10,22,24,167	•••	10,22,24,167	
Total Revenue	10,22,24,167		10,22,24,167	
iue			· · ·	
Village and Small Industries	7,25,46,667		7,25,46,667	
Total Revenue	7,25,46,667		7,25,46,667	
.1				
Capital Outlay on Village and Small ries	23,26,667	•••	23,26,667	
Total Capital	23,26,667	•••	23,26,667	
ue				
Non Ferrous Mining and Metallurgical ies	9,50,66,667		9,50,66,667	
Total Revenue	9,50,66,667	· · ·	9,50,66,667	
10				
Roads and Bridges	34,26,92,667	••••	34,26,92,667	
Total Revenue	34,26,92,667		34,26,92,667	
		· · · · · · · · · · · · · · · · · · ·		
Capital Outlay on Roads and Bridges	• 75,77,41,667		75,77,41,667	
Total Capital	75,77,41,667		75,77,41,667	

Sec. 1]

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[PART II-SEC. 1]

1.	2		3	
No. of Vote /		Sums not exceeding		
Appro- priatio 🖡	Services and purposes			
		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
	Revenue			·····
57	3452 -Tourism	4,08,66,667	••••	4,08,66,667
	Total Revenue	4,08,66,667	•••	4,08,66,667
	Capital			
	5452 -Capital Outlay on Tourism	1,66,667	···· ·	1,66,667
i i	7452 - Loans for Tourism	1,16,66,667		1,16,66,667
	Total Capital	1,18,33,333		1,18,33,333
	Capital			
59	6003 - Internal Debt of the State Government	•••	54,93,66,667	54,93,66,667
	Total Capital	•••	54,93,66,667	54,93,66,667
	6004 - Loans and Advances from the Central Government		6,17,74,000	6,17,74,000
-	Total Capital		6,17,74,000	6,17,74,000
2	Capital			
60	7610 - Loans to Government Servants, etc.	1,96,66,667		1,96,66,667
	Total Capital	1,96,66,667	***	1,96,66,667
1 - 1 1 - 1	TOTAL	1389,44,53,358	151,42,55,667	1540,87,09,025

PRATIBHA DEVISINGH PATIL, President.

> T.K. VISWANATHAN, Secy. to the Govi. of India.

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REGISTERED NO. DL-(N)04/0007/2003-09

रजिस्ट्री सं॰ डी॰ एल॰----(एन)04/0007/2003----09



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> ...EXTRAORDINARY भाग II --- खण्ड 1 PART II --- Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

असाधारण

नई दिल्ली, मंगलवार, मार्च 31, 2009 /10 चैत्र, 1931

सं॰ 32] नई दिल्ली, मंगलवार, मार्च 31, 2009 /10 चैत्र, 1931 No. 32] NEW DELHI, TUESDAY, MARCH 31, 2009 / 10 Chaitra, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 31st March, 2009/Chaitra 10, 1931 (Saka)

THE MEGHALAYA APPROPRIATION ORDINANCE, 2009 No. 5 OF 2009

Promulgated by the President in the Sixtieth Year of the Republic of India.

An Ordinance to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Meghalaya for the services of financial year 2008-2009.

WHEREAS by a proclamation issued on the 19<sup>th</sup> March, 2009 by the President under article 356 of the Constitution, the powers of the Legislature of the State of Meghalaya have been declared to be exercisable by or under the authority of Parliament;

AND WHEREAS the Parliament is not in session and the President is satisfied that circumstances exist which rendered it necessary for her to take immediate action for the purpose of authorising payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Meghalaya for the services of financial year 2008-2009.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Meghalaya Appropriation Ordinance, 2009.

Short title and commencement.

(2) It shall come into force at once.

Issue of Rs.215,25,90,382 from and out of the Consolidated Fund of Meghalaya for the financial year 2008-2009.

2

2. From and out of the Consolidated Fund of the State of Meghalaya there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of two hundred fifteen crores, twenty-five lakh, ninety thousand, three hundred eighty-two rupees towards defraying the several charges which will come in course of payment during the financial year 2008-2009 in respect of the services specified in column 2 of the Schedule.

Appropriation.

3. The sums authorised to be paid and applied from and out of the Consolidated Fund of the State of Meghalaya by this Ordinance shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

[PART II----

SEC. 1]

## THE GAZETTE OF INDIA EXTRAORDINARY

# THE SCHEDULE (See sections 2 and 3)

1	2	3		
		Sums not exceeding		
No. of Vote / Appro- priation.	Services and purposes	Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
01	Revenue			
	2011 – Parliamentary / State / Union territory Legislature	56,23,000	20,00,000	76,23,000
	2058 – Stationery and Printing	41,58,439		41,58,439
	Total Revenue	97,81,439	20,00,000	1,17,81,439
02	Revenue			
	2012 – Governor	4,50,000		4,50,000
	Total Revenue	4,50,000		4,50,000
	Capital			
	4216 - Capital Outlay on Housing		1,00,52,000	1,00,52,000
	Total Capital		1,00,52,000	1,00,52,000
04	Revenue			
	2014 - Administration of Justice	53,27,236	26,47,971	79,75,207
	Total Revenue	53,27,236	26,47,971	79,75,207
05	Revenue			· · · · · · · · · · · · · · · · · · ·
	2015 – Elections	13,96,45,594		13,96,45,594
	Total Revenue	13,96,45,594		13,96,45,594
06	Revenue	······		
	2029 – Land Revenue	32,56,000		32,56,000
	2245 – Relief on Account of Natural Calamities	36,00,000		36,00,000
	Total Revenue	68,56,000		68,56,000

[Part II-----

ľ	2		3`	
			Sums not exceeding	
No. of Vote / Appro- priation.	Services and purposes	Voted by Parliament	Charged on the Consolidated Fund.	Total
		Rs.	Rs.	Rs.
08	Revenue			
	2039 – State Excise	34,25,300		34,25,300
	Total Revenue	34,25,300		34,25,300
10	Revenue			
	2070 - Other Administrative Services, etc.	11,83,53,990		11,83,53,990
,	Total Revenue	11,83,53,990		11,83,53,990
11	Revenue			
	2501 – Special Programmes for Rural Development	35,65,000		35,65,000
	Total Revenue	35,65,000		35,65,000
16	Revenue			
	2055 – Police	10,93,18,563		10,93,18,563
	2070 - Other Administrative Services, etc.	1,10,95,123		1,10,95,123
,	Total Revenue	12,04,13,686		12,04,13,686
18	Revenue			
	2058 - Stationery and Printing	30,00,000	•••	30,00,000
	Total Revenue	30,00,000		30,00,000
19	Capital			
	4059 – Capital Outlay on Public Works	13,49,50,000		13,49,50,000
	4202 – Capital Outlay on Education	3,60,00,000		3,60,00,000
	4216 – Capital Outlay on Housing	1,55,02,000		1,55,02,000
	Total Capital	18,64,52,000		18,64,52,000
21	Revenue			
	2204 - Sports and Youth Services	2,00,00,000		2,00,00,000
	2205 - Art and Culture	60,00,000		60,00,000
	Total Revenue	2,60,00,000		2,60,00,000
-				

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1	[2]	3,-		
		{	Sums not exceeding	
No. of Vote / Appro- priation.	Services and purposes	Voted by Parliament	Charged on the Consolidated Fund.	Total
		Rs.	Rs.	Rs.
22	Revenue			
	2070 - Other Administrative Services, etc.	2,34,145		2,34,145
	2216 – Housing	1,27,21,212		1,27,21,212
	Total Revenue	1,29,55,357		1,29,55,357
26	Revenue			
	2211 – Family Welfare	2,32,30,000		2,32,30,000
1	Total Revenue	2,32,30,000		2,32,30,000
<u></u>	Capital			
	4210 – Capital Outlay on Medical and Public Health	30,00,000		30,00,000
	Total Capital	30,00,000		30,00,000
27	Revenue			
·	2215 - Water Supply and Sanitation	10,60,15,000		10,60,15,000
	Total Revenue	10,60,15,000		10,60,15,000
	Capital			
	4215 – Capital Outlay on Water Supply and Sanitation	7,10,00,000		7,10,00,000
<ol> <li>Presses Property Physics (Construction)</li> </ol>	Total Capital	7,10,00,000		7,10,00,000
28	Revenue			
	2216 – Housing	3,97,22,338		3,97,22,338
	Total Revenue	3,97,22,338		3,97,22,338
29	Capital			
	4217 - Capital Outlay on Urban Development	38,44,05,000		38,44,05,000
	Total Capital	38,44,05,000		38,44,05,000
32	Revenue			
	3456 - Civil Supplies	86,25,000		86,25,000
	Total Revenue	86,25,000		86,25,000
	Capital			
	4408 – Capital Outlay on Food Storage and Warehousing	1,33,52,000		1,33,52,000
	Total Capital	1,33,52,000		1,33,52,000

SEC. 1]

[Part II----

·	2.	3		
		Sums not exceeding		
No. of Vote / Appro- priation.	Services and purposes	Voted by Parliament	Charged on the Consolidated Fund.	Total
		Rs.	Rs.	Rs.
38	Revenue			
	3451 – Secretariat Economic Services	14,65,450		14,65,450
	. Total Revenue	14,65,450		14,65,450
43	Revenue			······································
,	2702 – Minor Irrigation	10,83,33,800		10,83,33,800
	Total Revenue	10,83,33,800		10,83,33,800
	Capital		-	
	4702 - Capital Outlay on Minor Irrigation	14,05,00,000		14,05,00,000
	Total Capital	14,05,00,000		14,05,00,000
46	Revenue -			
	2501 – Special Programmes for Rural Development	10,02,30,000		10,02,30,000
	Total Revenue	10,02,30,000		10,02,30,000
50	Revenue			· · · · · · · · · · · · · · · · · · ·
	2406 – Forestry and Wildlife	5,91,25,910		5,91,25,910
	Total Revenue	5,91,25,910		5,91,25,910
51	Revenue			
	2515 – Other Rural Development Programmes	4,75,94,000		4,75,94,000
	Total Revenue	4,75,94,000		4,75,94,000
52	Capital			
	4854 – Capital Outlay on Cement and Non- Metallic minerals	5,00,00,000		5,00,00,000
	Total Capital	5,00,00,000		5,00,00,000
53	Revenue			
	2851 – Village and Small Industries	3,09,76,888		3,09,76,888
	Total Revenue	3,09,76,888		3,09,76,888
54	Revenue	·····		
	2851 – Village and Small Industries	61,71,000		61,71,000
	Total Revenue	61,71,000		61,71,000

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SEC. 1]

### THE GAZETTE OF INDIA EXTRAORDINARY

. 2	3			
	Sums not exceeding			
Services and purposes	Voted by Parliament	Charged on the Consolidated Fund.	Total	
	Rs.	Rs.	Rs.	
Revenue				
2853 - Non- Ferrous Mining and Metallurgical Industries	21,34,37,423	•••	21,34,37,423	
Total Revenue	21,34,37,423		21,34,37,423	
Capital				
5054 - Capital Outlay on Roads and Bridges	7,95,77,200		7,95,77,200	
Total Capital	7,95,77,200		7,95,77,200	
Capital	and a set of the set of			
7610 - Loans to Government Servants, etc.	1,49,03,800		1,49,03,800	
Total Capital	1,49,03,800		1,49,03,800	
TOTAL	213,78,90,411	1,46,99,971	215,25,90,382	

#### PRATIBHA DEVISINGH PATIL, President.

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T.K. VISWANATHAN, Secy. to the Govt. of India.

