

2019

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भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 4] नई दिल्ली, शनिवार, जनवरी 12, 2019/पौष 22, 1940 (शक)
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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 12th January, 2019/Pausha 22, 1940 (Saka)

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ORDINANCE, 2019

No. 1 OF 2019

Promulgated by the President in the Sixty-ninth Year
of the Republic of India.

An Ordinance to protect the rights of married
Muslim women and to prohibit divorce by
pronouncing *talaq* by their husbands and for
matters connected therewith or incidental thereto;

WHEREAS the Muslim Women (Protection of
Rights on Marriage) Ordinance, 2018 was
promulgated by the President on the 19th day of
September, 2018;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Bill, 2018 replacing the said Ordinance was passed by the House of the People on the 27th day of December, 2018 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;

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 and commencement.

1. (1) This Ordinance may be called the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 19th day of September, 2018.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) “electronic form” shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;

(b) "*talaq*" means *talaq-e-biddat* or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband; and

2 of 1974.

(c) "Magistrate" means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973, in the area where the married Muslim woman resides.

CHAPTER II DECLARATION OF *TALAQ* TO BE *VOID* AND ILLEGAL

3. Any pronouncement of *talaq* by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be *void* and illegal.

Talaq to be *void* and illegal.

4. Any Muslim husband who pronounces *talaq* referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Punishment for pronouncing *talaq*.

CHAPTER III PROTECTION OF RIGHTS OF MARRIED MUSLIM WOMEN

5. Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom *talaq* is pronounced shall be entitled to receive from her husband such amount of subsistence allowance for her and dependent children as may be determined by the Magistrate.

Subsistence allowance.

Custody of minor children.

6. Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of *talaq* by her husband, in such manner as may be determined by the Magistrate.

Offence to be cognizable, compoundable, etc.

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974.

(a) an offence punishable under this Ordinance shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom *talaq* is pronounced or any person related to her by blood or marriage;

(b) an offence punishable under this Ordinance shall be compoundable, at the instance of the married Muslim women upon whom *talaq* is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;

(c) no person accused of an offence punishable under this Ordinance shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

Repeal and Savings.

8. (1) The Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 is hereby repealed.

Ord. 7 of 2018.

Ord. 7 of 2018.

(2) Notwithstanding such repeal, anything done or any action taken under the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 shall be deemed to have been done or taken under the provisions of this Ordinance.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



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PART II — Section 1

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MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 12th January, 2019/Pausha 22, 1940 (Saka)

**THE INDIAN MEDICAL COUNCIL (AMENDMENT)
ORDINANCE, 2019**

No. 2 OF 2019

Promulgated by the President in the Sixty-ninth Year of the Republic of India.

An Ordinance further to amend the Indian Medical Council Act, 1956.

WHEREAS the Indian Medical Council (Amendment) Ordinance, 2018 was promulgated by the President on the 26th day of September, 2018;

AND WHEREAS the Indian Medical Council (Amendment) Bill, 2018, to replace the Indian Medical Council (Amendment) Ordinance, 2018, has been passed by the House of the People 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;

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 Indian Medical Council (Amendment) Ordinance, 2019.

(2) (A) The provisions of this Ordinance shall, except sub-clause (i) of clause (c) of section 2, be deemed to have come into force on the 26th day of September, 2018; and

(B) sub-clause (i) of clause (c) of section 2 shall come into force at once.

Amendment of
section 3A.

2. In section 3A of the Indian Medical Council Act, 1956,—

102 of 1956.

(a) in sub-section (1), for the words, brackets and figures “Indian Medical Council (Amendment) Act, 2010”, the words, brackets and figures “Indian Medical Council (Amendment) Ordinance, 2019” shall be substituted;

(b) in sub-section (2), for the words “three years”, the words “one year” shall be substituted;

(c) in sub-section (4),—

(i) for the words “seven persons”, the words “twelve persons” shall be substituted;

(ii) for the words “and medical education”, the words “and medical education or proven administrative capacity and experience” shall be substituted;

(d) after sub-section (7), the following sub-section shall be inserted, namely:—

“(7A) The Board of Governors shall be assisted by a Secretary General who shall be appointed by the Central Government on deputation or contract basis and he shall be the head of the secretariat in the Council.”.

- Ord. 8 of 2018. 3.(1) The Indian Medical Council (Amendment) Ordinance, 2018 is hereby repealed. Repeal and savings.
- 102 of 1956. (2) Notwithstanding such repeal, anything done or any action taken under the Indian Medical Council Act, 1956 as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act, as amended by this Ordinance.

RAM NATH KOVIND,

President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



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MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 12th January, 2019/Pausha 22, 1940 (Saka)

THE COMPANIES (AMENDMENT) ORDINANCE, 2019

No. 3 OF 2019

Promulgated by the President in the Sixty-ninth Year of the Republic of India.

An Ordinance further to amend the Companies Act, 2013.

WHEREAS the Companies (Amendment) Ordinance, 2018 was promulgated by the President on the 2nd day of November, 2018;

AND WHEREAS the Companies (Amendment) Bill, 2019 to replace the Companies (Amendment) Ordinance, 2018 has been passed by the House of People on the 4th day of January, 2019 and is pending in the Council of States;

AND WHEREAS the Companies (Amendment) Bill, 2019 could not be taken up for consideration and passing in the Council of States;

ANDWHEREAS the Companies (Amendment) Ordinance, 2018 will cease to operate on the 21st day of January, 2019;

ANDWHEREAS it is considered necessary to give continued effect to the provisions of the Companies (Amendment) Ordinance, 2018;

ANDWHEREAS 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 Companies (Amendment) Ordinance, 2019.

Short title and commencement.

(2) It shall be deemed to have come into force on the 2nd day of November, 2018.

Amendment of section 2.

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41),—

(a) for the first proviso, the following provisos shall be substituted, namely:—

“Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;

(b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted.

Insertion of new section 10A.

3. After section 10 of the principal Act, the following section shall be inserted, namely:—

Commencement of business, etc.

“10A.(1) A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

4. In section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:—

Amendment of section 12.

“(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

5. In section 14 of the principal Act,—

Amendment of
section 14.

(i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely:—

“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;

(ii) in sub-section (2), for the word “Tribunal”, the words “Central Government” shall be substituted.

Amendment of
section 53.

6. In section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”.

Amendment of

7. In section 64 of the principal Act, for sub-section (2),

section 64. the following sub-section shall be substituted, namely:—

“(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.”.

Amendment of section 77.

8. In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—

“Provided that the Registrar may, on an application by the company, allow such registration to be made—

(a) in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2019, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2019, within a period of sixty days of such creation,

on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified—

(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such *advalorem* fees as may be prescribed.”.

9. Section 86 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:—

Amendment of section 86.

“(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.”.

10. For section 87 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 87.

“87. The Central Government on being satisfied that —

Rectification by Central Government in Register of charges.

(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

(b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.”.

Amendment of section 90.

11. In section 90 of the principal Act,—

(i) for sub-section (9), the following sub-section shall be substituted, namely:—

“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;

(ii) in sub-section (10),—

(a) after the word “punishable”, the words “with imprisonment for a term which may extend to one year or” shall be inserted;

(b) after the words “ten lakh rupees”, the words “or with both” shall be inserted;

Amendment of
section 92.

12. In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.”.

13. In section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

Amendment of
section 102.

“(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.”.

14. In section 105 of the principal Act, in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted.

Amendment of
section 105.

15. In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of
section 117.

“(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

16. In section 121 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

Amendment of
section 121.

“(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

Amendment of
section 137.

17. In section 137 of the principal Act, in sub-section (3),—

(a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted;

(b) for the portion beginning with “punishable with imprisonment”, and ending with “five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further

penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted.

Amendment of
section 140.

18. In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

Amendment of
section 157.

19. In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

20. For section 159 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 159.

“159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”.

Penalty for
default of
certain
provisions.

21. In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:—

Amendment of section 164.

“(i) he has not complied with the provisions of sub-section (1) of section 165.”.

22. In section 165 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” shall be substituted.

Amendment of section 165.

23. In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

Amendment of section 191.

“(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”.

24. In section 197 of the principal Act,—

Amendment of section 197.

(a) sub-section (7) shall be omitted;

(b) for sub-section (15), the following sub-section shall be substituted, namely:—

“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.

Amendment of section 203.

25. In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.”.

Amendment of
section 238.

26. In section 238 of the principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of one lakh rupees” shall be substituted.

Amendment of
section 248.

27. In section 248 of the principal Act, in sub-section (1),—

(a) in clause (c), for the word and figures “section 455,”, the words and figures “section 455; or” shall be substituted;

(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:—

“(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.”.

28. In section 441 of the principal Act,—

Amendment of
section 441.

(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees”, the words “does not exceed twenty-five lakh rupees” shall be substituted;

(b) for sub-section (6), the following sub-section shall be substituted, namely:—

2 of 1974.

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.”.

29. In section 446B of the principal Act, for the portion beginning with “punishable with fine” and ending with “specified in such sections”, the words “liable to a penalty which shall not be more than one half of the penalty specified in such sections” shall be substituted.

Amendment of
section 446B.

30. In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted. Amendment of section 447.

31. In section 454 of the principal Act, — Amendment of section 454.

(i) for sub-section (3), the following sub-section shall be substituted, namely: —

“(3) The adjudicating officer may, by an order—

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;

(ii) in sub-section (4), for the words “such company and the officer who is in default”, the words “such company, the officer who is in default or any other person” shall be substituted;

(iii) in sub-section (8),—

(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted;

(b) in clause (ii)—

(i) for the words “Where an officer of a company”, the words “Where an officer of a company or any other person” shall be substituted;

(ii) for the words “does not pay the penalty”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted.

Insertion of
new section
454A.

32. After section 454 of the principal Act, the following section shall be inserted, namely:—

Penalty for
repeated default.

“454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.”.

Repeal and
Savings.

33. (1) The Companies (Amendment) Ordinance, 2018 is hereby repealed. Ord. 9 of 2018.

(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.

RAM NATH KOVIND,

President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

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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 AND JUSTICE
(Legislative Department)

New Delhi, the 21st February, 2019/Phalguna 2, 1940 (Saka)

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) SECOND ORDINANCE, 2019

NO. 4 OF 2019

Promulgated by the President in the Seventieth
Year of the Republic of India.

An Ordinance to protect the rights of married
Muslim women and to prohibit divorce by pronouncing
talaq by their husbands and for matters connected
therewith or incidental thereto;

WHEREAS the Muslim Women (Protection of
Rights on Marriage) Bill, 2017 has been passed by the
House of the People and is pending in the Council of
States;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 with certain modifications was promulgated by the President on the 19th day of September, 2018;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Bill, 2018 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 Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 cease to operate on the 21st January, 2019, and to give continued effect to the provisions of the said Ordinance, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 was promulgated by the President on the 12th day of January, 2019;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Bill, 2018 replacing the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 with necessary official amendments was listed for consideration and passing in Rajya Sabha and it could not be taken up;

AND WHEREAS to give continued effect to the provisions of the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019, it is necessary to take immediate necessary action in the matter;

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

1. (1) This Ordinance may be called the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019.

Short title, extent and commencement.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 19th day of September, 2018.

2. In this Ordinance, unless the context otherwise requires,—

Definitions.

(a) “electronic form” shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;

21 of 2000.

(b) “*talaq*” means *talaq-e-biddat* or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband; and

(c) “Magistrate” means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973, in the area where the married Muslim woman resides.

2 of 1974.

CHAPTER II

DECLARATION OF *TALAQ* TO BE *VOID* AND ILLEGAL

Talaq to be *void*
and illegal.

3. Any pronouncement of *talaq* by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be *void* and illegal.

Punishment for
pronouncing *talaq*.

4. Any Muslim husband who pronounces *talaq* referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

CHAPTER III

PROTECTION OF RIGHTS OF MARRIED MUSLIM WOMEN

Subsistence
allowance.

5. Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom *talaq* is pronounced, shall be entitled to receive from her husband such amount of subsistence allowance for her and dependent children as may be determined by the Magistrate.

6. Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of *talaq* by her husband, in such manner as may be determined by the Magistrate.

Custody of minor children.

2 of 1974.

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Offences to be cognizable, compoundable, etc.

(a) an offence punishable under this Ordinance shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom *talaq* is pronounced or any person related to her by blood or marriage;

(b) an offence punishable under this Ordinance shall be compoundable, at the instance of the married Muslim women upon whom *talaq* is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;

(c) no person accused of an offence punishable under this Ordinance shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied

that there are reasonable grounds for granting bail to such person.

Repeal and
Savings.

8. (1) The Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 is hereby repealed.

Ord. 1 of 2019.

(2) Notwithstanding such repeal, anything done or any action taken under the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 shall be deemed to have been done or taken under the provisions of this Ordinance.

Ord. 1 of 2019.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
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 21st February, 2019/Phalguna 2, 1940 (Saka)

**THE INDIAN MEDICAL COUNCIL (AMENDMENT)
SECOND ORDINANCE, 2019**

NO. 5 OF 2019

Promulgated by the President in the Seventieth Year of the Republic of India.

An Ordinance further to amend the Indian Medical Council Act, 1956.

WHEREAS the Indian Medical Council (Amendment) Ordinance, 2018 was promulgated by the President on the 26th day of September, 2018;

AND WHEREAS the Indian Medical Council (Amendment) Bill, 2018 to replace the said Ordinance was introduced in the House of the People on 14th December, 2018 and the said Bill was considered and passed in the said House on 31st December, 2018;

AND WHEREAS the Indian Medical Council (Amendment) Bill, 2018 could not be taken up for consideration and passing in the Council of States;

AND WHEREAS, as the Indian Medical Council (Amendment) Ordinance, 2018 would cease to operate in view of the provisions of sub-clause (a) of clause (2) of article 123 of the Constitution, the Indian Medical Council (Amendment) Ordinance, 2019 was promulgated by the President on the 12th day of January, 2019;

AND WHEREAS the Indian Medical Council (Amendment) Bill, 2018, as passed by the House of the People, could not be taken up for consideration and passing in the Council of States;

AND WHEREAS the Indian Medical Council (Amendment) Ordinance, 2019 would cease to operate on the 13th day of March, 2019;

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 Medical Council (Amendment) Second Ordinance, 2019.

Short title and commencement.

(2) (A) The provisions of this Ordinance shall, except sub-clause (i) of clause (c) of section 2, be deemed to have come into force on the 26th day of September, 2018; and

(B) sub-clause (i) of clause (c) of section 2 shall be deemed to have come into force on the 12th day of January, 2019.

102 of 1956.

2. In section 3A of the Indian Medical Council Act, 1956,—

Amendment of section 3A.

(a) in sub-section (1), for the words, brackets and figures “Indian Medical Council (Amendment) Act, 2010”, the words, brackets and figures “Indian Medical Council (Amendment) Second Ordinance, 2019” shall be substituted;

(b) in sub-section (2), for the words “three years”, the words “two years” shall be substituted;

(c) in sub-section (4),—

(i) for the words “seven persons”, the words “twelve persons” shall be substituted;

(ii) for the words “and medical education”, the words “and medical education or proven administrative capacity and experience” shall be substituted;

(d) after sub-section (7), the following sub-section shall be inserted, namely:—

“(7A) The Board of Governors shall be assisted by a Secretary General who shall be appointed by the Central Government on deputation or contract basis and he shall be the head of the secretariat in the Council.”.

