

Bill No. 165 of 2017

THE FINANCIAL RESOLUTION AND DEPOSIT INSURANCE
BILL, 2017

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Bill No. 165 of 2017

THE FINANCIAL RESOLUTION AND DEPOSIT INSURANCE BILL, 2017

A

BILL

to provide for the resolution of certain categories of financial service providers in distress; the deposit insurance to consumers of certain categories of financial services; designation of systemically important financial institutions; and establishment of a Resolution Corporation for protection of consumers of specified service providers and of public funds for ensuring the stability and resilience of the financial system and for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

5 2017. **1.** (1) This Act may be called the Financial Resolution and Deposit Insurance Act, Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2. In this Act, unless the context otherwise requires,— Definitions.

10 (1) "Appellate Tribunal" means the National Company Law Appellate Tribunal established under section 410 of the Companies Act, 2013;

18 of 2013.

(2) "appropriate regulator" means a financial sector regulator specified under

- the First Schedule, and includes financial sector regulators where the specified service provider is regulated by more than one financial sector regulator; and in that case such regulators shall, from amongst them, designate a lead regulator by entering into a memorandum of understanding, and in case of any disagreement, the Central Government may designate a lead regulator; 5
- (3) "banking" means the banking as defined in clause (b) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.
- (4) "banking institution" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 and includes— 10 of 1949.
- (i) a corresponding new bank as defined in clause (da) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.
- (ii) an eligible co-operative bank;
- (iii) a multi-state co-operative bank as defined in clause (cciiia) of section 56 of the Banking Regulation Act, 1949; 10 of 1949.
- (iv) a Regional Rural Bank established under sub-section (I) of section 3 of the Regional Rural Banks Act, 1976; and 15 of 1976.
- (v) the State Bank of India constituted under sub-section (I) of section 3 of the State Bank of India Act, 1955 and its subsidiary banks as defined in clause (nd) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.
- (5) "bridge service provider" means a company limited by shares, created by the Corporation under section 50; 20
- (6) "central counterparty" means an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts, and includes a system provider operating as a central counterparty under the Payment and Settlement Systems Act, 2007 or a clearing corporation under section 8A of the Securities Contract Regulation Act, 1956; 25 of 2007. 42 of 1956.
- (7) "co-operative bank" means—
- (i) a State co-operative bank as defined in clause (u) of section 2 of the National Bank for Agriculture and Rural Development Act, 1981; 30 of 1981.
- (ii) a central co-operative bank as defined under clause (d) of section 2 of the National Bank for Agriculture and Rural Development Act, 1981; and 61 of 1981.
- (iii) a primary co-operative bank as defined in clause (ccv) of section 56 of the Banking Regulation Act, 1949; 10 of 1949.
- (8) "consumer" means a person who has availed or avails or intends to avail of a financial service or had or has or intends to have a right or interest in a financial service; 35
- (9) "Corporation" means the Resolution Corporation established under section 3;
- (10) "critical functions" means functions which,— 40
- (i) may have a significant impact on a specified service provider if suddenly discontinued;
- (ii) are not easily substitutable;
- (iii) are specific to a specified service provider;
- (iv) such other functions as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator; 45

(11) "deposit" means the aggregate of the unpaid balances due to a depositor (other than a foreign Government, the Central Government, a State Government, or a banking institution or a co-operative bank) in respect of all his accounts, by whatever name called, with a banking institution, and includes credit balances in any cash credit account, but does not include—

(i) where a banking institution on the commencement of this Act or an eligible co-operative bank is working under a scheme of compromise or arrangement sanctioned by the competent authority providing for the acceptance of fresh deposits, any amount due to the depositor in respect of his deposit before the date of the coming into force of the scheme to the extent it is not credited after that date under the provisions of the scheme; or

(ii) any amount due on account of any deposit with an insured service provider which has been specially exempted in this behalf by the Corporation with the previous approval of the appropriate regulator;

(iii) any amount due on account of any deposit received outside India, and the expression "depositor" shall be construed accordingly;

(12) "deposit insurance" means the insurance provided by the Corporation to depositors of an insured service provider, under section 29;