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सं॰ 40] नई दिल्ली, बुधवार, अक्टूबर 14, 2009 / आश्विन 22, 1931 No. 40] NEW DELHI, WEDNESDAY, OCTOBER 14, 2009 / ASVINA 22, 1931

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### MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 14th October, 2009/Asvina 22, 1931 (Saka)

#### THE COMPETITION (AMENDMENT) ORDINANCE, 2009

No. 6 of 2009

Promulgated by the President in the Sixtieth Year of the Republic of India.

A Ordinance further to amend the Competition Act, 2002.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Competition (Amendment) Ordinance, 2009.

(2) It shall come into force at once.

2. In section 66 of the Competition Act, 2002,-

(a) in sub-section (1), the proviso and the *Explanation* thereto shall be omitted;

(b) in sub-section (3), for the words, brackets and figure "after the expiry of two years referred to in the proviso to sub-section (1)", the words, brackets and figures "on the commencement of the Competition (Amendment) Ordinance, 2009" shall be substituted;

Shrot title and commencement.

Amendment of section 66 of Act 12 of 2003. (c) in sub-section (4), for the words, brackets and figure "on or before the expiry of two years referred to in the proviso to sub-section (1)", the words, brackets and figures "immediately before the commencement of the Competition (Amendment) Ordinance, 2009, shall, on such commencement" shall be substituted;

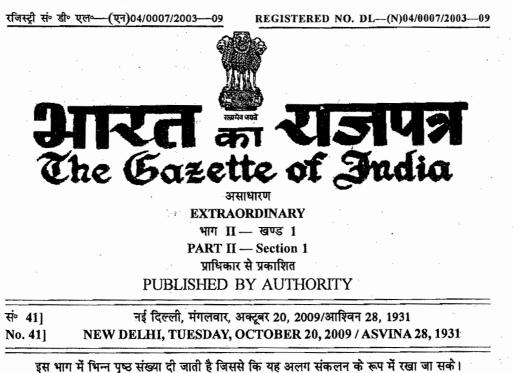
(d) in sub-section (5), for the words, brackets and figure "after the expiry of two years referred to in the proviso to sub-section (1)", the words, brackets and figures "on the commencement of the Competition (Amendment) Ordinance, 2009" shall be substituted.

PRATIBHA DEVISINGH PATIL,

President.

T. K. VISWANATHAN, Secy. to the Govt. of India.

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## MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 20th October, 2009/Asvina 28, 1931 (Saka)

## THE JHARKHAND CONTINGENCY FUND (AMENDMENT) ORDINANCE, 2009

#### No. 7 OF 2009

# Promulgated by the President in the Sixtieth Year of the Republic of India.

An Ordinance to amend the Jharkhand Contingency Fund Act, 2001.

WHEREAS, by a Proclamation issued on the 19th day of January, 2009 by the President under article 356 of the Constitution, the powers of the Legislature of the State of Jharkhand have been declared to be exercisable by or under the authority of Parliament;

AND WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

[PART II-SEC. 1]

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, and of all other powers enabling her in that behalf, the President is pleased to promulgate the following Ordinance:-

**1.**(1) This Ordinance may be called the Jharkhand Short title and commencement. Contingency Fund (Amendment) Ordinance, 2009.

(2) It shall come into force at once.

Amendment of section 4 of Jharkhand Act 9 of 2001.

2. In section 4 of the Jharkhand Contingency Fund Act, 2001, the following proviso shall be inserted, namely:-

'Provided that during the period beginning on the date of commencement of the Jharkhand Contingency Fund (Amendment) Ordinance, 2009 and ending on the 31st day of March, 2010, this section shall have effect subject to the modification that for the words "one hundred and fifty crore rupees", the words "five hundred crore rupees" shall be substituted.'

#### PRATIBHA DEVISINGH PATIL,

President.

#### T.K. VISWANATHAN, Secy. to the Govt. of India.

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REGISTERED NO. DL-(N)04/0007/2003-09



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 नई दिल्ली, मंगलवार, अक्टूबर 20, 2009/आश्विन 28, 1931

 No. 42]
 NEW DELHI, TUESDAY, OCTOBER 20, 2009 / ASVINA 28, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

### MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 20th October, 2009/Asvina 28, 1931 (Saka)

#### THE CENTRAL UNIVERSITIES (AMENDMENT) ORDINANCE, 2009

No. 8 OF 2009

Promulgated by the President in the Sixtieth Year of the Republic of India.

An Ordinance to amend the Central Universities Act, 2009.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Central Universities (Amendment) Ordinance, 2009.

Short title and commencement.

[PART II-

(2) It shall come into force at once.

25 of 2009.

**2.** After section 3 of the Central Universities Act, 2009 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:-

**"3A**. (1) The Central University of Jammu and Kashmir established under sub-section (4) of section 3 shall be known as the Central University of Kashmir, and its territorial jurisdiction shall be limited to the Kashmir Division of the State of Jammu and Kashmir.

(2) There shall be established a university, which shall be a body corporate, to be known as the Central University of Jammu having its territorial jurisdiction extending to the Jammu Division of the State of Jammu and Kashmir.

(3) All assets and liabilities of the Central University of Jammu and Kashmir in respect of the territory of Jammu Division of the State of Jammu and Kashmir shall stand transferred to be the assets and liabilities of the Central University of Jammu.

(4) Anything done or any action taken by the University of Jammu and Kashmir in respect of the territory of Jammu Division of the State of Jammu and Kashmir shall be deemed to have been done or taken by the Central University of Jammu.

(5) Any suit or legal proceedings instituted or continued by or against the Central University of Jammu and Kashmir in respect of the territory of Jammu Division of the State of Jammu and Kashmir shall be deemed to be instituted or continued by or against of the Central University of Jammu.".

Amendment of the First Schedule to the principal Act. **3.** In the First Schedule to the principal Act, for serial number 5 and the corresponding entries against it, the following serial numbers and entries and shall be substituted, namely:-

Serial No.		Name of the University	
<b>"5.</b>	and	•	Kashmir Division of the State of Jammu and Kashmir

2

Special provision with respect to the State of Jammu and Kashmir.

Insertion of

section 3A.

5A.

Jammu Central and University of Kashmir Jammu Jammu Division of the State of Jammu and Kashmir".

#### PRATIBHA DEVISINGH PATIL,

President.

V.K. BHASIN, Secy. to the Govt. of India.

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सं॰ 43]नई दिल्ली, बुधवार, अक्तूबर 21, 2009 / 29 आश्विन, 1931No. 43]NEW DELHI, WEDNESDAY, OCTOBER 21, 2009 / 29 Asvina, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE (Legislative Department)

THE ESSENTIAL COMMODITIES (AMENDMENT AND VALIDATION) ORDINANCE, 2009 No. 9 OF 2009

Promulgated by the President in the Sixtieth Year of the Republic of India.

An Ordinance further to amend the Essential Commodities Act, 1955 and to make provisions for validation of certain orders issued by the Central Government determining the price of levy sugar and actions taken under those orders and for matters connected therewith.

WHEREAS the Supreme Court, in Modi Industries Ltd. and Another versus Union of India and Ors [T.C. (Civil) No. 9/1990] on the  $20^{th}$  February, 1996 and later on in Bharat Sugar Mills Ltd. and Another versus Union of India and Others [T.C. (Civil) Nos. 15-17/1993] on the 19<sup>th</sup> August, 1998 and in Union of India and Others versus Triveni Engineering Works Ltd. and Others [(1999) (9) SCC 245] on the  $2^{nd}$  February, 1999, upheld the determination of price of levy sugar in respect of the sugar season 1982-1983 by taking note of the fact that while determining the price of levy sugar neither the additional price under clause 5A of the Sugarcane (Control) Order, 1966 nor the mopping up of excess realisation were factored into consideration;

AND WHEREAS the Supreme Court in Mahalakshmi Sugar Mills Company Limited and Another *versus* Union of India and Others [2008 (6) Scale 275] by its judgment dated the 31<sup>st</sup> March, 2008 has considered the scope and ambit of sub-section (3C) of section 3 of the Essential Commodities Act, 1955 and construed in relation to the sugar seasons 1983-1984 and 1984-1985 that both the additional price paid to the cane growers in terms of clause 5A of the Sugarcane (Control) Order, 1966 made under the said Act and the State Advised Price (SAP) or actual price of sugarcane paid should be factored in the computation of price of levy sugar;

AND WHEREAS there have been conflicting decisions as to the factors to be taken into consideration in determining the price of levy sugar;

AND WHEREAS it has become necessary to clarify for certainty and to have a uniform policy and factors to be taken into consideration for the determination of price of levy sugar and also to clarify that the State Governments declaring the SAP also bear the additional expenditure connected thereto in so far as the impact on price of levy sugar in respect of sugar factories located in those States is concerned; AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

Short title and commence ment.

1. (1) This Ordinance may be called the Essential Commodities (Amendment and Validation) Ordinance, 2009.

(2) 1

(2) It shall come into force at once.

Amendment of section 3 of Act 10 of 1955. 2. In section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act)-

(a) in sub-section (3C), the existing *Explanation* shall be numbered as *Explanation I*, and after *Explanation I* as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted, with effect from the 1<sup>st</sup> day of October, 1974, namely:-

*Explanation II.*- For the removal of doubts, it is hereby declared that the expressions "minimum price" referred to in clause (a), "manufacturing cost of sugar" referred to in clause (b) and "reasonable return on the capital employed" referred to in clause (d) do not include the additional price of sugarcane paid or payable under clause 5A of the Sugarcane (Control) Order, 1966 and the price paid or payable under any order or enactment of any State Government and any price agreed to between the producer and the grower of sugarcane or a sugarcane growers' co-operative society";

(b) on and from the 1st day of October, 2009, for sub-section (3C) and the *Explanations* thereunder, the following shall be, and shall be deemed to have been substituted, namely:-

(3C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount therefor which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to-

(a) the fair and remunerative price, if, any, fixed for sugarcane by the Central Government under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing of sugar,

and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar:

Provided that where only provisional determination of price of levy sugar has been done in respect of sugar produced upto the sugar season 2008-2009, the final determination may be done under this sub-section as it stood immediately before the 1<sup>st</sup> day of October, 2009.