Ord. 2 of 2019. 3.(1) The Indian Medical Council (Amendment) Ordinance, 2019 is hereby repealed. Repeal and savings.

102 of 1956. (2) Notwithstanding such repeal, anything done or any action taken under the Indian Medical Council Act, 1956 as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act, as amended by this Ordinance.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



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EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

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MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 21st February, 2019/Phalgun 2, 1940 (Saka)

THE COMPANIES (AMENDMENT) SECOND ORDINANCE, 2019 No. 6 OF 2019

Promulgated by the President in the Seventieth Year of the Republic of India.

An Ordinance further to amend the Companies Act, 2013.

WHEREAS the Companies (Amendment) Ordinance, 2018 was promulgated by the President on the 2nd day of November, 2018;

AND WHEREAS the Companies (Amendment) Bill, 2019 to replace the Companies (Amendment) Ordinance, 2018 has been passed by the House of People on the 4th day of January, 2019 and is pending in the Council of States;

AND WHEREAS in order to give continued effect to the provisions of the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance, 2019 was promulgated on the 12th day of January, 2019;

AND WHEREAS the Companies (Amendment) Bill, 2019 along with amendments to the said Bill could not be taken up for consideration and passing in the Council of States;

AND WHEREAS the Companies (Amendment) Ordinance, 2019 will cease to operate on the 13th day of March, 2019;

AND WHEREAS it is considered necessary to give continued effect to the provisions of the Companies (Amendment) Ordinance, 2019;

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:—

Short title and commencement.

1. (1) This Ordinance may be called the Companies (Amendment) Second Ordinance, 2019.

(2) It shall be deemed to have come into force on the 2nd day of November, 2018.

Amendment of section 2.

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41),—

(a) for the first proviso, the following provisos shall be substituted, namely:—

“Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Second Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before

such commencement.”;

(b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted.

3. After section 10 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 10A.

“10A.(1) A company incorporated after the commencement of the Companies (Amendment) Second Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—

Commencement of business, etc.

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

4. In section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:—

Amendment of section 12.

“(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

Amendment of
section 14.

5. In section 14 of the principal Act,—

(i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely:—

“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Second Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;

(ii) in sub-section (2), for the word “Tribunal”, the words “Central Government” shall be substituted.

Amendment of
section 53.

6. In section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”.

7. In section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 64.

“(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.”.

8. In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—

Amendment of section 77.

“Provided that the Registrar may, on an application by the company, allow such registration to be made—

(a) in case of charges created before the commencement of the Companies (Amendment) Second Ordinance, 2019, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Second Ordinance, 2019, within a period of sixty days of such creation,

on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified—

(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Second Ordinance, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such *advalorem* fees as may be prescribed.”.

9. Section 86 of the principal Act shall be numbered as

Amendment of section 86.

sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.”.

Substitution of new section for section 87.

10. For section 87 of the principal Act, the following section shall be substituted, namely:—

Rectification by Central Government in Register of charges.

“87. The Central Government on being satisfied that —

(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

(b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.”.

Amendment of section 90.

11. In section 90 of the principal Act,—

(i) for sub-section (9), the following sub-section shall be substituted, namely:—

“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the

Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;

(ii) in sub-section (10),—

(a) after the word “punishable”, the words “with imprisonment for a term which may extend to one year or” shall be inserted;

(b) after the words “ten lakh rupees”, the words “or with both” shall be inserted;

12. In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:— Amendment of section 92.

“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.”.

13. In section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:— Amendment of section 102.

“(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.”.

14. In section 105 of the principal Act, in sub-section (3), for the words “punishable with fine which may extend to five Amendment of section 105.

thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted.

Amendment of
section 117.

15. In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

Amendment of
section 121.

16. In section 121 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

Amendment of
section 137.

17. In section 137 of the principal Act, in sub-section (3),—

(a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted;

(b) for the portion beginning with “punishable with imprisonment”, and ending with “five lakh rupees or with

both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted.

18. In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— Amendment of section 140.

“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

19. In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 157.

“(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

20. For section 159 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 159.

“159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”. Penalty default certain provisions. for of

Amendment of section 164. **21.** In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:—

“(i) he has not complied with the provisions of sub-section (1) of section 165.”.

Amendment of section 165. **22.** In section 165 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” shall be substituted.

Amendment of section 191. **23.** In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”.

Amendment of section 197. **24.** In section 197 of the principal Act,—

(a) sub-section (7) shall be omitted;

(b) for sub-section (15), the following sub-section shall be substituted, namely:—

“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.

Amendment of section 203. **25.** In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding

five lakh rupees.”.

26. In section 238 of the principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of one lakh rupees” shall be substituted. Amendment of section 238.

27. In section 248 of the principal Act, in sub-section (1),— Amendment of section 248.

(a) in clause (c), for the word and figures “section 455,”, the words and figures “section 455; or” shall be substituted;

(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:—

“(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.”.

28. In section 441 of the principal Act,—

Amendment of section 441.

(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees”, the words “does not exceed twenty-five lakh rupees” shall be substituted;

(b) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.”.

2 of 1974.

29. In section 446B of the principal Act, for the portion beginning with “punishable with fine” and ending with “specified in such sections”, the words “liable to a penalty Amendment of section 446B.

which shall not be more than one half of the penalty specified in such sections” shall be substituted.

Amendment of section 447. **30.** In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.

Amendment of section 454. **31.** In section 454 of the principal Act, —

(i) for sub-section (3), the following sub-section shall be substituted, namely: —

“(3) The adjudicating officer may, by an order—

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;

(ii) in sub-section (4), for the words “such company and the officer who is in default”, the words “such company, the officer who is in default or any other person” shall be substituted;

(iii) in sub-section (8),—

(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted;

(b) in clause (ii)—

(i) for the words “Where an officer of a company”, the words “Where an officer of a company or any other person” shall be substituted;

(ii) for the words “does not pay the penalty”, the words, brackets and figures “fails to comply

with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted.

32. After section 454 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
454A.

"454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act."

Penalty for
repeated
default.

Ord. 3 of 2019.

33. (1) The Companies (Amendment) Ordinance, 2019 is hereby repealed.

Repeal and
Savings.

(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.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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No. 13] NEW DELHI, THURSDAY, FEBRUARY 21, 2019/PHALGUNA 2, 1940 (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 21st February, 2019/Phalguna 2, 1940 (Saka)

THE BANNING OF UNREGULATED
DEPOSIT SCHEMES ORDINANCE, 2019
NO. 7 OF 2019

Promulgated by the President in the Seventieth Year of
the Republic of India.

An Ordinance to provide for a comprehensive
mechanism to ban the unregulated deposit schemes and to
protect the interest of depositors and for matters connected
therewith or incidental thereto.

WHEREAS the Banning of Unregulated Deposit
Schemes Bill, 2019 was passed on the 13th day of February,
2019 in the House of the People;

AND WHEREAS the said Bill could not be taken up for
consideration and passing 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;

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 and
commencement.

1. (1) This Ordinance may be called the Banning of Unregulated Deposit Schemes Ordinance, 2019.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(1) “appropriate Government” means in respect of matters relating to,—

(i) the Union territory without legislature, the Central Government;

(ii) the Union territory of Puducherry, the Government of that Union territory;

(iii) the Union territory of Delhi, the Government of that Union territory; and

(iv) the State, the State Government;

(2) “company” shall have the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013; 18 of 2013.

(3) “Competent Authority” means an Authority appointed by the appropriate Government under section 7;

(4) “deposit” means an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—

(a) amounts received as loan from a scheduled bank or a co-operative bank or any other banking

- 10 of 1949. company as defined in section 5 of the Banking Regulation Act, 1949;
- 2 of 1934. (b) amounts received as loan or financial assistance from the Public Financial Institutions notified by the Central Government in consultation with the Reserve Bank of India or any non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 and is registered with the Reserve Bank of India or any Regional Financial Institutions or insurance companies;
- (c) amounts received from the appropriate Government, or any amount received from any other source whose repayment is guaranteed by the appropriate Government, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;
- 42 of 1999. (d) amounts received from foreign Governments, foreign or international banks, multilateral financial institutions, foreign Government owned development financial institutions, foreign export credit collaborators, foreign bodies corporate, foreign citizens, foreign authorities or person resident outside India subject to the provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder;
- (e) amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership;
- (f) amounts received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from the relatives of any of its partners;
- (g) amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable);
- 54 of 2002. (h) amounts received by an asset re-construction company which is registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(i) any deposit made under section 34 or an amount accepted by a political party under section 29B of the Representation of People Act, 1951; 43 of 1951.

(j) any periodic payment made by the members of the self-help groups operating within such ceilings as may be prescribed by the State Government or Union territory Government;

(k) any other amount collected for such purpose and within such ceilings as may be prescribed by the State Government;

(l) an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—

(i) payment, advance or part payment for the supply or hire of goods or provision of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided;

(ii) advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement;

(iii) security or dealership deposited for the performance of the contract for supply of goods or provision of services; or

(iv) an advance under the long-term projects for supply of capital goods except those specified in item (ii):

Provided that if the amounts received under items (i) to (iv) become refundable, such amounts shall be deemed to be deposits on the expiry of fifteen days from the date on which they become due for refund:

Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval under the law for the time being in force, wherever required, to deal in the goods or

properties or services for which money is taken, such amounts shall be deemed to be deposits.

Explanation.— For the purposes of this clause,—

18 of 2013. (i) in respect of a company, the expression “deposit” shall have the same meaning as assigned to it under the Companies Act, 2013;

2 of 1934. (ii) in respect of a non-banking financial company registered under the Reserve Bank of India Act, 1934, the expression “deposit” shall have the same meaning as assigned to it in clause (bb) of the section 45-I of the said Act;

9 of 1932. (iii) the expressions “partner” and “firm” shall have the same meanings as respectively assigned to them under the Indian Partnership Act, 1932;

6 of 2009. (iv) the expression “partner” in respect of a limited liability partnership shall have the same meaning as assigned to it in clause (q) of section 2 of the Limited Liability Partnership Act, 2008;

18 of 2013. (v) the expression “relative” shall have the same meaning as assigned to it in the Companies Act, 2013;

(5) “depositor” means any person who makes a deposit under this Ordinance;

(6) “deposit taker” means—

(i) any individual or group of individuals;

(ii) a proprietorship concern;

(iii) a partnership firm (whether registered or not);

6 of 2009. (iv) a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(v) a company;

(vi) an association of persons;

2 of 1882. (vii) a trust (being a private trust governed under the provisions of the Indian Trusts Act, 1882 or a public trust, whether registered or not);

(viii) a co-operative society or a multi-State co-operative society; or

(ix) any other arrangement of whatsoever nature,

receiving or soliciting deposits, but does not include—

(i) a Corporation incorporated under an Act of Parliament or a State Legislature;

(ii) a banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank as defined in the Banking Regulation Act, 1949;

10 of 1949.

(7) “Designated Court” means a Designated Court constituted by the appropriate Government under section 8;

(8) “insurer” shall have the same meaning as assigned to it in clause (9) of section 2 of the Insurance Act, 1938;

4 of 1938.

(9) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(10) “person” includes—

(i) an individual;

(ii) a Hindu Undivided Family;

(iii) a company;

(iv) a trust;

(v) a partnership firm;

(vi) a limited liability partnership;

(vii) an association of persons;

(viii) a co-operative society registered under any law for the time being in force relating to co-operative societies; or

(ix) every artificial juridical person, not falling within any of the preceding sub-clauses;

(11) “prescribed” means prescribed by the rules made by the Central Government or, as the case may be, the State Government under this Ordinance;

(12) “property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

18 of 2013.

(13) “public financial institution” shall have the same meaning as assigned to it in clause (72) of section 2 of the Companies Act, 2013;

(14) “Regulated Deposit Scheme” means the Schemes specified under column (3) of the First Schedule;

(15) “Regulator” means the Regulator specified in column (2) of the First Schedule;

(16) “Schedule” means the Schedules appended to this Ordinance;

(17) “Unregulated Deposit Scheme” means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule.

CHAPTER II BANNING OF UNREGULATED DEPOSIT SCHEMES

3. On and from the date of commencement of this Ordinance,—

Banning of
Unregulated
Deposit
Schemes.

(a) the Unregulated Deposit Schemes shall be banned; and

(b) no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an Unregulated Deposit Scheme.

Fraudulent
default in
Regulated
Deposit
Schemes.

4. No deposit taker, while accepting deposits pursuant to a Regulated Deposit Scheme, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.

Wrongful
inducement in
relation to
Unregulated
Deposit
Schemes.

5. No person by whatever name called shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme.

Certain scheme
to be
Unregulated
Deposit
Scheme.

6. A prize chit or a money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an Unregulated Deposit Scheme under this Ordinance.

43 of 1978.

CHAPTER III AUTHORITIES

Competent
Authority.

7. (1) The appropriate Government shall, by notification, appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority for the purposes of this Ordinance.

(2) The appropriate Government may, by notification, appoint such other officer or officers as it thinks fit, to assist the Competent Authority in discharging its functions under this Ordinance.

(3) Where the Competent Authority or officers appointed under sub-section (2), for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of such information and particulars as may be prescribed that any deposit taker is soliciting deposits in contravention of section 3, he may, by order in writing, provisionally attach the deposits held by the deposit taker and the money or other property acquired either in the name of the deposit taker or in the name of any other person on behalf of the deposit taker from the date of the order, in such manner as may be prescribed.

(4) The Competent Authority shall, for the purposes of sub-section (3), have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 while conducting investigation or inquiry in respect of the following matters, namely:—

5 of 1908.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(5) The Competent Authority shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this section.

(6) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

45 of 1860. (7) Every proceeding under sub-sections (4) and (5) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

(8) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Ordinance:

Provided that the officers referred to in sub-section (2) shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Competent Authority.

8. (1) The appropriate Government shall, with the concurrence of the Chief Justice of the concerned High Court, by notification, constitute one or more Courts known as the Designated Courts for such area or areas or such case or cases as may be specified in such notification, which shall be presided over by a Judge not below the rank of a District

Designated
Court.

and Sessions Judge or Additional District and Sessions Judge.

(2) No Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Ordinance apply.

(3) When trying an offence under this Ordinance, the Designated Court may also try an offence, other than an offence under this Ordinance, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

CHAPTER IV INFORMATION ON DEPOSIT TAKERS

Central
database.

9. (1) The Central Government may designate an authority, whether existing or to be constituted, which shall create, maintain and operate an online database for information on deposit takers operating in India.

(2) The authority designated under sub-section (1) may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed.

Intimation of
business by
deposit taker.

10. (1) Every deposit taker which commences or carries on its business as such on or after the commencement of this Ordinance shall intimate the authority referred to in sub-section (1) of section 9 about its business in such form and manner and within such time, as may be prescribed.

(2) The Competent Authority may, if it has reason to believe that the deposits are being solicited or accepted pursuant to an Unregulated Deposit Scheme, direct any deposit taker to furnish such statements, information or particulars, as it considers necessary, relating to or connected with the deposits received by such deposit taker.

Explanation.— For the removal of doubts, it is hereby clarified that—

(a) the requirement of intimation under sub-section (1) is applicable to deposit takers accepting or soliciting deposits as defined in clause (4) of section 2; and

(b) the requirement of intimation under sub-section (1) applies to a company, if the company accepts the deposits under Chapter V of the Companies Act, 2013.