(13) "eligible co-operative bank" means a co-operative bank, other than a multi-State co-operative bank, the law for the time being in force, under which such co-operative bank is governed, provides that—

(i) an order for the winding up, or sanctioning a scheme of compromise or arrangement or of amalgamation, of the bank, may be made only with the previous sanction of the Reserve Bank of India;

(ii) an order for the winding up of the bank shall be made if so required by the Reserve Bank of India in the circumstances referred to in section 121;

(iii) if so required by the Reserve Bank of India in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made for the supersession of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an administrator therefor;

(iv) the power exercisable by the Reserve Bank of India under sub-clauses (i), (ii) and (iii) shall only be exercisable by the Corporation in the event of the bank being classified as imminent or critical risk to viability under this Act;

(v) an order for the winding up of the bank or an order sanctioning a scheme of compromise or arrangement or of amalgamation or an order for the supersession of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an administrator thereof made with the previous sanction in writing or on the requisition of the Reserve Bank of India or the Corporation, as the case may be, shall not be liable to be called in question in any manner; and

(vi) the liquidator or the insured service provider or the transferee bank, as the case may be, shall be under an obligation to pay to the Corporation in the circumstances, to the extent and in the manner referred to in section 29;

(14) "financial market infrastructure" includes—

(i) a depository as defined in the Depositories Act, 1996;

(ii) a payment systems and the trade repositories defined in the Payment and Settlement Systems Act, 2007;

- (iii) a recognised stock exchange as defined in the Securities Contracts (Regulation) Act, 1956; 42 of 1956.
- (iv) a securities settlement system;
- (v) a clearing corporation referred to in section 8A of the Securities Contracts (Regulation) Act, 1956; and 5 42 of 1956.
- (vi) such other entity,

as may be notified by the Central Government, but shall not include a settlement system owned or operated by the Reserve Bank of India;

(15) "financial service provider" shall have the same meaning as assigned to it in clause (17) of section 3 of the Insolvency and Bankruptcy Code, 2016; 10 31 of 2016.

(16) "information utility" shall have the same meaning as assigned to it in clause (21) of section 3 of the Insolvency and Bankruptcy Code, 2016; 31 of 2016.

(17) "insurance company" means any person who has obtained the certificate of registration under sub-section (1) of section 3 of the Insurance Act, 1938 and includes the Life Insurance Corporation of India and the General Insurance Corporation of India; 4 of 1938. 15

(18) "insured deposit" means the deposit or any portion thereof, the repayment of which is insured by the Corporation under section 29;

(19) "insured service provider" means any banking institution, that has obtained deposit insurance under sub-section (3) of section 33; 20

(20) "liquidation commencement date" means the date on which the Tribunal passes an order of liquidation under section 63;

(21) "Member" means a Member of the Corporation appointed under sub-section (2) of section 4;

(22) "notification" means a notification published in the Official Gazette, and the expression "notified" or "notify" shall be construed accordingly; 25

(23) "person", whether resident in India or outside, includes—

- (i) an individual;
- (ii) a Hindu Undivided Family;
- (iii) a company; 30
- (iv) a trust;
- (v) a partnership;
- (vi) a limited liability partnership;
- (vii) an association of persons or body of individuals, whether incorporated or not; 35
- (viii) a body corporate or artificial juridical person not falling within clauses (i) to (vii); and
- (ix) any agency, office or branch owned or controlled by any of the persons mentioned in clauses (i) to (vii);

(24) "premium" means the sum payable by an insured service provider for deposit insurance under sub-section (2) of section 22; 40

(25) "prescribed" means prescribed by rules made by the Central Government under this Act;

(26) "regulations" means the regulations made by the Corporation or appropriate regulator, as the case may be, under this Act;

(27) "related to a specified service provider" means-

5 (i) a director or a partner of the specified service provider or a relative of a director or partner of the specified service provider;

(ii) a key managerial personnel of the specified service provider or a relative of a key managerial personnel of the specified service provider;

10 (iii) a limited liability partnership or a partnership firm in which a director, partner, or manager of the specified service provider or his relative is a partner;