Explanation -- For the purposes of this sub-section,-

(a) "fair and remunerative price" means the price of sugarcane fixed by the Central Government under this section;

(b) "manufacturing cost of sugar" means the net cost incurred on conversion of sugarcane into sugar including net cost of transportation of sugarcane from the purchase centre to factory gate, to the extent it is borne by the producer;

(c) "producer" means a person carrying on the business of manufacturing sugar;

(d) "reasonable return on the capital employed" means the return on net fixed assets plus working capital of a producer in relation to manufacture of sugar including procurement of sugarcane on fair and remunerative price fixed under this section."

3. (1) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority-

(a) all things done or all actions taken by the Central Government under the specified orders shall be deemed to be and deemed to have always been done or taken in accordance with law;

(b) no suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority for the payment or adjustment of any payment in relation to the determination of price of levy sugar under any specified order;

(c) no court shall enforce any decree or order directing any payment in relation to the determination of price of levy sugar under any specified order;

(d) no claim or challenge shall be made in, or entertained by any court, tribunal or other authority on the ground that the Central Government did not take into consideration any factors specified in sub-section (3C) of section 3 of the principal Act in the determination of price of levy sugar under any specified order.

(2) In this section, "specified order" means any order relating to the determination of price of sugar issued under sub-section (3C) of section 3 of the principal Act before the commencement of this Ordinance in relation to sugar produced in any sugar season up to and including sugar season 2008-2009.

#### PRATIBHA DEVISINGH PATIL

President.

V.K. BHASIN, Secy. to the Govt. of India.

PRINTED BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2009. Validation of action taken, etc., under specified orders issued under sub-section (3C) of section 3 of the principal Act.

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रजिस्ट्री सं॰ डी॰ एल॰----(एन)04/0007/2003----09

सं॰ 6]

No. 6]



# The Gazette of India

असाधारण EXTRAORDINARY

भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

नई दिल्ली, शनिवार, जनवरी 23, 2010 /3 माघ, 1931 NEW DELHI, SATURDAY, JANUARY 23, 2010 / 3 Magha, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 23rd January, 2010/Magha 3, 1931(Saka)

## THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS (AMENDMENT AND VALIDATION) ORDINANCE, 2010

#### No. 1 of 2010)

Promulgated by the President in the Sixtieth Year of the Republic of India.

An Ordinance further to amend the Ancient Monuments and Archaeological Sites and Remains Act. 1958 and to make provision for validation of certain actions taken by the Central Government for public purposes under the said Act.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action:

NOW. 'THEREFORE: in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Ancient Momments and Short title and Archaeological Sites and Remains (Amendment and Validation) commencement. Ordinance, 2010.

(2) It shall come into force at once.

Amendment of section 2.

2. On and from the  $16^{th}$  day of June. 1992. in the Ancient Monuments and Archaeological Sites and Remains Act. 1958 (hereinafter referred to 24 of 1958. as the principal Act), in section 2.-

(a) after clause (h). the following clause shall be inserted and shall be deemed to have been inserted, namely :-

(*ha*) "prohibited area" means any area declared by the Central Government to be a prohibited area under section 20A; :

(b) after clause (j), the following clause shall be inserted and shall be deemed to have been inserted, namely :-

(k) "regulated area" means any area declared by the Central Government under section 20B.".

Insertion of new heading and new sections 20A.20I3.20C and 20I2

**3.** On and from the  $16^{th}$  day of June. 1992. after section 20 of the principal Act. the following shall be inserted and shall be deemed to have been inserted, namely:-

'PROHIBITED AREA AND REGULATED AREA NEAR OR ADJOINING PROTECTED MONUMENTS

Declaration of prohibited Exareas and no carrying out ac of pubic pr work in reprohibited areas.

20A. (1) The Central Government may, on the recommendation of an Expert Advisory Committee constituted under section 20D, by notification in the Official Gazette, declare, from time to time, in accordance with the procedure as may be prescribed, any area near any protected momment or its adjoining area to be a prohibited area in respect of such protected momment.

(2) No person, other than an archaeological officer, shall carry out any construction in any prohibited area referred to in sub-section (1).

(3) In a case where the Central Government is satisfied that-

(a) it is necessary or expedient for carrying out such public . work or any project essential to the public as may be notified in the Official Gazette; and

(b) such work, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding,

it may, notwithstanding any thing contained in sub-section (2), in exceptional cases. having regard to the public interest, by order and for reasons to be recorded in writing, permit such public work or project essential to the public, to be carried out.

(4) The Director-General may, on the recommendation of an Expert Advisory Committee constituted under section 2013, notwithstanding anything contained in sub-section (2), in exceptional cases, permit a person to carry out any construction activity

[PART II----

in a prohibited area referred to in sub-section (1) in accordance with the terms and conditions of a special permission granted by him in accordance with the rules as may be made by the Central Government:

Provided that any area near any protected monument or its adjoining area dcclared, during the period beginning on or after the 16th day of June, 1992 but ending before the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010, as a prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction of any public work or project essential to the public or special permission granted for construction, notwithstanding that such public work or project essential to the public or special permission, had not been notified, in respect of such prohibited area without having obtained recommendations of the Expert Advisory Committee or any other Committee, or such notification had not been laid before Parliament, shall be and shall be deemed to have been validly granted in accordance with the provisions of this Act.

2013. (1) The Central Government may, on the recommendation of an Expert Advisory Committee constituted under section 2010, by notification in the Official Gazette, declare from time to time, in accordance with the procedure as may be prescribed, any area (whether near any prohibited area in respect of protected monument or not, or, its adjoining area) to be a regulated area in respect of such protected monument.

(2) The Director-General may, on the recommendation of an Expert Advisory Committee constituted under section 20D, permit a person to carry out any construction activity in a regulated area referred to in sub-section (1) in accordance with the terms and conditions of a licence granted by him in accordance with the rules as may be made by the Central Government:

Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of hme. 1992 but ending before the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinauce, 2010, as a regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area shall, notwithstanding anything contained in sub-section (1) and this subsection or that such notification had not been laid before Parliament, be deemed to have been validly granted in accordance with the provisions of this Act.

(3) Every notification issued under section 20A and this section shall be laid before each House of Parliament.

Declaration of regulated area in respect of every protected monument and regulation of construction activities in such area.

SEC. 1]

Repair, renovation, reconstruction or construction in prohibited or regulated area.

#### 20C. (1) If any person,-

(a) owns any building or construction, which existed in a prohibited area before the  $16^{th}$  day of June, 1992, or, had been constructed with the approval of the Director-General and he desires to carry out any repair or renovation or re-construction of such building or construction; or

(b) owns or possesses any building or construction or land in any regulated area, and he desires to carry out any repair or renovation or re-construction or construction of such building or construction on such land, as the case may be.

he may make an application to the Director-General for such repair or renovation or re-construction or construction, as the case may be.

(2) The Director-General, on receipt of any application under subsection (1) may, on the recommendation of an Expert Advisory Committee constituted under section 2010, by order and for reasons to be recorded in writing, permit, subject to such terms and conditions as may be specified in the permission, the carrying out of the repair or renovation work or re-construction of any building or construction referred to in that sub-section, without causing any damage to the protected monument.

(3) Every order for grant of permission under sub-section (2) shall be made within three months from the date of receipt of the application.

(4) In case the Director-General refuses to grant permission under sub-section (2), he shall, by order in writing, intimate such refusal with in three months from the date of receipt of the application.

(5) If the Director-General, after grant of the permission under subsection (2) and during the carrying out of the repair or renovation work or re-construction of building or construction referred to in that subsection, is of the opinion (on the basis of material in his possession or otherwise) that such repair or renovation work or re-construction of building or construction is likely to have an adverse impact on the preservation, safety, security or access to the monument considerably, he may withdraw the permission granted under sub-section (2).

(6) Every order and every permission of the Director-General under this Act shall be exhibited in the website of the Archaeological Survey of India.

20D. (1) The Central Government may, by notification in the Official Gazette, constitute one or more Expert Advisory Committees for the purposes of sections 20A, 20B and 20C, for making recommendations.

Provided that until such time an Expert Advisory Committee is constituted under this sub-section, the Expert Committee constituted by the Director-General before the commencement of the Ancient

Expert Advisory Committee. [PART II---

Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010 and functioning as such before such commencement, shall be deemed to be an Expert Advisory Committee under sub-section (1):

Provided further that the Expert Committee constituted by the Director-General before the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance. 2010 and functioning as such before such commencement, shall cease to be the Expert Advisory Committee immediately after constitution of an Expert Advisory Committee under sub-section (1).

(2) Every reference for seeking recommendations of the Expert Advisory Committee by or under this Act shall be made by the Central Government or the Director-General, as the case may be.

(3) The Expert Advisory Committee shall, within two months of the receipt of a reference, forward its recommendations to the Central Government or the Director-General, as the case may be,

(4) An Expert Advisory Committee shall consist of the Director-General or his nominee as its Chairperson and such number of other members not exceeding six persons having proven experience and expertise in the field of archaeology, country and town planning, architecture, heritage, landscape architecture, conservation- architecture, urban planning, civil engineering, law or culture.

(5) The Central Government, or the Director-General, as the case may be, shall exhibit, in their website, all the recommendations of the Expert Advisory Committee.

(6) The Expert Advisory Committee shall regulate its own procedure for the purposes of holding its meetings (including quorum of such meetings) and making recommendations under this Act.

(7) The Expert Advisory Committee shall mention in its recommendation as to whether any construction in any prohibited area or regulated area is likely to have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding.

(8) The members of the Expert Advisory Committee shall be entitled to such fees as may be prescribed and such fee shall be payable by the Central Government or Director-General who makes a reference for seeking its recommendations.

4. Notwithstanding anything contained in any judgment. decree or order of any court, tribunal or other authority-

(a) any thing done or purported to be done or any action taken or purported to be taken by the Central Government immediately before the commencement of this Ordinance in pursuance of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) number S.O.1764 dated the 16<sup>th</sup> June. 1992 issued under rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules. 1959, shall be deemed to be and deemed to have always been done or

Validation of action taken. etc., under notification No.S.O.1764 dated 16<sup>th</sup> June, 1992.