18 of 2013.

11. (1) The Competent Authority shall share all information received under section 29 with the Central Bureau of Investigation and with the authority which may be designated by the Central Government under section 9.

Information to be shared.

(2) The appropriate Government, any Regulator, income-tax authorities or any other investigation agency, having any information or documents in respect of the offence investigated under this Ordinance by the police or the Central Bureau of Investigation, shall share all such information or documents with the police or the Central Bureau of Investigation.

(3) Where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank has reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Ordinance, he shall forthwith inform the same to the Competent Authority.

CHAPTER V RESTITUTION TO DEPOSITORS

54 of 2002.
31 of 2016.

12. Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, any amount due to depositors from a deposit taker shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

Priority of depositors' claim.

54 of 2002.
31 of 2016.

13. (1) Save as otherwise provided in the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

Precedence of attachment.

(2) Where an order of provisional attachment has been passed by the Competent Authority—

(a) such attachment shall continue until an order is passed under sub-section (3) or sub-section (5) of section 15 by the Designated Court;

(b) all the attached money or property of the deposit taker and the persons mentioned therein shall vest in the Competent Authority and shall remain so vested till further order of the Designated Court.

(3) The Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realised under this Ordinance, which shall not be utilised except under the instructions of the Designated Court.

(4) The Competent Authority shall not dispose of or alienate the property or money attached except in accordance with the order of the Designated Court under sub-section (3) or sub-section (5) of section 15.

(5) Notwithstanding anything contained in sub-section (4), the Competent Authority may, if it thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilised in the same manner as provided for other property.

Application for confirmation of attachment and sale of property.

14. (1) The Competent Authority shall, within a period of thirty days, which may extend up to sixty days, for reasons to be recorded in writing, from the date of the order of provisional attachment, file an application with such particulars as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary, by private sale.

(2) In case where the money or property has been attached on the permission granted by a Designated Court in another State or Union territory, the application for confirmation of such attachment shall be filed in that Court.

Confirmation of attachment by Designated Court.

15. (1) Upon receipt of an application under section 14, the Designated Court shall issue notice to—

(a) the deposit taker; and

(b) any person whose property is attached under section 14,

to show cause, within a period of thirty days from the date of issue of notice, as to why the order of attachment should not be made absolute and the properties so attached be sold.

(2) The Designated Court shall also issue notice to all other persons represented to it as having or being likely to claim any interest or title in the property, to appear on the same date as persons referred to in sub-section (1) to raise objections, if they so desire, to the attachment of the property.

(3) The Designated Court shall, after adopting such procedure as may be prescribed, pass an order—

(a) making the provisional order of attachment absolute; or

(b) varying it by releasing a portion of the property from attachment; or

(c) cancelling the provisional order of attachment,

and in case of an order under clause (a) or clause (b), direct the Competent Authority to sell the property so attached by public auction or, if necessary, by private sale and realise the sale proceeds.

(4) The Designated Court shall not, in varying or cancelling the provisional order of attachment, release any property from attachment, unless it is satisfied that—

(a) the deposit taker or the person referred to in sub-section (1) has interest in such property; and

(b) there shall remain an amount or property sufficient for repayment to the depositors of such deposit taker.

(5) The Designated Court shall pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale.

(6) The Designated Court shall endeavor to complete the proceedings under this section within a period of one hundred and eighty days from the date of receipt of the application referred to in sub-section (1).

16. (1) Where the Designated Court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may, by notice, require any transferee of such property, whether or

Attachment of
property of
malafide
transferees.

not he received the property directly from the said deposit taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not a bonafide transfer and not for commensurate consideration, it shall order the attachment of so much of the said transferee's property as in its opinion is equivalent to the proper value of the property transferred.

Payment in lieu
of attachment.

17. (1) Any deposit taker or a person referred to in sub-section (1) of section 15, or transferee referred to in section 16 whose property is about to be attached or has been provisionally attached under this Ordinance, may, at any time before the confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.

(2) While allowing the deposit taker or person or transferee referred to in sub-section (1) to make the deposit under sub-section (1), the Designated Court may order such deposit taker or person or transferee to pay any sum towards costs as may be applicable.

Powers of
Designated
Court.

18. (1) The Designated Court shall exercise the following powers, namely:—

(a) power to approve the statement of dues of the deposit taker due from various debtors;

(b) power to assess the value of the assets of the deposit taker and finalise the list of the depositors and their respective dues;

(c) power to direct the Competent Authority to take possession of any assets belonging to or in the control of the deposit taker and to sell, transfer or realise the attached assets, either by public auction or by private sale as it deems fit depending upon the nature of assets and credit the sale proceeds thereof to its bank account;

(d) power to approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the assets of the deposit taker;

(e) power to pass an order for full payment to the depositors by the Competent Authority or an order for proportionate payment to the depositors in the event the money so realised is not sufficient to meet the entire deposit liability;

(f) power to direct any person, who has made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Ordinance, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention; and

(g) power to pass any other order which the Designated Court deems fit for realisation of assets of the deposit taker and for repayment of the same to the depositors of such deposit taker or on any other matter or issue incidental thereto.

(2) On the application of any person interested in any property attached and vested in the Competent Authority under this Ordinance and after giving such Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for—

(a) providing from such of the property attached and vested in the Competent Authority as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for expenses connected with the defence of the applicant where criminal proceedings have been initiated against him in the Designated Court under this Ordinance; or

(b) safeguarding, so far as may be practicable, the interest of any business affected by the attachment.

Explanation.—For the purposes of this section, the expression “deposit taker” includes the directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under this Ordinance.

19. Any person including the Competent Authority, if aggrieved by any final order of the Designated Court under this Chapter, may appeal to the High Court, within a period of sixty days from the date of such order:

Appeal to High Court.

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.— The expression “High Court” means the High Court of a State or Union territory where the Designated Court is situated.

Power of
Supreme Court
to transfer
cases.

20. (1) Whenever it is made to appear to the Supreme Court that there is a default in any deposit scheme or deposit schemes of the nature referred to in section 30, the Supreme Court may, by an order, direct that any particular case be transferred from one Designated Court to another Designated Court.

(2) The Supreme Court may act under this section only on an application filed by the Competent Authority or any interested party, and every such application shall be supported by an affidavit.

(3) Where an application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding fifty thousand rupees as it may consider appropriate in the circumstances of the case.

CHAPTER VI OFFENCES AND PUNISHMENTS

Punishment for
contravention of
section 3.

21. (1) Any deposit taker who solicits deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees.

(2) Any deposit taker who accepts deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than three lakh rupees but which may extend to ten lakh rupees.

(3) Any deposit taker who accepts deposits in contravention of section 3 and fraudulently defaults in repayment of such deposits or in rendering any specified service, shall be punishable with imprisonment for a term

which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five lakh rupees but which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in the Unregulated Deposit Scheme.

Explanation.— For the purposes of this Ordinance,—

45 of 1860.

(i) the expression “fraudulently” shall have the same meaning as assigned to it in section 25 of the Indian Penal Code;

(ii) where the terms of the Deposit Scheme are entirely impracticable or unviable, the terms shall be relevant facts showing an intention to defraud.

22. Any deposit taker who contravenes the provisions of section 4 shall be punishable with imprisonment for a term which may extend to seven years, or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of the fraudulent default referred to in said section, whichever is higher, or with both.

Punishment for contravention of section 4.

23. Any person who contravenes the provisions of section 5 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which may extend to ten lakh rupees.

Punishment for contravention of section 5.

24. Whoever having been previously convicted of an offence punishable under this Chapter, except the offence under section 26, is subsequently convicted of an offence shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and with fine which shall not be less than ten lakh rupees but which may extend to fifty crore rupees.

Punishment for repeat offenders.

25. (1) Where an offence under this Ordinance has been committed by a deposit taker other than an individual, every person who, at the time the offence was committed, was in charge of, and was responsible to, the deposit taker for the conduct of its business, as well as the deposit taker, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Offences by deposit takers other than individuals.

(2) Nothing contained in sub-section (1) 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 exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed by a deposit taker other than an individual, and it is proved that the offence—

(a) has been committed with the consent or connivance; or

(b) is attributable to any neglect on the part of any director, manager, secretary, promoter, partner, employee or other officer of the deposit taker,

such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Punishment for contravention of section 10.

26. Whoever fails to give the intimation required under sub-section (1) of section 10 or fails to furnish any such statements, information or particulars as required under sub-section (2) of that section, shall be punishable with fine which may extend to five lakh rupees.

Cognizance of offences.

27. Notwithstanding anything contained in section 4, no Designated Court shall take cognizance of an offence punishable under that section except upon a complaint made by the Regulator:

Provided that the provisions of section 4 and this section shall not apply in relation to a deposit taker which is a company.

CHAPTER VII INVESTIGATION, SEARCH AND SEIZURE

Offences to be cognizable and non-bailable.

28. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Ordinance, except the offence under section 22 and section 26, shall be cognizable and non-bailable.

2 of 1974.

Competent Authority to be informed of offences.

29. The police officer shall, on recording information about the commission of an offence under this Ordinance, inform the same to the Competent Authority.

Investigation of offences by Central Bureau of Investigation.

30. (1) On receipt of information under section 29 or otherwise, if the Competent Authority has reason to believe that the offence relates to a deposit scheme or deposit schemes in which—

(a) the depositors, deposit takers or properties involved are located in more than one State or Union territory in India or outside India; and

(b) the total value of the amount involved is of such magnitude as to significantly affect the public interest,

the Competent Authority shall refer the matter to the Central Government for investigation by the Central Bureau of Investigation.

25 of 1946. (2) The reference made by the Competent Authority under sub-section (1) shall be deemed to be with the consent of the State Government under section 6 of the Delhi Special Police Establishment Act, 1946.

25 of 1946. (3) On the receipt of the reference under sub-section (1), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under section 5 of the Delhi Special Police Establishment Act, 1946.

31. (1) Whenever any police officer, not below the rank of an officer-in-charge of a police station, has reason to believe that anything necessary for the purpose of an investigation into any offence under this Ordinance may be found in any place within the limits of the police station of which he is in-charge, or to which he is attached, such officer may, with the written authorisation of an officer not below the rank of Superintendent of Police, and after recording in writing so far as possible, the thing for which the search is to be made and subject to the rules made in this behalf, authorise any officer sub-ordinate to him,—

Power to enter, search and seize without warrant.

(a) to enter and search any building, conveyance or place, between sunrise and sunset, which he has reason to suspect is being used for purposes connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Ordinance;

(b) in case of resistance, to break open any door and remove any obstacle to such entry, if necessary by force, with such assistance as he considers necessary, for exercising the powers conferred by clause (a);

(c) to seize any record or property found as a result of the search in the said building, conveyance or place, which are intended to be used, or reasonably suspected to have been used, in connection with any such deposit-

taking scheme or arrangement in contravention of the provisions of this Ordinance; and

(d) to detain and search, and if he thinks proper, take into custody and produce before any Designated Court any such person whom he has reason to believe to have committed any offence punishable under this Ordinance:

Provided that if such officer has reason to believe that the said written authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may, without the said written authorisation, enter and search such building, conveyance or place, at any time between sunset and sunrise after recording the grounds in writing.

(2) Where it is not practicable to seize the record or property, the officer authorised under sub-section (1), may make an order in writing to freeze such property, account, deposits or valuable securities maintained by any deposit taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Ordinance and it shall be binding on the concerned bank or financial or market establishment to comply with the said order:

Provided that no bank or financial or market establishment shall freeze such account, deposit or valuable securities, for a period beyond thirty days unless the same is authorised by the order of the Designated Court:

Provided further that, if at any time, it becomes practicable to seize the frozen property, the officer authorised under sub-section (1) may seize such property.

Explanation.—For the purpose of this section, the expressions,—

(i) “freezing of account” shall mean that no transaction, whether deposit or withdrawal shall be allowed in the said account; and

(ii) “freezing of property” shall mean that no transfer, conversion, disposition or movement of property shall be allowed.

(3) Where an officer takes down any information in writing or records grounds for his belief or makes an order in writing under sub-section (1) or sub-section (2), he shall, within a time of seventy-two hours send a copy thereof to the Designated Court in a sealed envelope and the owner or occupier of the building, conveyance or place shall, on application, be furnished, free of cost, with a copy of the same by the Designated Court.

2 of 1974. (4) All searches, seizures and arrests under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

32. (1) The Designated Court may take cognizance of offences under this Ordinance without the accused being committed to it for trial.

Application of
Code of
Criminal
Procedure, 1973
to proceedings
before
Designated
Court.

2 of 1974. (2) Save as otherwise provided in section 31, the provisions of the Code of Criminal Procedure, 1973 shall apply—

(a) to all arrests, searches and seizures made under this Ordinance;

(b) to the proceedings under this Ordinance and for the purposes of the said provisions, the Designated Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Designated Court, shall be deemed to be Public Prosecutors.

CHAPTER VIII MISCELLANEOUS

33. Where any newspaper or other publication of any nature, contains any statement, information or advertisement promoting, soliciting deposits for, or inducing any person to become a member of any Unregulated Deposit Scheme, the appropriate Government may direct such newspaper or publication to publish a full and fair retraction, free of cost, in the same manner and in the same position in such newspaper or publication as may be prescribed.

Publication of
advertisement
of Unregulated
Deposit
Scheme.

Ordinance to have overriding effect.

34. Save as otherwise expressly provided in this Ordinance, the provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or Union territory.

Application of other laws not barred.

35. 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.

Protection of action taken in good faith.

36. No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Competent Authority or any officer of the appropriate Government for anything which is in good faith done or intended to be done under this Ordinance or the rules made thereunder.

Power of Central Government to make rules.

37. (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 information and other particulars to be taken into consideration before issuing an order, and the manner of attachment, under sub-section (3) of section 7;

(b) information to be shared under sub-section (2) of section 9;

(c) the form and manner in which and the time within which the intimation shall be given under sub-section (1) of section 10;

(d) the particulars contained in the application to be filed by the Competent Authority before the Designated Court under sub-section (1) of section 14;

(e) the procedure to be adopted by the Designated Court before issuing an order under sub-section (3) of section 15;

(f) rules under sub-section (1) of section 31;

(g) the manner of publication of advertisement under section 33; and

(h) any other matter which is required to be, or may be, prescribed.

38. (1) The State Government or Union territory Government, as the case may be, in consultation with the Central Government, by notification, make rules for carrying out the provisions of this Ordinance.

Power of State Government, etc. to make rules.

(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) ceiling for self-help groups under clause (j) of sub-section (4) of section 2;

(b) purpose and ceiling under clause (k) of sub-section (4) of section 2;

(c) the manner of provisional attachment of property by the Competent Authority under sub-section (3) of section 7;

(d) other matters under clause (f) of sub-section (4) of section 7;

(e) the rules relating to impounding and custody of records under sub-section (8) of section 7;

(f) any other matter which is required to be, or may be, prescribed.

39. (1) 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 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.

Laying of rules.

(2) Every rule made by a State Government or the Union territory Government, as the case may be shall be laid, as soon as may be after it is made, before each House of the State Legislature or the Union territory Legislature, as

the case may be, where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to
remove
difficulties.

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 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 this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Power to amend
First Schedule.

41. (1) The Central Government may, having regard to the objects of this Ordinance, and if it considers necessary or expedient so to do, by notification, add to, or as the case may be, omit from the First Schedule, any scheme or arrangement, and on such addition, or omission, such scheme or arrangement shall become, or cease to be, a Regulated Deposit Scheme, as the case may be.

(2) A copy of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

Amendment to
certain
enactments.

42. The enactments specified in the Second Schedule shall be amended in the manner specified therein.

FIRST SCHEDULE
[(See section 2 (15)]

REGULATED DEPOSIT SCHEMES

(1) The Regulator and Regulated Deposit Scheme refers to the regulators and schemes and arrangements listed in the following Table, namely:—

TABLE

Sl. No.	Regulator	Regulated Deposit Scheme
(1)	(2)	(3)
1.	Securities and Exchange Board of India	<p>(i) Any scheme or an arrangement [as defined under section 11AA of the Securities and Exchange Board of India Act, 1992 (15 of 1992)] launched, sponsored or carried out by a Collective Investment Management Company registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999.</p> <p>(ii) Any scheme or an arrangement registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.</p> <p>(iii) Any scheme or an arrangement, pursuant to which funds are managed by a portfolio manager, registered under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993.</p> <p>(iv) Any scheme or an arrangement regulated under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 or providing for employee benefits as permitted under the Companies Act, 2013 (18 of 2013).</p> <p>(v) Any other scheme or an arrangement registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the regulations made thereunder.</p> <p>(vi) Any amount received as contributions in the nature of subscriptions to a mutual fund registered with Securities and</p>

Exchange Board of India under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

- | | | |
|----|---|--|
| 2. | Reserve Bank of India | <p>(i) Any scheme under which deposits are accepted by Non-Banking Financial Companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and registered with the Reserve Bank of India; or any other scheme or an arrangement registered under the Reserve Bank of India Act, 1934.</p> <p>(ii) Any scheme or an arrangement under which funds are accepted by individuals or entities engaged as Business Correspondents and Facilitators by banks subject to the Guidelines and Circulars issued by the Reserve Bank of India from time to time.</p> <p>(iii) Any scheme or an arrangement under which funds are received by a system provider operating as an authorised payment system under the Payment and Settlement Systems Act, 2007 (51 of 2007).</p> <p>(iv) Any other scheme or an arrangement regulated under the Reserve Bank of India Act, 1934 (2 of 1934), or the guidelines or circulars of the Reserve Bank of India.</p> |
| 3. | The Insurance Regulatory and Development Authority of India | A contract of insurance pursuant to a certificate of registration obtained in accordance with the Insurance Act, 1938 (4 of 1938). |
| 4. | State Government or Union territory Government | <p>(i) Any scheme or an arrangement made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State or Union territory.</p> <p>(ii) Any scheme or an arrangement commenced or conducted as a chit business with the previous sanction of the State Government in accordance with the provisions of the Chit Funds Act, 1982 (40 of 1982).</p> <p>(iii) Any scheme or an arrangement regulated by any enactment relating to money lending which is for the time being in force in any State or Union territory.</p> |

- (iv) Any scheme or an arrangement by a prize chit or money circulation scheme under section 11 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978).
5. National Housing Bank Any scheme or an arrangement for acceptance of deposits registered under the National Housing Bank Act, 1987 (53 of 1987).
 6. Pension Regulatory and Development Authority Fund and Any scheme or an arrangement under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).
 7. Employees Provident Organisation Fund Any scheme, Pension Scheme or Insurance Scheme framed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952).
 8. Central Multi-State Co-operative Societies Registrar, Co- Any scheme or an arrangement for acceptance of deposits from voting members by a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 (39 of 2002).
 9. Ministry of Corporate Affairs, Government of India (i) Deposits accepted or permitted under the provisions of Chapter V of the Companies Act, 2013 (18 of 2013).
(ii) Any scheme or an arrangement under which deposits are accepted by a company declared as a Nidhi or a Mutual Benefit Society under section 406 of the Companies Act, 2013 (18 of 2013).

(2) The following shall also be treated as Regulated Deposit Schemes under this Ordinance, namely:—

(a) deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute; and

(b) any other scheme as may be notified by the Central Government under this Ordinance.

AMENDMENT TO CERTAIN ENACTMENTS

PART I
AMENDMENT TO THE RESERVE BANK OF INDIA
ACT, 1934

2 of 1934.

In the Reserve Bank of India Act, 1934, in section 45-I, in clause (bb), after *Explanation II*, the following *Explanation* shall be inserted, namely:—

Amendment of section 45-I of Act 2 of 1934.

“Explanation III.—The amounts accepted by a co-operative society from the members or shareholders, by whatever name called, but excluding the amounts received as share capital, shall be deemed to be deposits for the purposes of this clause, if such members or shareholders are nominal or associate members, by whatever name called, who do not have full voting rights in the meetings of such co-operative society.”.

PART II
AMENDMENTS TO THE SECURITIES AND
EXCHANGE BOARD OF INDIA ACT, 1992

In the Securities and Exchange Board of India Act, 1992,—

Amendment of section 11 of Act 15 of 1992.

(i) in section 11, in sub-section (4), for clause (e), the following clause shall be substituted, namely:—

“(e) attach, for a period not exceeding ninety days, bank accounts or other property 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 the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, 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

SECOND SCHEDULE

[(See section 42)]

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE RESERVE BANK OF INDIA
ACT, 1934

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In the Reserve Bank of India Act, 1934, in section 45-I, in clause (bb), after *Explanation II*, the following *Explanation* shall be inserted, namely:—

Amendment of
section 45-I of
Act 2 of 1934.

“Explanation III.—The amounts accepted by a co-operative society from the members or shareholders, by whatever name called, but excluding the amounts received as share capital, shall be deemed to be deposits for the purposes of this clause, if such members or shareholders are nominal or associate members, by whatever name called, who do not have full voting rights in the meetings of such co-operative society.”.

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EXCHANGE BOARD OF INDIA ACT, 1992

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Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of

any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.”;

(ii) in section 28A, after *Explanation* 3, the following *Explanation* shall be inserted, namely:—

“*Explanation* 4.—The interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person.”. 43 of 1961.

PART III
AMENDMENT TO THE MULTI-STATE CO-OPERATIVE
SOCIETIES ACT, 2002

In the Multi-State Co-operative Societies Act, 2002, in section 67, in sub-section (1),—

Amendment of
section 67 of
Act 39 of 2002.

(a) after the words “receive deposits”, the words “from its voting members” shall be inserted;

(b) the following *Explanation* shall be inserted, namely:—

“*Explanation*.—For the removal of doubts, it is hereby clarified that a multi-State co-operative society shall not be entitled to receive deposits from persons other than voting members.”.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

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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 AND JUSTICE

(Legislative Department)

New Delhi, the 28th February, 2019/Phalguna 9, 1940 (Saka)

CORRIGENDA

In the BANNING OF UNREGULATED DEPOSIT SCHEMES ORDINANCE, 2019 (No. 07 OF 2019) as published in the Gazette of India, Extraordinary, Part II, Section 1, Issue No. 13, dated the 21st February, 2019, —

Page No.	Line(s) No.	For	Read
28	-	"The whole page"	"Deleted"
29	-	Page "29"	Page "28"
30	-	Page "30"	Page "29"

DR. G. NARAYANA RAJU,
Secy. to the Government of India.



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असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

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MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 1st March, 2019/Phalguna 10, 1940 (Saka)

THE JAMMU AND KASHMIR RESERVATION (AMENDMENT) ORDINANCE, 2019

NO 8 OF 2019

Promulgated by the President in the Seventieth Year of the Republic of India.

An Ordinance to amend the Jammu and Kashmir Reservation Act, 2004.

WHEREAS the President of India issued a Proclamation No. G.S.R. 1223(E), dated the 19th December, 2018 under article 356 of the Constitution of India in relation to the State of Jammu and Kashmir declaring therein that the powers of the Legislature of the State of Jammu and Kashmir shall be exercisable by or under the authority of the Parliament;

AND WHEREAS aforesaid Proclamation *inter alia* provides that the references in section 91 in the Constitution to the Governor and to the Legislature of the State or the House thereof, shall be construed as references to the

President and to the Parliament or to the Houses thereof respectively;

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 section 91 of the Constitution of Jammu and Kashmir and of all other powers enabling him in that behalf, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

1. (1) This Ordinance may be called the Jammu and Kashmir Reservation (Amendment) Ordinance, 2019.

(2) It shall come into force at once.

Amendment in section 2.

2. In section 2 of the Jammu and Kashmir Reservation Act, 2004 (hereinafter referred to as the principal Act), in clause (o),— XIV of 2004.

(a) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) the persons residing in the area adjoining Actual Line of Control and International Border;”;
and

(b) in second proviso, in clause (ix), in the proviso for the words “Actual Line of Control”, the words “Actual Line of Control or International Border” shall be substituted.

Amendment of section 3.

3. In section 3 of the principal Act, in sub-section (2), for the words “Line of Actual Control”, wherever they occur, the words “Actual Line of Control or International Border” shall be substituted.

RAM NATH KOVIND,

President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



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असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

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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 AND JUSTICE
(Legislative Department)

New Delhi, the 2nd March, 2019/Phalgun 11, 1940 (Saka)

THE AADHAAR AND OTHER LAWS (AMENDMENT) ORDINANCE, 2019 NO 9 OF 2019

Promulgated by the President in the Seventieth Year of the Republic of India.

An Ordinance to amend the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and further to amend the Indian Telegraph Act, 1885 and the Prevention of Money-laundering Act, 2002.

WHEREAS the Aadhaar and Other Laws (Amendment) Bill, 2019 was passed by the House of the People on the 4th day of January, 2019 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;

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:—

PART I PRELIMINARY

1.(1) This Ordinance may be called the Aadhaar and Other Laws (Amendment) Ordinance, 2019. Short title and commencement.

(2) It shall come into force at once.

PART II
AMENDMENTS TO THE AADHAAR (TARGETED DELIVERY OF
FINANCIAL AND OTHER SUBSIDIES, BENEFITS AND SERVICES)
ACT, 2016

Amendment of
section 2.

2. In section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereafter in this Part referred to as the principal Act),— 18 of 2016.

(i) for clause (a), the following clause shall be substituted, namely:—

‘(a) “Aadhaar number” means an identification number issued to an individual under sub-section (3) of section 3, and includes any alternative virtual identity generated under sub-section (4) of that section;’;

(ii) after clause (a), the following clause shall be inserted, namely:—

‘(aa) “Aadhaar ecosystem” includes enrolling agencies, Registrars, requesting entities, offline verification-seeking entities and any other entity or group of entities as may be specified by regulations;’;

(iii) after clause (b), the following clauses shall be inserted, namely:—

‘(ba) “Adjudicating Officer” means an adjudicating officer appointed under sub-section (1) of section 33B;

‘(bb) “Appellate Tribunal” means the Appellate Tribunal referred to in sub-section (1) of section 33C;’;

(iv) after clause (i), the following clause shall be inserted, namely:—

‘(ia) “child” means a person who has not completed eighteen years of age;’;

(v) after clause (p), the following clauses shall be inserted, namely:—

‘(pa) “offline verification” means the process of verifying the identity of the Aadhaar number holder without authentication, through such offline modes as may be specified by regulations;

‘(pb) “offline verification-seeking entity” means any entity desirous of undertaking offline verification of an Aadhaar number holder;’.

Amendment of
section 3.

3. In section 3 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) The Aadhaar number issued to an individual under sub-section (3) shall be a twelve-digit identification number and any alternative virtual identity as an alternative to the actual Aadhaar number of an individual that shall be generated by the Authority in such manner as may be specified by regulations.”.

4. After section 3 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 3A.

“3A.(1) The enrolling agency shall, at the time of enrolment of a child, seek the consent of the parent or guardian of the child, and inform the parent or guardian, the details specified under sub-section (2) of section 3.

Aadhaar number of children.

(2) A child who is an Aadhaar number holder may, within a period of six months of attaining the eighteen years of age, make an application to the Authority for cancellation of his Aadhaar number, in such manner as may be specified by regulations and the Authority shall cancel his Aadhaar number.

(3) Notwithstanding anything in section 7, a child shall not be denied any subsidy, benefit or service under that section in case of failure to establish his identity by undergoing authentication, or furnishing proof of possession of Aadhaar number, or in the case of a child to whom no Aadhaar number has been assigned, producing an application for enrolment.”

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

Amendment of section 4.

“(3) Every Aadhaar number holder to establish his identity, may voluntarily use his Aadhaar number in physical or electronic form by way of authentication or offline verification, or in such other form as may be notified, in such manner as may be specified by regulations.

Explanation.— For the purposes of this section, voluntary use of the Aadhaar number by way of authentication means the use of such Aadhaar number only with the informed consent of the Aadhaar number holder.

(4) An entity may be allowed to perform authentication, if the Authority is satisfied that the requesting entity is—

(a) compliant with such standards of privacy and security as may be specified by regulations; and

(b) (i) permitted to offer authentication services under the provisions of any other law made by Parliament; or

(ii) seeking authentication for such purpose, as the Central Government in consultation with the Authority, and in the interest of State, may prescribe.

(5) The Authority may, by regulations, decide whether a requesting entity shall be permitted the use of the actual Aadhaar number during authentication or only an alternative virtual identity.

(6) Every requesting entity to whom an authentication request is made by an Aadhaar number holder under sub-section (3) shall inform to the Aadhaar number holder of alternate and viable means of identification and shall not deny any service to him for refusing to, or being unable to, undergo authentication.

(7) Notwithstanding anything contained in the foregoing provisions, mandatory authentication of an Aadhaar number holder for the provision of

any service shall take place if such authentication is required by a law made by Parliament.”.

Amendment of
section 8.

6. In section 8 of the principal Act,—

(a) in sub-section (2),—

(i) in clause (a), after the words “consent of an individual”, the words “, or in the case of a child obtain the consent of his parent or guardian” shall be inserted;

(ii) after clause (b), the following proviso shall be inserted, namely:—

“Provided that the requesting entity shall, in case of failure to authenticate due to illness, injury or infirmity owing to old age or otherwise or any technical or other reasons, provide such alternate and viable means of identification of the individual, as may be specified by regulations.”;

(b) in sub-section (3), after the words “for authentication,”, the words “or in the case of a child, his parent or guardian” shall be inserted.

Insertion of new
section 8A.

7. After section 8 of the principal Act, the following section shall be inserted, namely:—

Offline
verification of
Aadhaar number.

“8A.(1) Every offline verification of an Aadhaar number holder shall be performed in accordance with the provisions of this section.

(2) Every offline verification-seeking entity shall,—

(a) before performing offline verification, obtain the consent of an individual, or in the case of a child, his parent or guardian, in such manner as may be specified by regulations; and

(b) ensure that the demographic information or any other information collected from the individual for offline verification is only used for the purpose of such verification.

(3) An offline verification-seeking entity shall inform the individual undergoing offline verification, or in the case of a child, his parent or guardian the following details with respect to offline verification, in such manner as may be specified by regulations, namely:—

(a) the nature of information that may be shared upon offline verification;

(b) the uses to which the information received during offline verification may be put by the offline verification-seeking entity; and

(c) alternatives to submission of information requested for, if any.