#### THE GAZETTE OF INDIA EXTRAORDINARY [PART II-SEC. 1]

taken validly and in accordance with law at all material times and no action taken or thing done (including any order made. agreement entered into, or notification issued for constituting any Expert Advisory Committee or any other Committee) in connection with any permission granted or license issued for any construction activity in a prohibited area or a regulated area in respect of a protected monument shall be deemed to be invalid or ever to have become invalid merchy on the ground that the Ancient Monuments and Archaeological Sites and Remains Act. 1958 or the rules, orders or notifications issued thereunder did not contain any provision for constitution of an Expert Advisory Committee under sub-section (1) of section 2010 or notifications had not been laid before Parliament for grant of such permission or licence, as the case may be:

(b) no suit claim or other proceedings shall be instituted. maintained or continued in any court, tribunal or other authority for any permission or licence granted by the Central Government or the Director-General under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any rule, order or notification made thereunder, for carrying out any repair, renovation or construction work or for undertaking any public work or public project before the commencement of this Ordinance:

(c) no claim or challenge shall be made in or entertained by any court, tribunal or other authority solely on the ground that the Central Government or the Director-General did not take into consideration any of the provisions of the Ancient Monuments and Archaeological Sites and Remains Act. 1958, as amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010, in granting any permission or licence for the purpose of carrying out any mining or repair, renovation or construction work in a prohibited area or a regulated area at any time between the 16th day of June, 1992 and the date of commencement of this Ordinance.

24 of 1958.

24 of 1958.

24 of 1958.

#### PRATIBHA DEVISINGH PATIL, President.

V.K. BHASIN, Secy. to the Govt. of India.

PRINTED BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI-2010.

-10 REGISTERED NO. DL---(N)04/0007/2003---10



(एन)04/0007/2003-

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EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं<sup>0</sup> 19] नई दिल्ली, शनिवार, मई 15, 2010/वैशाख 25, 1932 No. 19] NEW DELHI, SATURDAY, MAY 15, 2010 / VAISAKHA 25, 1932

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 15th May, 2010/ Vaisakha 25, 1932 (Saka)

#### THE INDIAN MEDICAL COUNCIL (AMENDMENT) ORDINANCE, 2010

#### No. 2 OF 2010

Promulgated by the President in the Sixty-first Year of the Republic of India.

An Ordinance further to amend the Indian Medical Council Act, 1956.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Indian Medical Council (Amendment) Ordinance, 2010.

Short title and commencement.

(2) It shall come into force at once.

Insertion of new sections 3A, 3B and 3C.

Power of Central Government to supersede the Council and to constitute a Board of Governors. 2. After section 3 of the Indian Medical Council Act, 1956, the 102 of 1956. following sections shall be inserted, namely:-

'3A. (1) On and from the date of commencement of the Indian Medical Council (Amendment) Ordinance, 2010, the Council shall stand superseded and the President, Vice-President and other members of the Council shall vacate their offices and shall have no claim for any compensation, whatsoever.

(2) The Council shall be reconstituted in accordance with the provisions of section 3 within a period of one year from the date of supersession of the Council under sub-section (1).

(3) Upon the supersession of the Council under sub-section (1) and until a new Council is constituted in accordance with section 3, the Board of Governors constituted under sub-section (4) shall exercise the powers and perform the functions of the Council under this Act.

(4) The Central Government shall, by notification in the Official Gazette, constitute the Board of Governors which shall consist of not more than seven persons as its members, who shall be persons of eminence and of unimpcachable integrity in the fields of medicine and medical education, and who may be either nominated members or members, *ex officio*, to be appointed by the Central Government, one of whom shall be named by the Central Government as the Chairperson of the Board of Governors.

(5) The Chairperson and the other members, other than the members, *ex officio*, shall be entitled to such sitting fee and travelling and other allowances as may be determined by the Central Government.

(6) The Board of Governors shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as is applicable to the Council.

(7) Two-third of the members of the Board of Governors shall constitute the quorum for its meetings.

(8) No act or proceedings of the Board of Governors shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Board of Governors; or

(b) any irregularity in the procedure of the Board of Governors not affecting the merits of the case.

(9) A member having any financial or other interest in any matter coming before the Board of Governors for decision, shall disclose his interest in the matter before he may, if allowed by the Board of Governors, participate in such proceedings.

2

(10) The Chairperson and other members of the Board of Governors shall hold office during the pleasure of the Central Government.

3B. During the period when the Council stands superseded,-

Certain modifications of the Act.

(a) the provisions of this Act shall be construed as if for the word "Council", the words "Board of Governors" were substituted;

(b) the Board of Governors shall-

(*i*) exercise the powers and discharge the functions of the Council under this Act and for this purpose, the provisions of this Act shall have effect subject to the modification that references therein to the Council shall be construed as references to the Board of Governors;

(*ii*) grant independently permission for establishment of new medical colleges or opening a new or higher course of study or training or increase in admission capacity in any course of study or training referred to in section 10A or giving the person or college concerned a reasonable opportunity of being heard as provided under section 10A without prior permission of the Central Government under that section, including exercise of the power to finally approve or disapprove the same: and

(*iii*) dispose of the matters pending with the Central Government under section 10A upon receipt of the same from it.

3C. (1) Without prejudice to the provisions of this Act, the Board of Governors or the Council after its reconstitution shall, in exercise of its powers and in the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Power of Central Government to give directions.

Provided that the Board of Governors or the Council after its reconstitution shall, as far as practicable, be given an opportunity to express its views before any direction is given under this subsection.

(2) The decision of the Central Government whether a question is a matter of policy or not shall be final.'.

## PRATIBHA DEVISINGH PATIL,

President.

#### V.K. BHASIN,

Secy. to the Govt. of India.

PRINTED BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2010.

SEC. 1]



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 सं॰ 26 ]
 नई दिल्ली, शुक्रवार, जून 18, 2010 / ज्येष्ठ 28, 1932(शक)

 No. 26 ]
 NEW DELHI, FRIDAY, JUNE 18, 2010 / JYAISTHA 28, 1932(Saka)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE

#### (Legislative Department)

New Delhi, the 18th June, 2010/ Jyaishta 28, 1932 (Saka)

#### THE SECURITIES AND INSURANCE LAWS (AMENDMENT AND VALIDATION) ORDINANCE, 2010 No. 3 of 2010

Promulgated by the President in the Sixty-first Year of the Republic of India.

An Ordinance further to amend the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992;

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

#### CHAPTER I Preliminary

1. (1) This Ordinance may be called the Securities and Insurance Laws (Amendment and Validation) Ordinance, 2010.

Short title and commencement.

(2) It shall come into force at once.

#### CHAPTER II

#### AMENDMENT TO THE RESERVE BANK OF INDIA ACT, 1934

Insertion of new Chapter IIIE in Act 2 of 1934.

Joint

Mechanism

2. After Chapter IIID of the Reserve Bank of India Act, 1934, the following Chapter shall be inserted, namely:---

## "CHAPTER IIIE

#### JOINT MECHANISM

45Y. (1) Notwithstanding anything contained in this Act or the Securities and Exchange Board of India Act, 1992 or any other law for the time being in force, if any difference of opinion arises as to whether—

(i) any instrument, being derivative referred to in clause (a) or money market instrument referred to in clause (b) or reportered to in clause (c) or reverse reportered to in clause (d) or securities referred to in clause (e) of section 45U of this Act; or

(*ii*) any instrument, being policy of life insurance under the Insurance Act, 1938, or the rules or regulations made thereunder, or, scrips or any other securities referred to in sub-clauses (*i*), (*ia*), (*ib*), (*ic*), (*id*), (*ie*), (*ii*), (*iia*) and (*iii*) of clause (*h*) section 2 of the Securities Contract (Regulation) Act, 1956,

is hybrid or composite instrument, having a component of money market investment or securities market instrument or a component of insurance or any other instrument referred to in clause (*i*) or clause (*ii*) and falls within the jurisdiction of the Reserve Bank of India or the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 or the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 or the Pension Fund Regulatory and Development Authority constituted by the Resolution of the Government of India number F.No. 1(6)2007-PR, dated the 14<sup>th</sup> November, 2008 or the Central Government, such difference of opinion shall be referred to a Joint Committee consisting of the following, namely:—

(a) the Union Finance Minister - ex officio Chairperson;

(b) the Governor, Reserve Bank of India – ex officio Member;

(c) the Finance Secretary in the Ministry of Finance, Government of India – ex officio Member;

(d) the Secretary (Financial Services) in the Ministry of Finance, Government of India – ex officio Member;

(e) the Chairperson, Insurance Regulatory and Development Authority – ex officio Member;

(f) the Chairman, Securities and Exchange Board of India – *ex officio* Member;

(g) the Chairperson, Pension Fund Regulatory and Development Authority – ex officio Member.

(2) The Secretary (Financial Services) in the Ministry of Finance, Government of India shall be the convener of the meetings of the Joint Committee referred to in sub-section (1).

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15 of 1992.

4 of 1938.

42 of 1956.

15 of 1992.

41 of 1999

2

[PART II---

(3) In case of any difference of opinion referred to in sub-section (1), any Member of the Joint Committee may make a reference to the Joint Committee.

(4) The Joint Committee shall follow such procedure as it may consider expedient and give, within a period of three months from the date of reference made under sub-section (3), its decisions thereon to the Central Government.

(5) The decision of the Joint Committee shall be binding on the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority.".

#### CHAPTER III

#### AMENDMENT TO THE INSURANCE ACT, 1938

3. In the Insurance Act, 1938, in section 2, after clause (11), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 9<sup>th</sup> day of April, 2010, namely:—

*Explanation.*— For the removal of doubts, it is hereby declared that "life insurance business" shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.".

#### CHAPTER IV

#### AMENDMENT TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

4. In the Securities Contracts (Regulation) Act, 1956, in section 2, in clause (*h*), after sub-clause (*id*), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the  $9^{th}$  day of April, 2010, namely:—

'*Explanation.*— For the removal of doubts, it is hereby declared that "securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever named called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.'

#### CHAPTER V

# AMENDMENT TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

5. In the Securities and Exchange Board of India Act, 1992, in section 12, in sub-section (1B), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the  $9^{th}$  day of April, 2010, namely:—

"*Explanation.*— For the removal of doubts, it is hereby declared that, for the purposes of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips. or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.".

Amendment of section 12 of Act 15 of 1992.

Amendment of section 2 of Act 42 of 1956.

Amendment of section 2 of Act 4 of 1938.

4 of 1938.

[PART II-SEC.1]

4 of 1938.

42 of 1956.

15 of 1992.

#### CHAPTER VI MISCELLANEOUS

Validation.

6. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the provisions of section 2 of the Insurance Act, 1938 or section 2 of the Securities Contracts (Regulation) Act, 1956 or section 12 of the Securities and Exchange Board of India Act, 1992, as amended by this Ordinance, shall have and shall be deemed to always have effect for all purposes as if the provisions of the said Acts, as amended by this Ordinance, had been in force at all material times and accordingly any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, issued or purported to have been issued at any time before the 9<sup>th</sup> day of April, 2010, shall be deemed and always deemed to have been validly issued and shall not be called in question in any court of law or other authority solely on the ground that it was issued without a certificate of registration under any law for the time being in force or without following any procedure under any law for the time being in force, by an insurer or any other person.

PRATIBHA DEVISINGH PATIL.