(4) No offline verification-seeking entity shall—

(a) subject an Aadhaar number holder to authentication;

(b) collect, use, or store an Aadhaar number or biometric information of any individual for any purpose;

(c) take any action contrary to any obligation on it as may be specified by regulations.”.

8. For section 21 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 21.

“21.(1) The Authority shall appoint such officers and employees as may be required for the discharge of its functions under this Act.

Officers and other employees of Authority.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Authority shall be such as may be specified by regulations.”.

9. After section 23 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 23A.

“23A.(1) The Authority may for the discharge of its functions under this Act, or any rules or regulations made thereunder, by order, issue such directions from time to time to any entity in the Aadhaar ecosystem, as it may consider necessary.

Power of Authority to issue directions.

(2) Every direction issued under sub-section (1) shall be complied with by the entity in the Aadhaar ecosystem to whom such direction is issued.”.

10. For section 25 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 25.

“25.(1) There shall be constituted a Fund to be called the Unique Identification Authority of India Fund and there shall be credited thereto—

Fund.

(a) all grants, fees and charges received by the Authority under this Act; and

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

(2) The Fund shall be applied for meeting—

(a) the salaries and allowances payable to the Chairperson and members and administrative expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Authority; and

(b) the expenses on objects and for purposes authorised by this Act.”.

11. In section 29 of the principal Act,—

Amendment of section 29.

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) No identity information available with a requesting entity or offline verification-seeking entity shall be—

(a) used for any purpose, other than the purposes informed in writing to the individual at the time of submitting any information for authentication or offline verification; or

(b) disclosed for any purpose, other than purposes informed in writing to the individual at the time of submitting any information for authentication or offline verification:

Provided that the purposes under clauses (a) and (b) shall be in clear and precise language understandable to the individual.”;

(b) in sub-section (4), for the words “or core biometric information”, the words “, demographic information or photograph” shall be substituted.

Amendment of
section 33.

12. In section 33 of the principal Act,—

(i) in sub-section (1),—

(a) for the words “District Judge”, the words “Judge of a High Court” shall be substituted;

(b) in the proviso, after the words “hearing to the Authority”, the words “and the concerned Aadhaar number holder” shall be inserted;

(c) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the core biometric information shall not be disclosed under this sub-section.”.

(ii) in sub-section (2), for the words “Joint Secretary”, the word “Secretary” shall be substituted.

Insertion of new
Chapter VIA.

13. After Chapter VI of the principal Act, the following Chapter shall be inserted, namely:—

**“CHAPTER VIA
CIVIL PENALTIES**

Penalty for failure
to comply with
provisions of this
Act, rules,
regulations and
directions.

33A.(1) Where an entity in the Aadhaar ecosystem fails to comply with the provision of this Act, the rules or regulations made thereunder or directions issued by the Authority under section 23A, or fails to furnish any information, document, or return of report required by the Authority, such entity shall be liable to a civil penalty which may extend to one crore rupees for each contravention and in case of a continuing failure, with additional penalty which may extend to ten lakh rupees for every day during which the failure continues after the first contravention.

(2) The amount of any penalty imposed under this section, if not paid, may be recovered as if it were an arrear of land revenue.

Power to
adjudicate.

33B.(1) For the purposes of adjudication under section 33A and imposing a penalty thereunder, the Authority shall appoint an officer of the Authority, who is not below the rank of a Joint Secretary to the Government of India and possessing such qualification and experience as may be

prescribed, to be an Adjudicating Officer for holding an inquiry in such manner as may be prescribed.

(2) No inquiry under sub-section (1) shall be initiated except by a complaint made by the Authority.

(3) While holding an inquiry, the Adjudicating Officer shall—

(a) provide the entity in the Aadhaar ecosystem against whom complaint is made, an opportunity of being heard;

(b) 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.

(4) If the Adjudicating Officer, on such inquiry, is satisfied that the entity in the Aadhaar ecosystem has failed to comply with any provision of this Act or the rules or regulations made thereunder or directions issued by the Authority under section 23A, or has failed to furnish any information, document, or return of report required by the Authority, the Adjudicating Officer may, by order, impose such penalty under section 33A as he thinks fit.

33C.(1) The Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997, shall be Appellate Tribunal for the purposes of hearing appeals against the decision of the Adjudicating Officer under this Act.

Appeals to
Appellate
Tribunal.

24 of 1997.

(2) A person or entity in the Aadhaar ecosystem aggrieved by an order of the Adjudicating Officer under section 33B, may prefer an appeal to the Appellate Tribunal within a period of forty-five days from the date of receipt of the order appealed against, in such form and manner and accompanied with such fee as may be prescribed:

Provided that the 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 (2), 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.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the Adjudicating Officer.

(5) Any appeal filed under sub-section (2) shall be dealt with by the Appellate Tribunal as expeditiously as possible and every endeavour shall be made by it to dispose of the appeal within six months from the date on which it is presented to it.

(6) The Appellate Tribunal may, for the purpose of deciding an appeal before it, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

Procedure and powers of the Appellate Tribunal.

33D. The provisions of sections 14-I to 14K (both inclusive), 16 and 17 of the Telecom Regulatory Authority of India Act, 1997 shall, *mutatis mutandis*, apply to the Appellate Tribunal in the discharge of its functions under this Act, as they apply to it in the discharge of its functions under that Act.

24 of 1997.

Appeal to Supreme Court of India.

33E. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law for the time being in force, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on any substantial question of law arising out of such order.

5 of 1908.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal which the parties have consented to.

(3) Every appeal under this section shall be preferred within a period of forty-five days from the date of the decision or order appealed against:

Provided that the Supreme Court 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.

Civil court not to have jurisdiction.

33F. 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.”.

Amendment of section 38.

14. In section 38 of the principal Act, for the words “three years”, the words “ten years” shall be substituted.

Amendment of section 39.

15. In section 39 of the principal Act, for the words “three years”, the words “ten years” shall be substituted.

Substitution of new section for section 40.

16. For section 40 of the principal Act, the following section shall be substituted, namely:—

Penalty for unauthorised use by requesting entity or offline verification-seeking entity.

“40. Whoever,—

(a) being a requesting entity, uses the identity information of an individual in contravention of sub-section (2) of section 8; or

(b) being an offline verification-seeking entity, uses the identity information of an individual in contravention of sub-section (2) of section 8A,

shall be punishable with imprisonment which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.”.

17. In section 42 of the principal Act, for the words "one year", the words "three years" shall be substituted. Amendment of section 42.

18. In section 47 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— Amendment of section 47.

"Provided that the court may, on a complaint made by an Aadhaar number holder or individual take cognizance of any offence punishable under section 34 or 35 or 36 or 37 or 40 or section 41."

19. After section 50 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 50A.

43 of 1961.

"50A. Notwithstanding anything contained in the Income Tax Act, 1961 or any other enactment for the time being in force relating to tax on income, profits or gains, the Authority shall not be liable to pay income tax or any other tax in respect of its income, profits or gains."

Exemption from tax on income.

20. In section 51 of the principal Act, for the words "Member, officer", the words "Member or officer" shall be substituted. Amendment of section 51.

21. In section 53 of the principal Act, in sub-section (2),— Amendment of section 53.

(i) after clause (a), the following clause shall be inserted, namely:—

"(aa) the purpose for which the requesting entity may be allowed by the Authority to perform authentication under sub-clause (ii) of clause (b) of sub-section (4) of section 4;"

(ii) after clause (g), the following clauses shall be inserted, namely:—

"(ga) the qualification and experience of, and the manner of appointment of, the Adjudicating Officer under sub-section (1) of section 33B;

(gb) the form, manner, and fee for an appeal to be filed under sub-section (2) of section 33C;"

22. In section 54 of the principal Act, in sub-section (2),— Amendment of section 54.

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) the entities or group of entities in the Aadhaar ecosystem under clause (aa), the biometric information under clause (g) and the demographic information under clause (k), the process of collecting demographic information and biometric information from the individuals by enrolling agencies under clause (m), and the modes of offline verification of Aadhaar number holder under clause (pa) of section 2;"

(ii) after clause (b), the following clauses shall be inserted, namely:—

"(ba) the manner of generating alternative virtual identity under sub-section (4) of section 3;

(bb) the manner in which cancellation of an Aadhaar number may be carried out under sub-section (2) of section 3A;"

(iii) after clause (c), the following clauses shall be inserted, namely:—

“(ca) standards of privacy and security to be complied with by the requesting entities under sub-section (4) of section 4;

(cb) the classification of requesting entities under sub-section (5) of section 4;”;

(iv) after clause (f), the following clauses shall be inserted, namely:—

“(fa) the alternate and viable means of identification of individual under the proviso to clause (b) of sub-section (2) of section 8;

(fb) the manner of obtaining consent under clause (a) of sub-section (2), the manner of providing information to the individual undergoing offline verification under sub-section (3), and the obligations of offline verification-seeking entities under clause (c) of sub-section (4), of section 8A;”.

Omission of
section 57.

23. Section 57 of the principal Act shall be omitted.

PART III

AMENDMENT TO THE INDIAN TELEGRAPH ACT, 1885

Amendment of
section 4 of Act
13 of 1885.

24. In section 4 of the Indian Telegraph Act, 1885, after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) Any person who is granted a license under the first proviso to sub-section (1) to establish, maintain or work a telegraph within any part of India, shall identify any person to whom it provides its services by—

(a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or 18 of 2016.

(b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or 18 of 2016.

(c) use of passport issued under section 4 of the Passports Act, 1967; or 15 of 1967.

(d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf.

(4) If any person who is granted a license under the first proviso to sub-section (1) to establish, maintain or work a telegraph within any part of India is using authentication under clause (a) of sub-section (3) to identify any person to whom it provides its services, it shall make the other modes of identification under clauses (b) to (d) of sub-section (3) also available to such person.

(5) The use of modes of identification under sub-section (3) shall be a voluntary choice of the person who is sought to be identified and no person shall be denied any service for not having an Aadhaar number.

(6) If, for identification of a person, authentication under clause (a) of sub-section (3) is used, neither his core biometric information nor the Aadhaar number of the person shall be stored.

(7) Nothing contained in sub-sections (3), (4) and (5) shall prevent the Central Government from specifying further safeguards and conditions for compliance by any person who is granted a license under the first proviso to sub-section (1) in respect of identification of person to whom it provides its services.

Explanation.—The expressions “Aadhaar number” and “core biometric information” shall have the same meanings as are respectively assigned to them in clauses (a) and (j) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.’.

18 of 2016.

PART IV

AMENDMENT TO THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

15 of 2002.

25. In chapter IV of the Prevention of Money-laundering Act, 2002 (hereafter in this Part, referred to as the principal Act), before section 12, the following section shall be inserted, namely:—

Insertion of new section 11A.

‘11A. (1) Every Reporting Entity shall verify the identity of its clients and the beneficial owner, by—

Verification of Identity by Reporting Entity.

18 of 2016.

(a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 if the reporting entity is a banking company; or

18 of 2016.

(b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or

15 of 1967.

(c) use of passport issued under section 4 of the Passports Act, 1967; or

(d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf.

18 of 2016.

Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a):

Provided further that no notification under the first proviso shall be issued without consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the appropriate regulator.

18 of 2016.

(2) If any reporting entity performs authentication under clause (a) of sub-section (1), to verify the identity of its client or the beneficial owner it shall make the other modes of identification under clauses (b), (c) and (d) of sub-section (1) also available to such client or the beneficial owner.

(3) The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

(4) If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.

(5) Nothing in this section shall prevent the Central Government from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

Explanation.— The expressions “Aadhaar number” and “core biometric information” shall have the same meanings as are respectively assigned to them in clauses (a) and (j) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.’

18 of 2016.

Amendment of
section 12.

26. In section 12 of the principal Act, in sub-section (1), clauses (c) and (d) shall be omitted.

Amendment of
section 73.

27. In section 73 of the principal Act, in sub-section (2), clauses (j) and (jj) shall be omitted.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 19] नई दिल्ली, शनिवार, मार्च 02, 2019/फाल्गुन 11, 1940 (शक)
No. 19] NEW DELHI, SATURDAY, MARCH 02, 2019/PHALGUNA 11, 1940 (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 2nd March, 2019/Phalguna 11, 1940 (Saka)

THE NEW DELHI INTERNATIONAL ARBITRATION CENTRE ORDINANCE, 2019

No 10 of 2019

Promulgated by the President in the Seventieth Year of the
Republic of India.

An Ordinance to provide for the establishment and incorporation of New Delhi International Arbitration Centre for the purpose of creating an independent and autonomous regime for institutionalised arbitration and for acquisition and transfer of the undertakings of the International Centre for Alternative Dispute Resolution and to vest such undertakings in the New Delhi International Arbitration Centre for the better management of arbitration so as to make it a hub for institutional arbitration and to declare the New Delhi International Arbitration Centre to be an institution of national importance and for matters connected therewith or incidental thereto;

WHEREAS dispute resolution process has a huge impact on the Indian economy and global perception on doing business in our

country and it has become necessary to inspire confidence and credibility among the litigants of commercial disputes;

AND WHEREAS rapidly changing economic activity demands expeditious settlement of disputes and creation and establishment of institutional arbitration;

AND WHEREAS the International Centre for Alternative Dispute Resolution was set-up in the year 1995, under the aegis of the Central Government and registered under the Societies Registration Act, 1860, with the objective of promoting alternative dispute resolution mechanism and providing facilities for the same; 21 of 18

AND WHEREAS the International Centre for Alternative Dispute Resolution has received land and substantial funding by way of grants and other benefits from the Central Government for constructing infrastructure and making other facilities;

AND WHEREAS the International Centre for Alternative Dispute Resolution has not been able to actively engage and embrace developments in the arbitration ecosystem and to create a reputation par excellence keeping pace with the dynamic nature of arbitration over more than two decades;

AND WHEREAS studies conducted by the High Powered Committee appointed by the Central Government indicate that the International Centre for Alternative Dispute Resolution has failed to address the growing needs of the institutional arbitration and also to bear optimum caseload and to become better choice to the parties for arbitration;

AND WHEREAS it has become expedient to take over the undertakings of the International Centre for Alternative Dispute Resolution including its regional offices without interfering with its activities and without adversely affecting its character as a Society but to utilise its existing infrastructure and other facilities which have been set-up by using the public funds provided by the Government and to incorporate a robust institution for domestic and international arbitration to be known as the New Delhi International Arbitration Centre;

AND WHEREAS it is considered necessary to declare the New Delhi International Arbitration Centre as an institution of national importance for its overall development as a major arbitration hub by promoting quick and efficient dispute resolution mechanism;

AND WHEREAS the New Delhi International Arbitration Centre Bill, 2018, to provide for the aforesaid matter, has been introduced in the House of the People on the 5th day of January, 2018 and passed by the House of the People on the 4th day of January, 2019 and is pending in the Council of States;

AND WHEREAS the New Delhi International Arbitration Centre Bill, 2019 could not be taken up for consideration and passing in the Council of the 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;

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 New Delhi International Arbitration Centre Ordinance, 2019.

Short title and
commencement.

(2) It shall come into force at once.

2. (1) In this Ordinance, unless the context otherwise requires, —

Definitions.