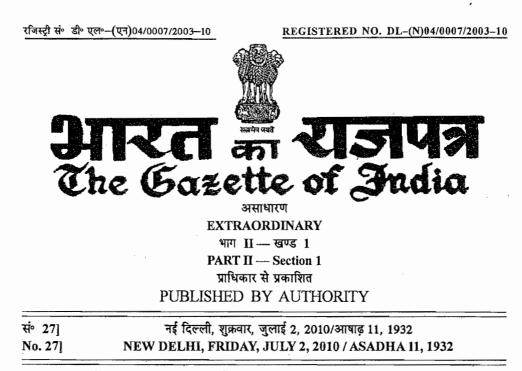
President.

#### V.K. BHASIN,

#### Secy. to the Govt. of India.

4

#### GMGIPMRND-2820GI(CRC)-18.06.2010



इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE (Legislative Department)

## New Delhi, the 2nd July, 2010/Asadha 11, 1932 (Saka)

#### THE ENEMY PROPERTY (AMENDMENT AND VALIDATION) ORDINANCE, 2010

## No. 4 OF 2010

Promulgated by the President in the Sixty-first Year of the Republic of India.

An Ordinance further to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Enemy Property (Amendment and Validation) Ordinance, 2010.

Short title and commencement.

(2) It shall come into force at once.

[PART II----

34 of 1968.

Amendment of section 5. 2. On and from the date of commencement of the Enemy Property Act, 1968 (hereinafter referred to as the principal Act), in section 5, after sub-section (2), the following shall be inserted and shall be deemed to have been inserted, namely:---

(3) The enemy property vested in the Custodian shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue to remain vested in the Custodian till it is divested by the Central Government.

*Explanation.*— For the purpose of this section, "enemy property vested in the Custodian" shall include all titles, rights and interest in, or any benefit arising out of, such property vested in him under the Act.'.

3. After section 5 of the principal Act, the following section shall be inserted, namely:----

"5A. The Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him under the Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein."

4. On and from the date of commencement of the principal Act, in section 6, the following *Explanation* shall be inserted and shall be deemed to have been inserted, namely:—

"Explanation.— For the removal of doubts, it is hereby declared that, for the purposes of this section, the transfer of any enemy property shall not include any transfer or any claim of transfer made,—

(a) through oral will or oral gift; or

(b) by concealment of enemy nationality; or

(c) in case the transfer of such property requires the permission of the Reserve Bank of India or any other competent authority, without such permission; or

(d) without the permission of the Custodian.".

5. In section 8 of the principal Act, in sub-section (2),-

(a) after clause (i), the following clause shall be inserted, namely:---

"(*ia*) fix and collect the rent, standard rent, lease rent, licence fee or usage charges, as the case may be, in respect of enemy property;";

(b) after clause (*iv*), the following clause shall be inserted, namely:---

"(*iva*) secure vacant possession of the enemy property by evicting from the unauthorised or illegal occupant or trespasser and remove unauthorised or illegal constructions, if any;".

Insertion of new section 10A.

6. After section 10 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 5A.

Issue of certificate by Custodian.

Amendment of section 6.

Amendment of section 8.

"10A. (1) Where the Custodian proposes to sell any enemy immovable property vested in him, as referred to in section 8, to any person, he may on receipt of the sale proceeds of such property, issue a certificate of sale in favour of such person and such certificate of sale shall, notwithstanding the fact that the original title deeds of the property have not been handed over to the transferee, be valid and conclusive proof of ownership of such property by such person.

(2) Notwithstanding anything contained in any law for the time being in force, the certificate of sale, referred to in sub-section (1), issued by the Custodian shall be a valid instrument for the registration of the property in favour of the transferee and the registration in respect of enemy property for which such certificate of sale had been issued by the Custodian, shall not be refused on the ground of lack of original title deeds in respect of such property or for any such other reason."

7. In section 11 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The Custodian, Deputy Custodian or Assistant Custodian shall have, for the purposes of exercising powers or discharging his functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while dealing with any case under this Act, in respect of the following matters, namely:—

(a) requiring the discovery and inspection of documents;

(b) enforcing the attendance of any person, including any officer dealing with land, revenue and registration matters, banking officer or officer of a company and examining him on oath;

(c) compelling the production of books, documents and other records; and

(d) issuing commissions for the examination of witnesses or documents.".

8. In section 17 of the principal Act, in sub-section (1), for the words "two per centum", at both the places where they occur, the words "five per centum" shall be substituted.

9. On and from the date of commencement of the principal Act, after section 18, the following section shall be inserted and shall be deemed to have been inserted, namely:---

"18A. Any income received in respect of the enemy property by the Custodian shall not, notwithstanding that such property had been divested or transferred to any other person, be returned or liable to be returned to such person or any other person unless so directed by order, by the Central Government.".

10. After section 18A of the principal Act, [as so inserted by section 9 of this Ordinance], the following sections shall be inserted, namely:—

"18B. No court shall have jurisdiction to order divestment from the Custodian of enemy property vested in him under this Act or direct the Central Government to divest such property from the Custodian.

Amendment of section 17.

Insertion of new section 18A.

Income not liable to be returned.

Insertion of new sections 18B and 18C.

Bar of jurisdiction of courts in matters of divesting.

Amendment of

section 11.

5 of 1908.

SEC. 1]

3

Transfer of

immovable property

belonging to enemy.

*Explanation.*— For the removal of doubts, it is hereby declared that the courts shall have jurisdiction to adjudicate whether the property claimed to be vested in the Custodian is an enemy property or not.

18C. The Central Government may, by general or special order, direct that any or all enemy property vested in the Custodian under this Act shall be sold or disposed off in such manner as may be prescribed.".

11. In section 20 of the principal Act, in sub-section (3), for the words "five hundred rupees", the words "ten thousand rupees" shall be substituted.

12. In section 23 of the principal Act, in sub-section (2), after clause (d), the following clause shall be inserted, namely:—

"(da) the manner of sale or disposal of the enemy property vested in the Custodian under section 18 C;".

13. After section 25 of the principal Act, the following section shall be inserted, namely:—

"26. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,----

(a) the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Ordinance, 2010, shall have and shall be deemed always to have effect for all purposes as if the provisions of this Act, as amended by the said Ordinance, had been in force at all material times;

(b) any enemy property divested from the Custodian to any person under the provisions of this Act, as it stood immediately before the commencement of the Enemy Property (Amendment and Validation) Ordinance, 2010, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the Custodian in the same manner as it was vested in the Custodian before such divesting of enemy property under the provisions of this Act, as if the provisions of this Act, as amended by the aforesaid Ordinance, were in force at all material times;

(c) no suit or other proceedings shall, without prejudice to the generality of the foregoing provisions, be maintained or continued in any court or tribunal or authority for the enforcement of any decree or order or direction given by such court or tribunal or authority directing divestment of enemy property from the Custodian vested in him under section 5 of this Act, as it stood before the commencement of the Enemy Property (Amendment and Validation) Ordinance, 2010, and such enemy property shall continue to vest in the Custodian under section 5 of this Act, as amended by the aforesaid Ordinance, as the said section, as amended by the aforesaid Ordinance, was in force at all material times;

(d) any transfer of any enemy property, vested in the Custodian, by virtue of any order of attachment, seizure or sale in execution of decree of a civil court or orders of any tribunal or other authority in respect of enemy property vested in the

Disposal of enemy property vested in custodian by Central Government.

Amendment of section 20.

Amendment of section 23.

Insertion of new section 26.

Validation

4

Custodian which is contrary to the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Ordinance, 2010, shall be deemed to be null and void and notwithstanding such transfer, continue to vest in the Custodian under this Act.".

Amendment of Act 40 of 1971.

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14. In the Public Premises (Eviction of Unauthorised Occupants) Act, 1971,---

(a) in section 2, in clause (e), after sub-clause (3), the following sub-clause shall be inserted, namely:—

"(4) any premises of the enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968;

(b) in section 3, in clause (a),—

(*i*) in the second proviso, the word "and" shall be omitted;

(*ii*) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that the Custodian, Deputy Custodian and Assistant Custodian of the enemy property appointed under section 3 of the Enemy Property Act, 1968 shall be deemed to have been appointed as the Estate Officer in respect of those enemy property, being the public premises, referred to in sub-clause (4) of clause (e) of section 2 of this Act for which they had been appointed as the Custodian, Deputy Custodian and Assistant Custodian under section 3 of the Enemy Property Act, 1968.".

#### PRATIBHA DEVISINGH PATIL,

President.

#### V.K. BHASIN,

Secy. to the Govt. of India.

PRINTED BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2010.

GMGIPMRND-2886GI(CRC)-02-07-2010.

34 of 1968.

34 of 1968

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REGISTERED NO. DL-(N)04/0007/2003-11



EXTRAORDINARY भाग II ---- खण्ड 1 PART II --- Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं॰ 11] नई दिल्ली, मंगलवार, मई 10, 2011/ वैशाख 20, 1933(शक) No. 11] NEW DELHI, TUESDAY, MAY 10, 2011/VAISAKHA 20, 1933 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 10th May, 2011/ Vaisakha 20, 1933 (Saka)

#### THE INDIAN MEDICAL COUNCIL (AMENDMENT) ORDINANCE, 2011

#### No. 1 of 2011

Promulgated by the President in the Sixty-second Year of the Republic of India.

An Ordinance further to amend the Indian Medical Council Act, 1956.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Indian Medical Council (Amendment) Short title and commencement.

(2) It shall come into force at once.

[Part II-- Sec. 1]

Amendment of 2. In section 3A of the Indian Medical Council Act, 1956, in sub-section (2), for the words "one year", the words "two years" shall be substituted.

PRATIBHA DEVI SINGH PATIL, President.

> V.K. BHASIN, Secy. to the Govt. of India.

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PUBLISHED BY AUTHORITY

सं॰ 12] नई दिल्ली, सोमवार, जून 20, 2011/ ज्येष्ठा 30, 1933(शक) No. 12] NEW DELHI, MONDAY, JUNE 20, 2011/JYAISTHA 30, 1933 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE (Legislative Department)

#### New Delhi, the 20th June, 2011 / Jyaistha 30, 1933 (Saka)

#### THE INDIAN INSTITUTE OF INFORMATION TECHNOLOGY, DESIGN AND MANUFACTURING, KANCHEEPURAM ORDINANCE, 2011

#### No. 2 of 2011

Promulgated by the President in the Sixty-second Year of the Republic of India.

An Ordinance to declare the Indian Institute of Information Technology, Design and Manufacturing, Kancheepuram, in the State of Tamil Nadu, to be an institute of national importance and to provide for its incorporation and for matters connected therewith.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

#### CHAPTER I PRELIMINARY

1. (1) This Ordinance may be called the Indian Institute of Information Technology, Design and Manufacturing, Kancheepuram Ordinance, 2011.

Short title and commencement.

(2) It shall come into force at once.

2. Whereas the objects of the institution known as the Indian Institute of Information Technology, Design and Manufacturing, Kancheepuram, in the State of Tamil Nadu are such as to make the institution one of national importance, it is hereby declared that the Indian Institute of Information Technology, Design and Manufacturing, Kancheepuram is an institution of national importance.

Declaration of Indian Institute of Information Technology, Design and Manufacturing, Kancheepuram, as an institution of national importance. Definitions.

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3. In this Ordinance, unless the context otherwise requires,-

(a) "Board" means the Board of Governors of the Institute;

(b) "Chairperson" means the Chairperson of the Board;

(c) "Director" means the Director of the Institute;

(d) "Institute" means the institution known as the Indian Institute of Information Technology, Design and Manufacturing, Kancheepuram incorporated under this Ordinance;

(e) "notification" means a notification published in the Official Gazette;

(f) "prescribed" means prescribed by Statutes made under this Ordinance;

(g) "Registrar" means the Registrar of the Institute;

(h) "Senate" means the Senate of the Institute;

(i) "Society" means the society known as the Indian Institute of Information Technology, Design and Manufacturing, Kancheepuram, registered under the Societies Registration Act, 1860;

(j) "Statutes" and "Ordinances" means the Statutes and Ordinances of the Institute made under this Ordinance;

(k) "Visitor" means the President of India.

#### CHAPTER II THE INSTITUTE

Incorporation of Institute. 4. (1) The Indian Institute of Information Technology, Design and Manufacturing, Kancheepuram which is a society registered under the Societies Registration Act, 1860 is hereby constituted as a body corporate by the name aforesaid and as such body corporate, it shall have perpetual succession and a common seal with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property and to contract and shall, by that name, sue and be sued.

(2) The Institute shall consist of a Chairperson, a Director and other members of the Board.

5. (1) On and from the commencement of this Ordinance, -

(a) any reference to the Society in any law, other than this Ordinance, or in any contract or other instrument, shall be deemed as a reference to the Institute;

(b) all property, movable and immovable, of or belonging to the Society shall vest in the Institute;

(c) all the rights and liabilities of the Society shall be transferred to, and be the rights and liabilities of the Institute; and

Effect of incorporation of Institute.

21 of 1860

21 of 1860.

SEC.1

(d) every person employed by the Society, immediately before such commencement shall hold his office or service in the Institute for the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held if this Ordinance had not been promulgated, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the Institute in accordance with the terms of contract with the employee or, if no provision is made therein in this behalf, on payment to him by the Institute of compensation equivalent to three months' remuneration in the case of permanent employees and one month's remuneration in the case of other employees.

(2) Any person pursuing any academic or research course, at any time before the commencement of this Ordinance, in the Society for award of any degree or diploma and registered for the said purpose with it shall be deemed to have migrated after such commencement to the Institute incorporated under this Ordinance and be registered with the said Institute for grant of the same degree or diploma by the Institute and such person shall be deemed to have migrated and registered with the Institute incorporated under this Ordinance at the same level of study in the Society from which such person is deemed to have migrated.

6. (1) Subject to the provisions of this Ordinance, the Institute shall exercise the following powers and perform the following functions, namely:-

(a) to provide for instruction and research in such branches of engineering and technology, management, education, sciences and arts, as the Institute may think fit, and for the advancement of learning and dissemination of knowledge in

(b) to hold examinations and grant degrees, diplomas and other academic distinctions or titles;

(c) to confer honorary degrees or other distinctions;

such branches;

(d) to fix, demand and receive fees and other charges;

(e) to establish, maintain and manage halls and hostels for the residence of students;

(f) to supervise and control the residence and regulate the discipline of students of the Institute and to make arrangements for promoting their health, general welfare and cultural and corporate life,

(g) to provide for the maintenance of units of the National Cadet Corps for the students of the Institute;

(h) to create administrative, technical, ministerial, academic and other posts with the prior approval of the Central Government, and to make appointments thereto (except in the case of the Director),

(i) to frame Statutes and Ordinances and to alter, modify or rescind the same;

(j) to deal with any property belonging to or vested in the Institute in such manner as the Institute may deem fit for advancing the objects of the Institute;

Powers and functions

of Institute

(k) to receive gifts, grants, donations or benefactions from the Government and to receive bequests, donations and transfers of moveable or immovable properties from testators, donors or transferors, as the case may be;

(1) to co-operate with educational or other institutions in any part of the world having objects wholly or partly similar to those of the Institute by exchange of teachers and scholars and generally in such manner as may be conducive to their common objects;

(m) to institute and award fellowships, scholarships, exhibitions, prizes and medals;

(n) to undertake consultancy in the areas or disciplines relating to the Institute; and

(o) to do all such things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Institute.

(2) Notwithstanding anything contained in sub-section (1), the Institute shall not dispose of in any manner any immovable property without the prior approval of the Central Government.

Institute to be open to all races, creeds and classes.

7. (1) The Institute shall be open to persons of either sex and of whatever race, creed, caste or class, and no test or condition shall be imposed as to religious belief or profession in admitting or appointing members, students, teachers or workers or in any other connection whatsoever.

(2) No bequest, donation or transfer of any property shall be accepted by the Institute which in the opinion of the Board involves conditions or obligations opposed to the spirit and object of this section.

Teaching at Institute.

Visitor.

8. All teaching at the Institute shall be conducted by or in the name of the Institute in accordance with the Statutes and Ordinances made in this behalf.

9. (1) The President of India shall be the Visitor of the Institute.

(2) The Visitor may appoint one or more persons to review the work and progress of the Institute and to hold inquiries into the affairs thereof and to report thereon in such manner as the Visitor may direct.

(3) Upon receipt of any such report, the Visitor may take such action and issue such directions as the Visitor considers necessary in respect of any of the matters dealt with in the report and the Institute shall be bound to comply with such directions.

Authorities of Institute.

10. The following shall be the authorities of the Institute, namely:-

(a) Board of Governors;

(b) Senate; and

(c) such other authorities as may be declared by the Statutes to be the authorities of the Institute.

Board of Governors.

11. The Board of Governors of the Institute shall consist of the following members, namely:-

(a) the Chairperson, to be nominated by the Visitor;

(b) the Director, ex officio;

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(c) one person to be nominated by the Government of Tamil Nadu;

(d) four persons to be nominated by the Central Government having special knowledge or practical experience in respect of engineering education, industry, information technology, design and manufacturing industries;

(e) one professor to be nominated by the Senate;

(f) one nominee of the Ministry in the Central Government dealing with Technical Education; and

(g) one nominee of the Ministry in the Central Government dealing with Information Technology;

12. (1) Save as otherwise provided in this section, the term of office of the Chairperson or other members of the Board shall be three years from the date of his nomination.

(2) The term of office of an *ex officio* member shall continue so long as he holds the office by virtue of which he is a member.

(3) The term of office of a member nominated under clause (e) of section 11 shall be two years from the 1st day of January of the year in which he is nominated.

(4) The term of office of a member nominated to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he has been nominated.

(5) Notwithstanding anything contained in this section, an outgoing member shall, unless the Board otherwise directs, continue in office until another person is nominated as a member in his place.

(6) The members of the Board shall be entitled to such allowances, if any, from the Institute as may be provided for in the Statutes but no member other than the members referred to in clauses (b) and (e) of section 11 shall be entitled to any salary by reason of this sub-section.

(7) A member may resign his office by writing under his hand addressed to the Central Government but he shall continue in office until his resignation is accepted by that Government.

13. (1) Subject to the provisions of this Ordinance, the Board of the Institute shall be responsible for the general superintendence, direction and control of the affairs of the Institute and shall exercise all the powers of the Institute not otherwise provided for by this Ordinance, the Statutes and the Ordinances and shall have the power to review the acts of the Senate.

(2) Without prejudice to the provisions of sub-section (1), the Board shall,-

(a) take decisions on questions of policy relating to the administration and working of the Institute;

(b) institute courses of study at the Institute;

(c) make Statutes,

(d) institute and appoint persons to academic as well as other posts in the Institute;

(e) consider and modify or cancel Ordinances;

(f) consider and pass resolutions on the annual report, the annual accounts and the budget estimates of the Institute;

Powers and functions of Board.

Terms of office of, vacancies among and allowances payable to, members of Board. (g) exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Ordinance or the Statutes.

(3) The Board shall have the power to appoint such committees, as it considers necessary for the exercise of its powers and the performance of its duties under this Ordinance.

14. The Senate of the Institute shall consist of the following persons, namely :-

(a) the Director, ex officio, who shall be the Chairman of the Senate;

(b) the Professors appointed or recognised as such by the Institute for the purpose of imparting instructions in the Institute;

(c) three persons, not being employees of the Institute, to be nominated by the Board from among educationists of repute, one each from the fields of science, engineering and humanities; and

15. Subject to the provisions of this Ordinance, the Statutes and the Ordinances, the Senate shall be the principal academic body of the Institute and shall have control over and be responsible for maintenance of standards of education, teaching and training, inter-departmental coordination, research, examinations and tests within the Institute and shall exercise such other powers and discharge such other duties and functions as may be prescribed or conferred upon it by the Statutes.

(d) such other members of the staff as may be laid down in the Statutes.

Functions of Senate.

Powers and functions of Chairperson.

16. (1) The Chairperson shall preside at the meetings of the Board and at convocations of the Institute.

(2) It shall be the duty of the Chairperson to ensure that decisions taken by the Board are implemented.

(3) The Chairperson shall exercise such powers and perform such duties as may be assigned to him by or under this Ordinance, Statutes or by resolution of the Board.

Director.

17. (1) The Director of the Institute shall be appointed by the Visitor, on whose directions the Board shall issue an order of appointment.

(2) The Director shall be the principal academic and executive officer of the Institute and shall be responsible for proper administration of the Institute and for imparting of instruction and maintenance of discipline therein.

(3) The Director shall submit annual reports and accounts to the Board.

(4) The Director shall exercise such powers and perform such other duties as may be assigned to him by this Ordinance, the Statutes or Ordinances or by resolution of the Board.

Registrar.

18. (1) The appointment of the Registrar of the Institute shall be on such terms and conditions as laid down by the Statutes.

(2) The Registrar shall be the custodian of records, the common seal, the funds of the Institute and the property of the Institute, as the Board shall commit to his charge.

(3) The Registrar shall act as the Secretary of the Board and such committees, as may be prescribed by the Statutes.

(4) The Registrar shall exercise such other powers and perform such other duties as may be assigned to him by this Ordinance or the Statutes or the Board or the Director and in exercising such powers and in performing such duties, he shall be responsible to the Director for the proper discharge of his functions.

Senate

SEC 1]

19. The powers and duties of officers other than those mentioned in this Chapter shall be determined by the Statutes.

20. For the purpose of enabling the Institute to discharge its functions efficiently under this Ordinance, the Central Government may after due appropriation made by Parliament by law in this behalf, pay to the Institute in each financial year such sums of money and in such manner as it may think fit.