(a) "Chairperson" means the Chairperson of the Centre referred to in clause (a) of section 5;

(b) "Chief Executive Officer" means the Chief Executive Officer appointed under section 21;

(c) "Committee" means relevant Committee of the Centre referred to in section 19;

(d) "Centre" means the New Delhi International Arbitration Centre established and incorporated under section 3;

(e) "Custodian" means the person who is appointed as Custodian under sub-section (2) of section 11 in respect of the undertakings;

(f) "Fund" means the Fund of the Centre to be maintained under section 25;

(g) "Member" means Full-time or Part-time Member of the Centre and includes the Chairperson;

(h) "notification" means a notification published in the Official Gazette;

(i) "prescribed" means prescribed by rules made by the Central Government under this Ordinance;

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

(k) "Society" means the International Centre for Alternative Dispute Resolution, registered as such under the Societies Registration Act, 1860, and having its registered office at New Delhi;

(l) "specified date" means the date as may be specified by the Central Government by notification;

(m) "undertakings" means the undertakings of the Society which vests with the Central Government under section 7.

(2) All other words and expressions used herein but not defined and defined in the Arbitration and Conciliation Act, 1996, shall have the same meanings as assigned to them in that Act.

CHAPTER II

ESTABLISHMENT AND INCORPORATION OF NEW DELHI INTERNATIONAL ARBITRATION CENTRE

Establishment
and
incorporation
of New Delhi
International

3. (1) The Central Government shall, by notification, establish a body to be called the New Delhi International Arbitration Centre for the purposes of exercising the powers and discharging the functions under this Ordinance.

Arbitration
Centre.

(2) The Centre shall be a body corporate by the name aforesaid, having 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 enter into contract, and shall, by the said name, sue or be sued.

4. (1) Whereas, the objects of the New Delhi International Arbitration Centre are such as to make it as an institution of national importance, it is hereby declared that the New Delhi International Arbitration Centre is an institution of national importance.

Declaration of
New Delhi
International
Arbitration
Centre as an
institution of
national
importance.

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

5. The Centre shall consist of the following Members, namely:—

Composition of
Centre.

(a) a person, who has been a Judge of the Supreme Court or a Judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of arbitration, law or management, appointed by the Central Government in consultation with the Chief Justice of India — Chairperson;

(b) two eminent persons having substantial knowledge and experience in institutional arbitration, both domestic and international, appointed by the Central Government—Full-time or Part-time Members;

(c) one representative of a recognised body of commerce and industry, chosen on rotational basis by the Central Government — Part-time Member;

(d) Secretary, Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of the Joint Secretary — Member, *ex-officio*;

(e) one Financial Adviser nominated by the Department of Expenditure, Ministry of Finance — Member, *ex-officio*; and

(f) Chief Executive Officer — Member, *ex-officio*.

Terms and conditions etc., of Chairperson and Members.

6. (1) The Chairperson and Members shall hold office for a term of three years from the date on which they enter upon their office and shall be eligible for re-appointment:

Provided that no Chairperson or Member shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of a Member.

(2) The terms and conditions, salary and allowances payable to the Chairperson and Full-time Member shall be such as may be prescribed.

(3) The term of office of a Member appointed to fill a casual vacancy shall be for the remainder of the term of the Member in whose place he has been appointed.

(4) The Part-time Member shall be entitled to such travelling and other allowances as may be prescribed.

CHAPTER III

ACQUISITION AND TRANSFER OF UNDERTAKINGS OF SOCIETY

Transfer and vesting.

7. On and from the specified date, so much of the undertakings of the Society as form part of, or are relatable to the Society, and the right, title and interest of the Society in relation to such undertakings, shall, by virtue of this Ordinance, stand transferred to, and vest in the Central Government.

General effect of vesting.

8. (1) The undertakings vested under section 7 shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges, and all property (movable and immovable), including lands, buildings, works, projects, instruments, automobiles and other vehicles, cash balances, Funds including reserve funds, investments and book debts of the Society as form part of, or are relatable to, the Society and all other rights and interest arising out of such properties as were immediately before the commencement of this Ordinance in

the ownership, possession, power or control of the Society, and all books of account, registers and all other documents of whatever nature relating thereto.

(2) All properties and assets as aforesaid which have vested in the Central Government under section 7 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, *lien* and all other encumbrances affecting them or of any attachment, injunction, decree or order of any court or other authority restricting the use of such properties or assets in any manner or appointing any receiver in respect of the whole or any part of such properties or assets shall be deemed to have been withdrawn.

(3) Any licence or other instrument granted to the Society in relation to any undertaking which has vested in the Central Government under section 7 at any time before the specified date and in force immediately before the specified date, shall continue to be in force on and after such day in accordance with its tenor in relation to and for the purpose of such undertaking or where the undertaking is directed under section 10, to vest in the Centre, the Centre shall be deemed to be substituted in such licence or other instrument as if such licence or other instrument had been granted to the Centre and the Centre shall hold it for the remainder of the period which the Society would have held it under the terms thereof.

(4) If, on the specified date, any suit, appeal or other proceeding, of whatever nature, in relation to any property or asset which has vested in the Central Government under section 7, instituted or preferred by or against the Society is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the Society of anything contained in this Ordinance, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Central Government or where the undertakings of the Society are directed under section 10, to vest in the Centre, by or against the Centre.

9. Every liability in relation to any undertaking in respect of any period prior to the specified date, shall be enforceable against the Society and not against the Central Government.

Liability prior
to specified
date.

Power of
Central
Government to
direct vesting
of undertaking
in Centre.

10. (1) Notwithstanding anything contained in sections 7 and 8, the Central Government shall, as soon as may be after the specified date, direct by notification, that the undertakings and the right, title and interest of the Society in relation to such undertakings which had vested in the Central Government under section 7, shall, vest in the Centre either on the date of publication of the notification or on such earlier or later date as may be specified in the notification.

(2) Where the right, title and interest of the Society in relation to the undertakings vest, under sub-section (1), in the Centre, the Centre shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings and the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become, the rights and liabilities, respectively, of the Centre.

Management,
etc., of the
undertakings.

11. (1) The general superintendence, direction, control and management of affairs of the undertakings, the right, the interest in relation to which have vested in the Central Government under section 7, shall—

(a) where a direction has been made by the Central Government under sub-section (1) of section 10, vest in the Centre; or

(b) where no such direction has been made by the Central Government, vest in the Custodian appointed by the Central Government under sub-section (2),
and, thereupon, the Centre or the Custodian so appointed, as the case may be, shall be entitled to exercise all such powers and do all such things as the Society, is authorised to exercise and do in relation to its undertakings.

(2) The Central Government may appoint any person as the Custodian of the undertakings in relation to which no direction has been made by it under sub-section (1) of section 10.

(3) The Custodian so appointed shall receive such remuneration as the Central Government may fix and shall hold office during the pleasure of the Central Government.

12. (1) On the vesting of the management of the undertakings in the Centre or on the appointment of a Custodian under sub-section (2) of section 11, all persons in charge of management of the undertakings immediately before such vesting or appointment shall be bound to deliver to the Centre or Custodian, as the case may be, all assets, books of account, registers and other documents in their custody relating to the undertakings.

Duties of persons in charge of management of undertakings to deliver all assets.

(2) The Central Government may issue such directions as it may deem desirable in the circumstances of the case to the Custodian as to the powers and duties of the Custodian and such Custodian may also, if it is considered necessary so to do, apply to the Central Government at any time for instructions as to the manner in which the management of the undertaking shall be conducted or in relation to any other matter arising in the course of such management.

(3) Any person who on the specified date, has in his possession or under his control, any books, documents or other papers relating to the undertakings shall be liable to account for the said books, documents or other papers to the Central Government or the Custodian or the Centre, as the case may be, and shall deliver them to the Central Government or the Custodian or the Centre or to such person or body of persons as the Central Government or the Centre may specify in this behalf.

(4) The Central Government or the Centre may take or cause to be taken, all necessary steps for securing possession of all undertakings which have vested in the Central Government or the Centre under this Ordinance.

(5) The Society shall, within such period as the Central Government may allow in this behalf, furnish to that Government a complete inventory of all its properties and assets, as on the commencement of this Ordinance pertaining to the undertaking and for this purpose, the Central Government or Custodian or the Centre shall afford to the Society, or body all reasonable facilities.

13. The Central Government or the Custodian or the Centre shall be entitled to receive up to the specified date, to the exclusion of all other persons, any money due to the Society in relation to its

Certain powers of Central Government or Centre.

undertakings which have vested in the Central Government or Custodian or the Centre, as the case may be, and realised after the commencement of this Ordinance, notwithstanding that the realisation pertains to a period prior to the commencement of this Ordinance.

Objects of
Centre.

14. The objects of the Centre shall be—

- (a) to bring targeted reforms to develop itself as a flagship institution for conducting international and domestic arbitration;
- (b) to promote research and study, providing teaching and training, and organising conferences and seminars in arbitration, conciliation, mediation and other alternative dispute resolution matters;
- (c) to provide facilities and administrative assistance for conciliation, mediation and arbitral proceedings;
- (d) to maintain panels of accredited arbitrators, conciliators and mediators both at national and international level or specialists such as surveyors and investigators;
- (e) to collaborate with other national and international institutions and organisations for ensuring credibility of the Centre as a specialised institution in arbitration and conciliation;
- (f) to set-up facilities in India and abroad to promote the activities of the Centre;
- (g) to lay down parameters for different modes of alternative dispute resolution mechanisms being adopted by the Centre; and
- (h) such other objectives as it may deem fit with the approval of the Central Government.

Functions of
Centre.

15. Without prejudice to the provisions contained in section 14, the Centre shall strive, —

- (a) to facilitate for conducting international and domestic arbitrations and conciliation in the most professional manner;
- (b) to provide cost effective and timely services for the conduct of arbitrations and conciliations at national and international level;

(c) to promote studies in the field of alternative dispute resolution and related matters, and to promote reforms in the system of settlement of disputes;

(d) to undertake teaching and to provide for diffusion of knowledge of law and procedures on alternative dispute resolution and related matters and to award certificates and other academic or professional distinction;

(e) to impart training in alternative dispute resolution and related matters to those who are handling arbitration, conciliation and mediation;

(f) to cooperate with other Societies, institutions and organisations, national or international for promoting alternative dispute resolution; and

(g) to perform such other functions as may be entrusted to it by the Central Government for promoting alternative dispute resolution.

16. No act or proceeding of the Centre shall be invalid merely by reason of—

Vacancies, etc.,
not to invalidate
proceedings of
Centre.

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

(b) any defect in the appointment of a person acting as a Member of the Centre; or

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

17. The Chairperson or the Full-time or Part-time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:

Resignation of
Members.

Provided that the Chairperson or the Full-time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed

as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

Removal of
Member.

18. (1) The Central Government may, remove a Member from his office if he—

- (a) is an undischarged insolvent; or
- (b) has engaged at any time (except Part-time Member), during his term of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) has become physically or mentally incapable of acting as a Member.

(2) Notwithstanding anything contained in sub-section (1), no Member shall be removed from his office on the grounds specified in clauses (d) and (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

Committees of
Centre.

19. (1) The Centre may constitute such Committees as may be considered necessary to administer various aspects of its functions.

(2) The composition and functions of the Committees referred to in sub-section (1) shall be such as may be prescribed.

(3) The Committee shall meet at such time and at such places and shall observe such rules of procedure in regard to the transaction of business at its meetings including the quorum as may be specified by the regulations.

Meetings of
Centre.

20. (1) The Chairperson shall ordinarily preside at the meetings of the Centre:

Provided that, in his absence, the Member chosen by the other Members present amongst themselves shall preside at the meetings.

(2) It shall be the duty of the Chairperson to ensure that the decisions taken by the Centre are implemented.

(3) The Chairperson shall exercise such other powers and perform such other duties as are assigned to him under this Ordinance.

(4) The Centre shall meet at least four times a year and follow such procedure in its meetings including quorum at such meetings in such manner as may be specified by the regulations.

(5) All questions which come up before any meeting of the Centre shall be—

(a) decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a casting vote;

(b) dealt with as expeditiously as possible and the Centre shall dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the Centre shall record its reasons in writing for not disposing of the application within that period.

(6) The Chairperson may invite any expert, not being a Member, to attend the meetings of the Centre, but such invitee shall not be entitled to vote at the meeting.

21. (1) There shall be a Chief Executive Officer of the Centre who shall be responsible for day-to-day administration of the Centre and for this purpose, he shall maintain liaison with the Centre and the Secretariat.

Chief Executive
Officer.

(2) The appointment, qualifications and the terms and conditions of services of the Chief Executive Officer shall be such as may be specified by the regulations.

(3) The Chief Executive Officer shall exercise such powers and discharge such functions as may be specified by the regulations or as may be delegated to him by the Centre.

Delegation of powers.

22. The Centre may, for the purpose of discharging of its powers, functions and duties, by general or special order in writing, specify the powers and duties conferred or imposed upon the Centre by or under this Ordinance (except the power to make regulations) which may also be exercised or performed by the Chief Executive Officer or any officer or officers of the Centre and the conditions and restrictions, if any, subject to which the powers and duties may be exercised and performed.

Secretariat.

23. (1) There shall be a Secretariat to the Centre consisting of—

- (a) Registrar, who shall supervise the activities of the Centre;
- (b) Counsel, dealing with the matters relating to domestic and international arbitration; and
- (c) such number of other officers and employees as may be prescribed.

(2) The qualifications, experience, method of selection and the functions of the Registrar, Counsel and other officers and employees shall be such as may be prescribed.

CHAPTER IV

FINANCE, ACCOUNTS AND AUDIT

Grants by Central Government.

24. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Centre in each financial year such sums of money and in such manner as it may think fit for being utilised for the purposes of this Ordinance.

Fund of Centre.

25. (1) The Centre shall maintain a Fund to which shall be credited—

- (a) all monies provided by the Central Government;
- (b) all fees and other charges received during or in connection with the arbitration, conciliation, mediation or other proceedings;
- (c) all monies received by the Centre for the facilities provided by it to the parties;

(d) all monies received by the Centre in the form of donations, grants, contributions and income from other sources; and

(e) the amount received from the investment income.

(2) All monies credited to the Fund shall be deposited in such banks or invested in such manner as may be decided by the Centre.

(3) The Fund shall be applied towards meeting the salary and other allowances of Members and the expenses of the Centre including expenses incurred in the exercise of its powers and discharge of its duties under this Ordinance.

26. (1) The Centre shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India. Accounts and audit.

(2) The accounts of the Centre 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 Centre 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 Centre 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 offices of the Centre.

(4) The accounts of the Centre 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 the Central Government shall cause the same to be laid before each House of Parliament.

27. The assets and liabilities in relation to any undertaking under this Ordinance shall be caused to be assessed by any agency authorised by the Comptroller and Auditor-General of India in such manner as may be specified by him and any payment on a claim to be Assessment of assets and liabilities of undertaking.

made in relation thereto shall be settled by him between the Society and the Central Government and shall be paid by the Society or the Central Government, as the case may be, in the manner as may be specified by the Comptroller and Auditor-General of India.

CHAPTER V

CHAMBER OF ARBITRATION AND ARBITRATION ACADEMY

Chamber of
Arbitration.

28. (1) The Centre shall establish a Chamber of Arbitration which shall empanel the Arbitrators and also scrutinise the applications for admission in the panel of reputed arbitrators to maintain a permanent panel of arbitrators.

(2) The Chamber of Arbitration shall consist of experienced arbitration practitioners of repute, at national and international level and persons having wide experience in the area of alternative dispute resolution and conciliation.