21. (1) The Institute shall maintain a fund to which the following shall be credited, namely:-

(a) all moneys provided by the Central Government or any State Government;

(b) all fees and other charges received by the Institute;

(c) all moneys received by the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; and

(d) all moneys received by the Institute in any other manner or from any other source.

(2) All moneys credited to the Fund of the Institute shall be deposited in such banks or invested in such manner as the Institute may, with the approval of the Central Government, decide.

(3) The Fund of the Institute shall be applied towards meeting the expenses of the Institute, including expenses incurred in the exercise of its powers and discharge of its duties under this Ordinance.

22. (1) The Institute shall maintain proper accounts and other relevant records Accounts and audit. and prepare an annual statement of accounts, including the balance sheet, in such form as may be specified, by notification, by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Institute shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Institute to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Institute shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the rights to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Institute.

(4) The accounts of the Institute as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament in accordance with such procedure as may be laid down by the Central Government.

23. (1) The Institute shall constitute for the benefit of its employees, including the Director in such manner and subject to such conditions as may be prescribed by the Statutes, such pension and provident funds and provide such insurance scheme as it may deem fit.

(2) Where any such provident fund has been so constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925 shall

Pension and provident

fund.

Grants by Central Government

Funds of Institute.

Other authorities and officers.

7

19 of 1925.

apply to such fund as if it were a Government Provident Fund.

24. All appointments of the staff of the Institute, except that of the Director, shall be made in accordance with the procedure laid down in the Statutes, by –

(a) the Board, if the appointment is made on the -

(i) academic staff in the post of Associate Professor or above; or

(ii) non-academic staff in any cadre up to a scale of pay as decided by the Board; and

(b) the Director, in other cases.

25. Subject to the provisions of this Ordinance, the Statutes may provide for all or any of the following matters, namely:-

(a) the conferment of honorary degrees;

(b) the formation of departments or divisions of teaching;

(c) the fees to be charged for courses of study in the Institute and for admission to the examinations of degrees and diplomas of the Institute;

(d) the institution of fellowships, scholarships, exhibitions, medals and prizes;

(e) the term of office and the method of appointment of officers of the Institute;

(f) the qualifications of teachers of the Institute;

(g) the classifications, the method of appointment and the determination of the terms and conditions of service of teachers and other staff of the Institute;

(h) the constitution of pension and provident funds and insurance scheme for the benefit of the officers, teachers and other staff of the Institute;

(i) the constitution, powers and duties of the authorities of the Institute;

(j) the establishment and maintenance of halls and hostels;

(k) the conditions of residence of students of the Institute and the levying of fees for residence in the halls and hostels and of other charges;

(1) the allowances to be paid to the Chairperson and members of the Board;

(m) the authentication of the orders and decisions of the Board;

(n) the meetings of the Board, the Senate, or any Committee, the quorum at

such meetings and the procedure to be followed in the conduct of their business; (o) any other matter which by this Ordinance is to be or may be prescribed by the Statutes.

26. (1) The first Statutes of the Institute shall be framed by the Central Government with the previous approval of the Visitor and a copy of the same shall be laid as soon as may be before each House of Parliament.

(2) The Board may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner provided in this section.

(3) Every new Statute or addition to the Statutes or any amendment or repeal of Statute shall require the previous approval of the Visitor who may assent thereto or withhold assent or remit it to the Board for consideration.

(4) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor.

27. Subject to the provisions of this Ordinance and the Statutes, the Ordinances of the Institute may provide for all or any of the following matters, namely:-

(a) the admission of the students to the Institute;

(b) the courses of study to be laid down for all degrees and diplomas of the Institute;

(c) the conditions under which students shall be admitted to the degree or

Statutes, how made.

Ordinances.

[Part II----

:

Statutes.

Appointments

diploma courses and to the examinations of the Institute, and shall be eligible for degrees and diplomas;

(d) the conditions of award of the fellowships, scholarships, exhibitions, medals and prizes;

(e) the conditions and mode of appointment and duties of examining bodies, examiners and moderators;

(f) the conduct of examinations;

(g) the maintenance of discipline among the students of the Institute; and

(h) any other matter which by this Ordinance or the Statutes is to be or may be provided for by the Ordinances.

28. (1) Save as otherwise provided in this section, Ordinances shall be made by Ordinances how made. the Senate.

(2) All Ordinances made by the Senate shall have effect from such date as it may direct, but every Ordinance so made shall be submitted, as soon as may be, to the Board and shall be considered by the Board at its next succeeding meeting.

(3) The Board shall have power by resolution to modify or cancel any such Ordinance and such Ordinance shall from the date of such resolution stand modified accordingly or cancelled, as the case may be.

29. (1) Any dispute arising out of a contract between the Institute and any of its employees shall, at the request of the employee concerned or at the instance of the Institute, be referred to a Tribunal of Arbitration consisting of one member appointed by the Institute, one member nominated by the employee, and an umpire appointed by the Visitor.

(2) The decision of the Tribunal shall be final and shall not be questioned in any court.

(3) No suit or proceeding shall lie in any court in respect of any matter, which is required by sub-section (1) to be referred to the Tribunal of Arbitration.

(4) The Tribunal of Arbitration shall have power to regulate its own procedure.

(5) Nothing in any law for the time being in force relating to arbitration shall apply to arbitrations under this section.

#### CHAPTER III MISCELLANEOUS

**30.** The Institute shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Ordinance.

**31.** No act of the Institute or Board or Senate or any other body set up under this Ordinance or the Statutes shall be invalid merely by reason of-

(a) any vacancy in or defect in the constitution thereof; or

(b) any defect in the selection, nomination or appointment of a person acting as a member thereof; or

(c) any irregularity in its procedure not affecting the merits of the case.

32. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary or expedient for removing the difficulty.

Tribunal of Arbitration.

Control by Central Government.

Acts and proceedings not to be invalidated by vacancies, etc.

Power to remove difficulties.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each of House of Parliament.

Transitional provisions.

33. Notwithstanding anything contained in this Ordinance,-

(a) the Board of Governors of the institute functioning as such immediately
before the commencement of this Ordinance shall continue to so function until a new Board is constituted for the Institute under this Ordinance, but on the constitution of a new Board under this Ordinance, the members of the Board holding office before such constitution shall cease to hold office;

(b) the Senate constituted in relation to the Institute before the commencement of this Ordinance shall be deemed to be the Senate constituted under this Ordinance until a Senate is constituted under this Ordinance for the Institute, but on the constitution of the new Senate under this Ordinance, the members of the Senate holding office before such constitution shall cease to hold office.

#### PRATIBHA DEVISINGH PATIL.

President.

V.K. BHASIN, Secy. to the Govt. of India.

#### CORRIGENDA

In the Gazette of India, Extraordinary, Part II, Section 1, issued as Issue No. 37, published on Vaisakha 29, 1925 (Saka) publishing the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (34 of 2003) in the Block of the Gazette occurring on page 1,-

(i) for " मई 19, 2002", read " मई 19, 2003";

(ii) for "May 19, 2002", read "May 19, 2003".

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असाधारण EXTRAORDINARY भाग II — खण्ड 1 PART II — Section 1 प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

सं<sup>°</sup> 25] नई दिल्ली, मंगलवार, अक्टूबर 25, 2011/ कार्तिक 3, 1933 (शक) No. 25] NEW DELHI, TUESDAY, OCTOBER 25, 2011/KARTIKA 3, 1933 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

#### MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 25th October, 2011/Kartika 3, 1933 (Saka)

#### THE CABLE TELEVISION NETWORKS (REGULATION) AMENDMENT ORDINANCE, 2011

No. 3 OF 2011

Promulgated by the President in the Sixty-second Year of the Republic of India.

An Ordinance further to amend the Cable Television Networks (Regulation) Act, 1995.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Cable Television Networks (Regulation) Amendment Ordinance, 2011.

Short title and commencement.

(2) It shall come into force at once.

[Part II—

Amendment of section 2.

2. In section 2 of the Cable Television Networks (Regulation) Act, 1995 7 of 1995. (hereinafter referred to as the principal Act),—

(A) for clause (aa), the following clauses shall be substituted, namely:---

'(ai) "Authority" means the Telecom Regulatory Authority of India 24 of 1997. established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997;

(aii) "Broadcaster" means a person or a group of persons, or body corporate, or any organisation or body providing programming services and includes his or its authorised distribution agencies;

(aiii) "cable operator" means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network and fulfils the prescribed eligibility criteria and conditions;";

(B) in clause (e), for sub-clause (iii), the following sub-clause shall be substituted, namely:—

"(iii) a company as defined in section 3 of the Companies Act, 1956;";

1 of 1956.

(C) after clause (e), the following clause shall be inserted, namely:---

'(ei) "post" means a post and includes a pole, tower, standard, stay, strut, cabinet, pillar or any above ground contrivance for carrying, suspending or supporting any network infrastructure facility;';

(D) in clause (g), in sub-clause (i), the words "through video cassette recorders or video cassette players" shall be omitted;

(E) after clause (g), the following clause shall be inserted, namely:---

(gi) "public authority" means any authority, body or institution of local self- government constituted or established by or under—

(i) the Constitution of India;

(ii) any law made by Parliament;

(iii) any law made by a State Legislature;

(iv)any notification issued or order made by the appropriate Government;

and includes any-

(v) body owned, controlled or substantially financed; or

(vi) non-governmental organisation substantially financed; or directly or indirectly by funds provided by the appropriate Government;':

(F) in clause (h), after the words "under this Act", the following shall be inserted, namely:----

"within such local limits of jurisdiction as may be determined by that Government;";

(G) in clause (i),---

(a) for the words "a person", the words "any individual, or association of individuals, or a company, or any other organisation or body" shall be substituted;

(b) for the words "indicated by him", the words "indicated by him or it" shall be substituted.

3. In section 3 of the principal Act, the proviso shall be omitted.

Amendment of section 3.

Substitution of

new section for

section 4.

4. For section 4 of the principal Act, the following section shall be substituted, namely:---

"4. (1) Any person who is desirous of operating or is operating a cable Registration as television network may apply for registration or renewal of registration, as a cable operator. cable operator to the registering authority.

(2) The cable operator shall fulfill such eligibility criteria and conditions as may be prescribed and different eligibility criteria may be prescribed for different categories of cable operators.

(3) On and from the date of issue of notification under section 4A, no new registration in a State, city, town or area notified under that section shall be granted to any cable operator who does not undertake to transmit or retransmit channels in an encrypted form through a digital addressable system.

(4) An application under sub-section (1) shall be made in such form and be accompanied with such documents and fees as may be prescribed.

(5) On receipt of the application, the registering authority shall satisfy itself that the applicant has furnished all the required information prescribed under sub-section (4) and on being so satisfied, register the applicant as a cable operator and grant him a certificate of registration or renew its registration, as the case may be, subject to such terms and conditions as may be prescribed under sub-section (6):

Provided that the registering authority may, if it is satisfied that the applicant does not fulfill the eligibility criteria and conditions prescribed under sub-section (2) or the application is not accompanied with necessary documents or fees prescribed under sub-section (4), and for reasons to be recorded in writing, by order, refuse to grant its registration or renewal and communicate the same to the applicant:

7.

56.

[PART II----

Provided further that the applicant may prefer an appeal against the order of the registering authority refusing grant or renewal of registration to the Central Government.

(6) Without prejudice to the compliance of eligibility criteria for registration of cable operators, the Central Government may prescribe, having regard to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, foreign relation or contempt of court, defamation or incitement to an offence, such terms and conditions of registration including additional criteria or conditions to be fulfilled by the cable operator.

(7) The Central Government may suspend or revoke the registration granted under sub section (5) if the cable operator violates one or more of the terms and conditions of such registration:

Provided that no such order of suspension or revocation shall be made without giving a reasonable opportunity of being heard to the cable operator.".

5. For section 4A of the principal Act, the following sections shall be substituted, namely:—

'4A. (1) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, make it obligatory for every cable operator to transmit or re-transmit programmes of any channel in an encrypted form through a digital addressable system with effect from such date as may be specified in the notification and different dates may be specified for different States, cities, towns or areas, as the case may be:

Provided that the date specified in the notification shall not be earlier than six months from the date of issue of such notification to enable the cable operators in different States, cities, towns or areas to install the equipment required for the purposes of this sub-section.

(2) The Central Government may prescribe appropriate measures and take such steps as it may consider necessary for implementation of the notification issued under sub-section (1).

(3) If the Central Government is satisfied that it is necessary in the public interest so to do, and if not otherwise specified by the Authority, it may direct the Authority to specify, by notification in the Official Gazette, one or more free-to-air channels to be included in the package of channels forming basic service tier and any or more such channels may be specified, in the notification, *genre-wise* for providing a programme mix of entertainment, information, education and such other programmes and fix the tariff for basic service tier which shall be offered by the cable operators to the consumers and the consumer shall have the option to subscribe to any such tier:

Provided that the cable operator shall also offer the channels in the basic

Substitution of new sections for section 4A.

Transmission of programmes through digital addressable systems, etc. service tier on a *la carte* basis to the subscriber at a tariff specified under this sub-section.

(4) The Central Government or the Authority may specify in the notification referred to in sub-section (3), the number of free-to-air channels to be included in the package of channels forming basic service tier for the purposes of that sub-section and different numbers may be specified for different States, cities, towns or areas, as the case may be.

(5) It shall be obligatory for every cable operator to publicise the prescribed information including but not limited to subscription rates, standards of quality of service and mechanism for redressal of subscribers' grievances in such manner and at such periodic intervals as may be specified by the Central Government or the Authority for the benefit of the subscriber.

(6) The cable operator shall not require any subscriber to have a receiver set of a particular type to receive signals of cable television network:

Provided that the subscriber shall use a digital addressable system to be attached to his receiver set for receiving programmes transmitted on any channel.

(7) Every cable operator shall provide such information relating to its cable services and networks in such format and at such periodic intervals to the Central Government or the State Governments or the Authority or their authorised representatives, as may be specified by them from time to time.

(8) All actions taken by the Central Government or the Authority in pursuance of the provisions of this section as they stood immediately before the commencement of the Cable Television Networks (Regulation) Amendment Ordinance, 2011 shall continue to remain in force till such actions are modified as per the provisions of this Act.

*Explanation.*— For the purposes of this section,—

(a) "addressable system " means an electronic device (which includes hardware and its associated software) or more than one electronic devices put in an integrated system through which signals of cable television network can be sent in encrypted form, which can be decoded by the device or devices, having an activated Conditional Access System at the premises of the subscriber within the limits of authorisation made, through the Conditional Access System and the subscriber management system, on the explicit choice and request of such subscriber, by the cable operator to the subscriber;

(b) "basic service tier" means a package of free-to-air channels to be offered by a cable operator to a subscriber with an option to subscribe, for a single price to subscribers of the area in which his cable television network is providing service;

(c) "encrypted", in réspect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without use of an addressable system and the expression "unencrypted" shall be construed accordingly;

SEC. 1]

(d) "free-to-air channel", in respect of a cable television network, means a channel, for which no subscription fee is to be paid by the cable operator to the broadcaster for its retransmission on cable;

(e) "pay channel", in respect of a cable television network, means a channel for which subscription fees is to be paid to the broadcaster by the cable operator and due authorisation needs to be taken from the broadcaster for its retransmission on cable;

(f) "subscriber management system" means a system or device which stores the subscriber records and details with respect to name, address and other information regarding the hardware being utilised by the subscriber, channels or bouquets of channels subscribed to by the subscriber, price of such channels or bouquets of channels as defined in the system, the activation or deactivation dates and time for any channel or bouquets of channels, a log of all actions performed on a subscriber's record, invoices raised on each subscriber and the amounts paid or discount allowed to the subscriber for each billing period.

4B. (1) Subject to the provisions of this Act, any cable operator entitled for providing cable services may, from time to time, lay and establish cables and erect posts under, over, along, across, in or upon any immovable property vested in or under the control or management of a public authority.

(2) Any public authority under whose control or management any immovable property is vested may, on receipt of a request from a cable operator permit the cable operator to do all or any of the following acts, namely:—

(a) to place and maintain underground cables or posts; and

(b) to enter on the property, from time to time, in order to place, examine, repair, alter or remove such cables or posts.

(3) The facility of right of way under this section for laying underground cables, and erecting posts, shall be available to all cable operators subject to the obligation of reinstatement or restoration of the property or payment of reinstatement or restoration charges in respect thereof at the option of the public authority.

(4) When a public authority in public interest considers it necessary and expedient that the underground cable or post placed by any cable operator under the provisions of this section should be removed or shifted or its position altered, it may require the cable operator to remove it or shift it or alter its position, as the case may be, at its own cost in the time frame indicated by the public authority.

(5) The Central Government may lay down appropriate guidelines to enable the State Governments to put in place an appropriate mechanism for speedy clearance of requests from cable operators for laying cables or erecting posts on any property vested in, or under the control or management of, any public authority and for settlement of disputes, including refusal of permission by the public authority.

(6) Any permission granted by a public authority under this section may be given subject to such reasonable conditions as that public authority thinks fit to impose as to the payment of any expenses, or time or mode of

Right of way for cable operators and permission by public authority.

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SEC. 1]

execution of any work, or as to any other matter connected with or related to any work undertaken by the cable operator in exercise of those rights.

(7), Nothing in this section shall confer any right upon any cable operator other than that of user for the purpose only of laying underground cable or erecting posts or maintaining them.'.

6. For section 8 of the principal Act, the following section shall be substituted namely:

**\*8.** (1) The Central Government may, by notification in the Official Gazette, specify the names of Doordarshan channels or the channels operated by or on behalf of Parliament, to be mandatorily carried by the cable operators in their cable service and the manner of reception and retransmission of such channels:

Provided that in areas where digital addressable system has not been introduced in accordance with the provisions of sub-section (1) of section 4A, the notification as regards the prime band is concerned shall be limited to the carriage of two Doordarshan terrestrial channels and one regional language channel of the State in which the network of the cable operator is located.

(2) The channels referred to in sub-section (1) shall be retransmitted without any deletion or alteration of any programme transmitted on such channels.

(3) Notwithstanding the provisions of sub-section (1), any notification issued by the Central Government or the Prasar Bharti (Broadcasting Corporation of India) in pursuance of the provisions of sub section (1), prior to the commencement of the Cable Television Networks (Regulation) Amendment Ordinance, 2011 shall continue to remain in force till such notifications are rescinded or amended, as the case may be.".

7. In section 9 of the principal Act,-

(a) for the word "equipment", at both the places where it occurs, the words "equipment or digital addressable system" shall be substituted;

(b) the proviso shall be omitted.

8. In section 10 of the principal Act, after the words "authorised Amen telecommunication systems", the words "and is in conformity with such section standards relating to interference as may be prescribed by the Central Government" shall be inserted.

9. After section 10 of the principal Act, the following section shall be inserted, namely:----

"10A. (1) Without prejudice to the provisions contained in the Indian Telegraph Act, 1885 or any other law for the time being in force, the Central Government or its officers authorised by it or authorised agency shall have the right to inspect the cable network and services.

(2) No prior permission or intimation shall be required to exercise the right of the Central Government or its authorised representatives to carry out

Amendment of section 9.

Amendment of section 10.

Insertion of new section 10 A.

Inspection of cable network and services.

new section for section 8. Compulsory transmission of certain channels.

Substitution of

7

13 of 1885.

such inspection.

8

(3) The inspection shall ordinarily be carried out after giving reasonable notice except in circumstances where giving of such a notice shall defeat the purpose of the inspection.

(4) On being so directed by the Central Government or its authorised officers or agency so authorised by it, the cable operator shall provide the necessary equipment, services and facilities at designated place or places for lawful interception or continuous monitoring of the cable service at its own cost by or under the supervision of the Central Government or its officers or agency so authorised by it.".

10. For section 11 of the principal Act, the following section shall be substituted, namely:----

"11. If any authorised officer has reason to believe that the provisions of section 3, section 4A, section 5, section 6, section 8, section 9 or section 10 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network:

Provided that the seizure of equipment in case of contravention of sections 5 and 6 shall be limited to the programming service provided on the channel generated at the level of the cable operator.".

11. In section 21 of the principal Act, for the words and figures "and the of section 21. Consumer Protection Act, 1986, "the following shall be substituted, namely:---

> 68 of 1986 "the Consumer Protection Act, 1986 and the Telecom Regulatory 24 of 1997 Authority of India Act, 1997".

Amendment of section 22. 12. In section 22 of the principal Act, in sub-section (2),-

(i) for clause (a), the following clause shall be substituted, namely:-

"(a) the eligibility criteria for different categories of cable operators under sub-section (2) of section 4;";

(ii) for clause (aa), the following clause shall be substituted, namely:---

"(aa) the form of application, documents to be accompanied and the fees payable under sub-section (4) of section 4;";

(iii) for clause (aaa), the following clause shall be substituted, namely:----

"(aaa) the terms and conditions of registration under sub-section (6) of section 4;";

(iv) after clause (aaa), the following clause shall be inserted, namely:----

"(aaaa) appropriate measures under sub-section (2) of section 4A for implementation of the notification under sub-section (1) of that section;";

Substitution of new section for section 11.

Power to seize equipment used for operating cable

television

network

Amendment

[PART II-

68 of 1986

(a) after clause (d), the following clause shall be inserted, namely:---

(da) the specifications of interference standards for interfering with any telecommunication system under section 10;".

#### PRATIBHA DEVISINGH PATIL, President.

V.K. BHASIN, Secy. to the Govt. of India.

of 1986. of 1986.

of 1997.

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