(3) The Centre shall by regulations lay down the criteria for admission to the panel of the cadre so as to maintain a pool of reputed arbitrators having expertise in international commercial arbitration and arbitration other than international commercial arbitration.

(4) The Registrar to the Secretariat of the Centre shall act as the Member-Secretary to the Chamber of Arbitration.

Arbitration
Academy.

29. (1) The Centre may establish an Arbitration Academy—

(a) to train the arbitrators, particularly in the area of international commercial arbitration to compete on par with the reputed international arbitral institutions;

(b) to conduct research in the area of alternative dispute resolution and allied areas; and

(c) to give suggestions for achieving the objectives of the Ordinance.

(2) For the purposes of sub-section (1), there may be constituted a permanent three member committee in order to suggest and to

submit a report to the Centre with respect to the amendments, if any, necessary to the rules and regulations pertaining to the Ordinance.

CHAPTER VI

MISCELLANEOUS

30. (1) The Central Government may, by notification, make rules to carry out the provisions of this Ordinance. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for—

(a) the terms and conditions and the salary and allowances payable to the Chairperson and Full-time Member under sub-section (2) of section 6;

(b) the travelling and other allowances payable to the Part-time Member under sub-section (4) of section 6;

(c) the composition and functions of the Committees referred to in sub-section (2) of section 19;

(d) the number of officers and employees of the Secretariat of the Centre under clause (c) of sub-section (1) of section 23;

(e) the qualifications, experience, method of selection and the functions of the Registrar, Counsel and other officers and employees of the Centre under sub-section (2) of section 23;

(f) annual statement of accounts, including the balance sheet under sub-section (1) of section 26; and

(g) any other matter in respect of which provision is to be made or may be made under this Ordinance.

31. (1) The Centre may, with the previous approval of the Central Government, by notification, make regulations consistent with this Ordinance and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the purposes of this Ordinance. Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provision for—

(a) the time and place and the rules of procedure to be observed in regard to the transaction of business of the Committee at the meetings including the quorum under sub-section (3) of section 19;

(b) the time and place and rules of procedure in regard to the transaction of business of the Centre or any Committee including the quorum at the meeting under sub-section (4) of section 20;

(c) the appointment, qualifications and the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 21;

(d) the powers and functions of the Chief Executive Officer under sub-section (3) of section 21;

(e) the criteria for admission to the panel of reputed arbitrators under sub-section (3) of section 28; and

(f) any other matter in respect of which provision, in the opinion of the Centre, is necessary for the performance of its functions under this Ordinance.

Laying of
rules and
regulations.

32. Every rule and 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.

Protection of
action taken in
good faith.

33. No suit, prosecution or other legal proceedings shall lie against the Centre, the Chairperson or Members or its employees and arbitrators for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made thereunder.

Power to
remove
difficulty.

34. (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 for removing the difficulty:

Provided that no such 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 be laid, as soon as may be after it is made, before each House of Parliament.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 20] नई दिल्ली, शनिवार, मार्च 02, 2019/फाल्गुन 11, 1940 (शक)
No. 20] NEW DELHI, SATURDAY, MARCH 02, 2019/PHALGUNA 11, 1940 (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 2nd March, 2019/Phalguna 11, 1940 (Saka)

THE HOMOEOPATHY CENTRAL COUNCIL (AMENDMENT)
ORDINANCE, 2019

NO 11 OF 2019

Promulgated by the President in the Seventieth Year of
the Republic of India.

An ordinance further to amend the Homoeopathy Central
Council Act, 1973.

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 Homoeopathy
Central Council (Amendment) Ordinance, 2019.

Short title and
commencement.

(2) It shall come into force at once.

Amendment of
section 3A.

2. In section 3A of the Homoeopathy Central Council Act, 1973, in sub-section (2), for the words "within a period of one year", the words "within a period of two years" shall be substituted.

59 of 1973.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



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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 2nd March, 2019/Phalguna 11, 1940 (Saka)

THE SPECIAL ECONOMIC ZONES (AMENDMENT) ORDINANCE, 2019 No. 12 OF 2019

Promulgated by the President in the Seventieth Year of the Republic of India.

An Ordinance further to amend the Special Economic Zones 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 Special Economic Zones (Amendment) Ordinance, 2019.

Short title and
commencement.

(2) It shall come into force at once.

Amendment of
section 2 of Act
28 of 2005.

2. In section 2 of the Special Economic Zones Act, 2005, in clause (v)—

(i) after the words “local authority”, the words “or trust or any entity as may be notified by the Central Government” shall be inserted;

(ii) for the words “authority or company”, the words “authority, company, trust or entity” shall be substituted.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
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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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 March, 2019/Phalguna 16, 1940 (Saka)

THE CENTRAL EDUCATIONAL INSTITUTIONS (RESERVATION IN TEACHERS' CADRE) ORDINANCE, 2019

No. 13 of 2019

Promulgated by the President in the Seventieth Year of the Republic of India.

An Ordinance to provide for the reservation of posts in appointments by direct recruitment of persons belonging to the Scheduled Castes, the Scheduled Tribes and the socially and educationally backward classes, to teachers' cadre in certain Central Educational Institutions established, maintained or aided by the Central Government, 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:—

1.(1) This Ordinance may be called the Central Educational Institutions (Reservation in Teachers' Cadre) Ordinance, 2019.

Short title and
commencement.

(2) It shall come into force at once.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) “appropriate authority” means the University Grants Commission established under the University Grants Commission Act, 1956, or any other authority or body established by or under a Central Act for the determination, coordination or maintenance of the standards of higher education in any Central Educational Institution; 3 of 1956.

(b) “branch of study” means a branch of study leading to three principal levels of qualifications at bachelors (under graduate), masters (post graduate) and doctoral levels;

(c) “Central Educational Institution” means—

(i) a university established or incorporated by or under a Central Act;

(ii) an institution of national importance established by an Act of Parliament;

(iii) an institution, declared as an institution deemed to be University under section 3 of the University Grants Commission Act, 1956, and maintained by or receiving aid from the Central Government; 3 of 1956.

(iv) an institution maintained by or receiving aid from the Central Government, whether directly or indirectly, and affiliated to an institution referred to in sub-clause (i) or sub-clause (ii), or a constituent unit of an institution referred to in sub-clause (iii); and

(v) an educational institution established by the Central Government under the Societies Registration Act, 1860; 21 of 1860.

(d) “direct recruitment” means the process of appointing faculty by inviting applications against public advertisement from persons eligible to teach in a Central Educational Institution;

(e) “faculty” means the faculty of a Central Educational Institution;

(f) “Minority Educational Institution” means an institution established and administered by the minorities under clause (1) of article 30 of the Constitution and so declared by an Act of Parliament or by the Central Government or declared as a Minority Educational Institution under the National Commission for Minority Educational Institutions Act, 2004; 2 of 2005.

(g) “sanctioned strength” means the number of posts in teachers’ cadre approved by the appropriate authority;

(h) “Scheduled Castes” means the Scheduled Castes notified under article 341 of the Constitution;

(i) “Scheduled Tribes” means the Scheduled Tribes notified under article 342 of the Constitution;

(j) “socially and educationally backward classes” means such backward classes as are so deemed under article 342A of the Constitution;

(k) “teachers’ cadre” means a class of all teachers of a Central Educational Institution, regardless of the branch of study or faculty, who are remunerated at the same grade of pay, excluding any allowance or bonus.

3.(1) Notwithstanding anything in any other law for the time being in force, there shall be reservation of posts in direct recruitment out of the sanctioned strength in teachers’ cadre in a Central Educational Institution to the extent and in the manner as may be specified by the Central Government by notification in the Official Gazette.

Reservation of posts in recruitments by Central Educational Institutions.

(2) For the purpose of reservation of posts, a Central Educational Institution shall be regarded as one unit.

4. (1) The provisions of section 3 shall not apply to—

Ordinance not to apply in certain cases.

(a) the institutions of excellence, research institutions, institutions of national and strategic importance specified in the Schedule to this Ordinance:

(b) a Minority Educational Institution.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule referred to in clause (a) of sub-section (1) from time to time.

5. Every notification 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 notification or both Houses agree that the notification should not be made, the notification 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 notification.

Laying of notifications before Parliament.

THE SCHEDULE

[See section 4(1)(a)]

Sl. No.	Name of the Institution of Excellence, etc.
(1)	(2)
1.	Homi Bhabha National Institute, Mumbai and its constituent units, namely:— (i) Bhabha Atomic Research Centre, Trombay; (ii) Indira Gandhi Centre for Atomic Research, Kalpakkam; (iii) Raja Ramanna Centre for Advanced Technology, Indore; (iv) Institute for Plasma Research, Gandhinagar; (v) Variable Energy Cyclotron Centre, Kolkata; (vi) Saha Institute of Nuclear Physics, Kolkata; (vii) Institute of Physics, Bhubaneswar; (viii) Institute of Mathematical Sciences, Chennai; (ix) Harish-Chandra Research Institute, Allahabad; (x) Tata Memorial Centre, Mumbai.
2.	Tata Institute of Fundamental Research, Mumbai.
3.	North-Eastern Indira Gandhi Regional Institute of Health and Medical Science, Shillong.
4.	National Brain Research Centre, Manesar, Gurgaon.
5.	Jawaharlal Nehru Centre for Advanced Scientific Research, Bangalore.
6.	Physical Research Laboratory, Ahmedabad.
7.	Space Physics Laboratory, Thiruvananthapuram.
8.	Indian Institute of Remote Sensing, Dehradun.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 59]

नई दिल्ली, बुधवार, सितम्बर 18, 2019/ भाद्रपद 27, 1941 (शक)

No. 59] NEW DELHI, WEDNESDAY, SEPTEMBER 18, 2019/BHADRA 27, 1941 (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 September, 2019/Bhadra 27, 1941 (Saka)

THE PROHIBITION OF ELECTRONIC CIGARETTES (PRODUCTION, MANUFACTURE, IMPORT, EXPORT, TRANSPORT, SALE, DISTRIBUTION, STORAGE AND ADVERTISEMENT) ORDINANCE, 2019

No 14 OF 2019

Promulgated by the President in the Seventieth Year of the
Republic of India.

An Ordinance to prohibit the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes in the interest of public health to protect the people from harm and for matters connected therewith or incidental thereto;

WHEREAS India is a signatory to the World Health Organisation Framework Convention on Tobacco Control adopted in Geneva, Switzerland on 21st day of May, 2003 which came into force on the 27th day of February, 2005;

AND WHEREAS the Conference of Parties established under article 23 of the said Convention took a decision on the 18th day of October, 2014 to invite the Parties to the Convention to consider prohibiting or regulating the electronic cigarettes or the Electronic Nicotine Delivery Systems and the Electronic non-Nicotine Delivery Systems, including as tobacco products, medicinal products, consumer products or other categories, as appropriate, taking into account a high level of protection for human health;

AND WHEREAS the Conference of Parties took a decision to urge the Parties to the Convention to consider banning or restricting advertising, promotion and sponsorship of the said Delivery Systems;

AND WHEREAS since these devices are injurious to health and proliferation of these products has negative impact on public health, it is expedient to prohibit the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes as enjoined by article 47 of the Constitution of India;

AND WHEREAS article 51 of the Constitution of India requires the State to endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another;

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:—

Short title and commencement.

1. (1) This Ordinance may be called the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Ordinance, 2019.

(2) It shall come into force at once.

Declaration as to expediency of control by Union.

2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the electronic cigarettes industry.

Definitions.

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

(a) "advertisement" means any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website or social media and includes through any notice, circular, label, wrapper, invoice or other document or device;

(b) "authorised officer" means—

(i) any police officer not below the rank of sub-inspector; or;

(ii) any other officer, not below the rank of sub-inspector, authorised by the Central Government or the State Government by notification;

(c) "distribution" includes distribution by way of samples, whether free or otherwise and the expression "distribute" shall be construed accordingly;

(d) "electronic cigarette" means an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems, Heat Not Burn Products, e-*Hookah* and the like devices, by whatever name called and whatever shape, size or form it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940.

23 of 1940.

Explanation.—For the purposes of this clause, the expression "substance" includes any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the form of gas or vapour;

(e) "export" with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(f) "import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(g) "manufacture" means a process for making or assembling electronic cigarettes and any part thereof, which includes any sub-process, incidental or ancillary to the manufacture of electronic cigarettes and any part thereof;

(h) "notification" means a notification published in the Official Gazette;

(i) “person” includes—

- (i) any individual or group of individuals;
- (ii) a firm (whether registered or not);
- (iii) a Hindu Undivided Family;
- (iv) a trust;
- (v) a limited liability partnership;
- (vi) a co-operative society;
- (vii) any corporation or company or body of individuals; and
- (viii) every artificial juridical person not falling within any of the preceding sub-clauses;

(j) “place” includes any house, room, enclosure, space, conveyance or the area in like nature;

(k) “production” with its grammatical variations and cognate expressions, includes the making or assembling of electronic cigarettes and any part thereof;

(l) “sale” with its grammatical variations and cognate expressions, means any transfer of property in goods (including online transfer) by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale.

Prohibition on production, manufacturing, import, export, transport, sale, distribution, advertisement of electronic cigarettes.

4. On and from the date of commencement of this Ordinance, no person shall, directly or indirectly,—

(i) produce or manufacture or import or export or transport or sell or distribute electronic cigarettes, whether as a complete product or any part thereof; and

(ii) advertise electronic cigarettes or take part in any advertisement that directly or indirectly promotes the use of electronic cigarettes.

Prohibition on storage of electronic cigarettes.

5. On and from the date of commencement of this Ordinance, no person, being the owner or occupier or having the control or use of any place shall, knowingly permit it to be used for storage of any stock of electronic cigarettes:

Provided that any existing stock of electronic cigarettes as on the date of the commencement of this Ordinance kept for sale, distribution, transport, export or advertisement shall be disposed of in the manner hereinafter specified—

(a) the owner or occupier of the place with respect to the existing stock of electronic cigarettes shall, *suo moto*, prepare a list of such stock of electronic cigarettes in his possession and without unnecessary delay submit the stock as specified in the list to the nearest office of the authorised officer; and

(b) the authorised officer to whom any stock of electronic cigarettes is forwarded under clause (a) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to the law for the time being in force.

6. (1) An authorised officer, if he has reason to believe that any provision of this Ordinance has been, or is being contravened, may enter and search any place where—

Power to enter, search and seize without warrant.

(a) any trade or commerce in electronic cigarettes is carried on or electronic cigarettes are produced, supplied, distributed, stored or transported; or

(b) any advertisement of the electronic cigarettes has been or is being made.

(2) After completion of the search referred to in sub-section (1), the authorised officer shall seize any record or property found as a result of the search in the said place, which are intended to be used, or reasonably suspected to have been used, in connection with any matter referred to in sub-section (1) and if he thinks proper, take into custody and produce, along with the record or property so seized, before the Court of Judicial Magistrate of the first class, any such person whom he has reason to believe to have committed any offence punishable under this Ordinance.

(3) Where it is not practicable to seize the record or property, the officer authorised under sub-section (1), may make an order in writing to attach such property, stocks or records maintained by the producer, manufacturer, importer, exporter, transporter, seller, distributor, advertiser or stockist about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with any offence in contravention of the provisions of this Ordinance and such

order shall be binding on the person connected with the said offence.

(4) All searches, seizures and attachment under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

2 of 1974.

Punishment for contravention of section 4.

7. Whoever contravenes the provisions of section 4, 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, for the second or subsequent offence, with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees.

Punishment for contravention of section 5.

8. Whoever contravenes the provisions of section 5, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

Jurisdiction and trial of offences.

9. (1) Any person committing an offence under section 4 or section 5 shall be triable for such offence in any place in which he is liable to be tried under any law for the time being in force.

(2) All offences under this Ordinance shall be tried by the Court of Judicial Magistrate of the first class in accordance with the procedure provided for trials in the Code of Criminal Procedure, 1973.

2 of 1974.

Power to dispose of stock seized.

10. After completion of the proceedings before the Court and if it is proved that the stock seized by the authorised officer under the provisions of this Ordinance are stocks of electronic cigarettes, such stocks shall be disposed of in accordance with the provisions contained in Chapter XXXIV of the Code of Criminal Procedure, 1973.

2 of 1974.

Offences by Companies.

11. (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 purpose of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” means a whole-time director in the company and in relation to a firm, means a partner in the firm.

12. No court shall take cognizance of an offence punishable under this Ordinance, except upon a complaint in writing made by an authorised officer under this Ordinance.

Cognizance of offences.

2 of 1974. 13. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under section 4 shall be cognizable.

Offences to be cognizable.

14. Save as otherwise expressly provided in this Ordinance, the provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Ordinance to have overriding effect.

15. 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 prohibiting production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes.

Application of other laws not barred.

16. No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Ordinance.

Protection of action taken in good faith.

17. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by an order published in the Official Gazette, make such

Power to remove difficulties.

provision not inconsistent with the provisions of this Ordinance, as may appear to be necessary or expedient for removing the difficulty.

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

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 60] नई दिल्ली, शुक्रवार, सितम्बर 20, 2019/ भाद्रपद 29, 1941 (शक)
No. 60] NEW DELHI, FRIDAY, SEPTEMBER 20, 2019/BHADRA 29, 1941 (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 September, 2019/Bhadra 29, 1941 (Saka)

THE TAXATION LAWS (AMENDMENT) ORDINANCE, 2019 No 15 OF 2019

Promulgated by the President in the Seventieth Year of the Republic of India.

An Ordinance further to amend the Income-tax Act, 1961 and the Finance (No. 2) Act, 2019.

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, 2019.

Short title and
commence-
ment.

(2) Save as otherwise provided, this Ordinance shall come into force at once.

CHAPTER II

AMENDMENTS IN THE INCOME-TAX ACT, 1961

Amendment of
section 92BA.

2. In section 92BA of the Income-tax Act, 1961 (hereafter in this Chapter referred to as the Income-tax Act), after clause (v), the following clause shall be inserted with effect from the 1st day of April, 2020, namely:—

43 of 1961.

“(va) any business transacted between the persons referred to in sub-section (4) of section 115BAB;”.

Amendment of
section 115BA.

3. In section 115BA of the Income-tax Act with effect from the 1st day of April, 2020,—

(a) for the marginal heading “Tax on income of certain domestic companies”, the marginal heading “Tax on income of certain domestic manufacturing companies” shall be substituted;

(b) in sub-section (1), for the words “subject to the other provisions of this Chapter”, the words, figures and letters “subject to the other provisions of this Chapter, other than those mentioned under section 115BAA and section 115BAB” shall be substituted;

(c) in sub-section (4), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that where the person exercises option under section 115BAB, the option under this section may be withdrawn.”.

Insertion of
new sections
115BAA and
115BAB.

4. After section 115BA of the Income-tax Act, the following sections shall be inserted with effect from the 1st day of April, 2020, namely:—

Tax on income
of certain
domestic
companies.

“115BAA. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent., if the conditions contained in sub-section (2) are satisfied.

(2) For the purposes of sub-section (1), the following conditions shall apply subject to the condition that the total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—*Deductions in respect of certain incomes*" other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and

(iii) by claiming the depreciation, if any, under section 32, other than clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

115BAB. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of fifteen per cent., if the conditions contained in sub-section (2) are satisfied.

Tax on income of certain new domestic manufacturing companies.

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) the company has been set-up and registered on or after the 1st day of October, 2019, and has commenced manufacturing on or before the 31st day of March, 2023, and,—

(i) is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in the said section;

(ii) does not use any machinery or plant previously used for any purpose.

Explanation 1.—For the purposes of sub-clause (ii), any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—

(A) such machinery or plant was not, at any time previous to the date of the installation by the person, used in India;

(B) such machinery or plant is imported into India from any country outside India; and

(C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

Explanation 2.—Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed twenty per cent. of the total value of the machinery or plant used by the company, then, for the purposes of sub-clause (ii) of this clause, the condition specified therein shall be deemed to have been complied with;

(iii) does not use any building previously used as a hotel or a convention centre, as the case may be.

Explanation.—For the purposes of this sub-clause, the expressions “convention centre” and “hotel” shall have the meanings respectively assigned to them in clause (a) and clause (b) of sub-section (6) of section 80-ID;

(b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and

(c) the total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading “C.—Deductions in respect of certain incomes” other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and

(iii) by claiming the depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Where it appears to the Assessing Officer that, owing to the close connection between the company and any other person, or for any other reason, the course of business between them is so arranged that the business

transacted between them produces to the company more than the ordinary profits which might be expected to arise, the Assessing Officer shall, in computing the profits and gains of such company for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F.

(5) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Amendment of
section 115JB.

5. In section 115JB of the Income-tax Act, with effect from the 1st day of April, 2020,—

(a) in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that for the previous year relevant to the assessment year commencing on or after the 1st day of April, 2020, the provisions of this sub-section shall have effect as if for the words “eighteen and one-half per cent.”, occurring at both the places, the words “fifteen per cent.” had been substituted.”;

(b) for sub-section (5A), the following sub-section shall be substituted, namely:—

“(5A) The provisions of this section shall not apply to,—

(i) any income accruing or arising to a company from life insurance business referred to in section 115B;

(ii) a person who has exercised the option referred to under section 115BAA or section 115BAB.”.

6. In section 115QA of the Income-tax Act, in sub-section (1), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 5th day of July, 2019, namely:—

Amendment of section 115QA.

“Provided that the provisions of this sub-section shall not apply to such buy-back of shares (being the shares listed on a recognised stock exchange), in respect of which public announcement has been made before 5th day of July, 2019 in accordance with the provisions of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 made under the Securities and Exchange Board of India Act, 1992 as amended from time to time.

15 of 1992.

CHAPTER III AMENDMENTS IN THE FINANCE (No.2) Act, 2019

7. In section 2 of the Finance (No.2) Act, 2019 [hereafter in this Chapter referred to as the Finance (No.2) Act], in sub-section (9), with effect from the 1st day of April, 2019,—

Amendment of Act No. 23 of 2019.

(a) in third proviso,—

(i) in clause (a) for the words “the Income-tax Act”, the words, figures and letters “the Income-tax Act, not having any income under section 115AD of the Income-tax Act” shall be inserted and shall be deemed to have been inserted;

(ii) after clause (a), the following clause shall be inserted and shall be deemed to have been inserted, namely:—

“(aa) in the case of every association of persons or body of individuals, whether incorporated or not, having income under section 115AD of the Income-tax Act,—

(i) at the rate of ten per cent. of such “advance tax”, where the total income exceeds fifty lakh rupees, but does not exceed one crore rupees;

(ii) at the rate of fifteen per cent. of such “advance tax”, where the total income exceeds one crore rupees but does not exceed two crore

rupees;

(iii) at the rate of twenty five per cent. of such “advance tax”, where the total income [excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act] exceeds two crore rupees but does not exceed five crore rupees;

(iv) at the rate of thirty-seven per cent. of such “advance tax”, where the total income [excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act] exceeds five crore rupees;

(v) at the rate of fifteen per cent. of such “advance tax”, where the total income [including the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act] exceeds two crore rupees but is not covered in sub-clauses (iii) and (iv):

Provided that in case where the total income includes any income chargeable under clause (b) of sub-section (1) of section 115AD of the Income-tax Act, the rate of surcharge on the advance tax computed on that part of income shall not exceed fifteen per cent.;

(b) in the fourth proviso, for the words, brackets and letter “in (a) above”, the words, brackets and letters “in (a) and (aa) above” shall be substituted;

(c) after the eighth proviso, the following proviso shall be inserted, namely:—

“Provided also that in respect of any income chargeable to tax under section 115BAA or section 115BAB of the Income-tax Act, the tax computed under the first proviso shall be increased by a surcharge, for the purposes of the Union, calculated at the rate of ten per cent. of such “advance tax”.

8. In the First Schedule of the Finance (No.2) Act, with effect from the 1st day of April, 2019,—

Amendment of
Part II of First
Schedule.

(A) in PART II, under the sub-heading “Surcharge on income-tax”, in paragraph (i), in clause (a),—

(i) in sub-clauses I and II, after the words “aggregate of such incomes”, the brackets, figures and letters “(including the income under the provisions of section 111A and section 112A of the Income-tax Act)” shall be inserted and shall be deemed to have been inserted;

(ii) in sub-clauses III and IV, after the words “aggregate of such incomes” the brackets, figures and letters “(excluding the income under the provisions of section 111A and section 112A of the Income-tax Act)” shall be inserted and shall be deemed to have been inserted.

(iii) after sub-clause IV, the following sub-clause shall be inserted and shall be deemed to have been inserted, namely:—

“V. at the rate of fifteen per cent. of such tax, where the income or aggregate of such incomes (including the income under the provisions of section 111A and section 112A of the Income-tax Act) paid or likely to be paid and subject to the deduction exceeds two crore rupees, but is not covered under sub-clauses III and IV):

Provided that in case where the total income includes any income chargeable under section 111A and section 112A of the Income-tax Act, the rate of surcharge on the amount of income-tax deducted in respect of that part of income shall not exceed fifteen per cent.;’;

(B) in PART III, in Paragraph A, under the sub-heading “Surcharge on income-tax”, after the opening portion,—

(i) in clauses (a) and (b), after the words “having a total income”, the brackets, words, figures and letters “(including the income under the provisions of section 111A and section 112A)” shall be inserted;

(ii) in clauses (c) and (d), after the words “having a total income”, the brackets, words, figures and letters “(excluding the income under the provisions of section 111A and section 112A)” shall be inserted;

(iii) after clause (d) and before the proviso, the following clause shall be inserted, namely:—

“(e) having a total income (including the income under the provisions of section 111A and section 112A) exceeding two crore rupees, but is not covered under clauses (c) and (d), shall be applicable at the rate of fifteen per cent. of such income-tax:

Provided that in case where the total income includes any income chargeable under section 111A and section 112A of the Income-tax Act, the rate of surcharge on the amount of income-tax computed on that part of income shall not exceed fifteen per cent.;’;

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



भारत का राजपत्र The Gazette of India

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 26th September, 2019/Asvina 4, 1941 (Saka)

CORRIGENDA

In the Taxation Laws (Amendment) Ordinance, 2019 (No. 15 of 2019) as published in a Gazette of India, Extraordinary, Part II Section 1, dated the 20th September, 2019 (Issue No. 60),-

1. At page 2, in line 23, for “115BAB,” read “115BAA,”.
2. At page 9,-
 - (i) in line 4, for “brackets, figures” read “brackets, words, figures”;
 - (ii) in line 9, for “brackets, figures” read “brackets, words, figures”.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



भारत का राजपत्र The Gazette of India

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 28th December, 2019/Pausha 7, 1941 (Saka)

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2019

No. 16 OF 2019

Promulgated by the President in the Seventieth Year of the Republic of India.

An Ordinance further to amend the Insolvency and Bankruptcy Code, 2016.

WHEREAS a need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency in case the company goes into corporate insolvency resolution process or liquidation, to provide immunity against prosecution of the corporate debtor, to prevent action against the property of such corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions and to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016;

AND WHEREAS the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 has been introduced in the House of the People on the 12th day of December, 2019;

AND WHEREAS the aforesaid Bill could not be taken up for consideration and passing 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:—

Short title and commencement.

1. (1) This Ordinance may be called the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019.

(2) It shall come into force at once.

Amendment of section 5.

2. In section 5 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the principal Act),—

(i) in clause (12), the proviso shall be omitted;

(ii) in clause (15), after the words “during the insolvency resolution process period” occurring at the end, the words “and such other debt as may be notified” shall be inserted.

Amendment of section 7.

3. In section 7 of the principal Act, in sub-section (1), before the *Explanation*, the following provisos shall be inserted, namely:—

“Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one

hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Ordinance, failing which the application shall be deemed to be withdrawn before its admission.”.

4. In section 11 of the principal Act, the *Explanation* shall be numbered as *Explanation I* and after *Explanation I* as so re-numbered, the following *Explanation* shall be inserted, namely:—

Amendment of section 11.

“*Explanation II.*—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.”.

5. In section 14 of the principal Act,—

Amendment of section 14.

(a) in sub-section (1), the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.”;

(c) in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

“(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;”.

Amendment of section 16.

6. In section 16 of the principal Act, in sub-section (1), for the words “within fourteen days from the insolvency commencement date”, the words “on the insolvency commencement date” shall be substituted.

Amendment of section 21.

7. In section 21 of the principal Act, in sub-section (2), in the second proviso, after the words “convertible into equity shares”, the words “or completion of such transactions as may be prescribed,” shall be inserted.

Amendment of section 23.

8. In section 23 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

“Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.”.

9. In section 29A of the principal Act,—

Amendment of
section 29A.

(i) in clause (c), in the second proviso, in the *Explanation* I, after the words, “convertible into equity shares”, the words “or completion of such transactions as may be prescribed,” shall be inserted;

(ii) in clause (j), in *Explanation* I, in the second proviso, after the words “convertible into equity shares”, the words “or completion of such transactions as may be prescribed,” shall be inserted.

10. After section 32 of the principal Act, the following section shall be inserted, namely:—

Insertion of new
section 32A.

“32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

Liability for prior
offences, etc.

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.

6 of 2009.

18 of 2013.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.—For the purposes of this sub-section, it is hereby clarified that,—

(i) an action against the property of the corporate debtor in relation to an offence shall include the

attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.”.

11. In section 227 of the principal Act,—

Amendment of
section 227.

(i) for the words “examined in this Code”, the words “contained in this Code” shall be substituted;

(ii) the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the removal of doubts, it is hereby clarified that the insolvency and liquidation proceedings for financial service providers or categories of financial service providers may be conducted with such modifications and in such manner as may be prescribed.”.

12. In section 239 of the principal Act, in sub-section (2), after clause (f), the following clauses shall be inserted, namely:—

Amendment of
section 239.

“(fa) the transactions under the second proviso to sub-section (2) of section 21;

(fb) the transactions under the *Explanation* I to clause (c) of section 29A;

(fc) the transactions under the second proviso to clause (j) of section 29A;”.

Amendment of section 240.

13. In section 240 of the principal Act, in sub-section (2), after clause (i), the following clause shall be inserted, namely:—

“(ia) circumstances in which supply of critical goods or services may be terminated, suspended or interrupted during the period of moratorium under sub-section (2A) of section 14;”.

RAM NATH KOVIND,
President.

DR. REETA VASISHTA,
Additional Secretary to the Govt. of India.