(iv) a private company in which a director, partner or manager of the specified service provider is a director and holds along with his relatives, more than two per cent. of its share capital;

15 (v) a public company in which a director, partner or manager of the specified service provider is a director and holds along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the specified service provider;

20 (vii) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of a director, partner or manager of the specified service provider;

(viii) any person on whose advice, directions or instructions, a director, partner or manager of the specified service provider is accustomed to act;

25 (ix) a body corporate which is a holding, subsidiary or an associate company of the specified service provider, or a subsidiary of a holding company for which the specified service provider is a subsidiary;

(x) any person who controls more than twenty per cent. of voting rights in the specified service provider on account of ownership or a voting agreement;

30 (xi) any person of which the specified service provider controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(xii) any person who can control the composition of the board of directors or corresponding governing body of the specified service provider;

35 (xiii) any person who is related to the specified service provider on account of—

(a) participation in policy making processes of the specified service provider;

(b) having more than two directors in common between the specified service provider and such person;

40 (c) interchange of managerial personnel between the specified service provider and such person; or

(d) provision of essential technical information to, or from, the specified service provider;

45 (28) "resolution" means the process of resolving a specified service provider in accordance with Chapter VI;

(29) "resolution cost" means the cost incurred by the Corporation for administration and resolution of a specified service provider under this Act, including the costs for the process of liquidation, if applicable, and such other costs, as may be specified by regulations made by the Corporation;

(30) "resolution plan" means a plan for the resolution of a specified service provider prepared in accordance with section 40; 5

(31) "restoration plan" means a plan for the restoration of a specified service provider prepared in accordance with section 39;

(32) "run-off entity" means an insurance entity which is under resolution in accordance with sub-section (2) of section 48; 10

(33) "Special Court" means a Special Court established or designated as such under sub-section (1) of section 435 of the Companies Act, 2013 having jurisdiction in the matter; 18 of 2013.

(34) "specified service provider" means a person as specified under the Second Schedule; 15

(35) "systemically important financial institution" means a person designated as such under section 25 and includes a central counterparty;

(36) "Tribunal" means the National Company Law Tribunal established under section 408 of the Companies Act, 2013, having jurisdiction in the place where the registered office of the specified service provider is situated or, in the case of a specified service provider incorporated outside India, where its principal place of business in India is situated; 18 of 2013. 20

(37) Words and expressions used and not defined in this Act but defined in the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Banking Regulation Act, 1949, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Depositories Act, 1996, the Foreign Exchange Management Act, 1999, the Payment and Settlement Systems Act, 2007, the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016, shall have the meanings respectively assigned to them in those Acts. 25 2 of 1934. 4 of 1938. 10 of 1949. 42 of 1956. 15 of 1992. 22 of 1996. 42 of 1999. 51 of 2007. 18 of 2013.

CHAPTER II

RESOLUTION CORPORATION

Establishment
of Corpora-
tion.

3. (1) The Central Government shall, by notification, establish for the purposes of this Act, a Corporation by the name of the Resolution Corporation.

(2) The Corporation shall be a body corporate, by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property, both movable and immovable, and to contract, and shall, by the said name sue or be sued. 35

(3) The head office of the Corporation shall be at Mumbai.

(4) The Corporation may establish its offices at other places in India.

Management
of Corpora-
tion.

4. (1) The general superintendence, direction and management of the affairs of the Corporation shall vest in the Members of the Corporation, which may exercise all powers and do all acts and things which may be exercised by the Corporation. 40

(2) The Corporation shall consist of the following Members, to be appointed by the Central Government, namely:—

(a) a Chairperson; 45

(b) one officer of the Government of India in the Ministry of Finance, *ex officio*;

(c) one Member to be nominated by the Reserve Bank of India, *ex officio*;

(d) one Member to be nominated by the Securities and Exchange Board of India, *ex officio*;

5 (e) one Member to be nominated by the Insurance Regulatory and Development Authority of India, *ex officio*;

(f) one Member to be nominated by the Pension Fund Regulatory and Development Authority of India, *ex officio*;

(g) such number of whole-time Members, not exceeding three, as may be decided by the Central Government; and

10 (h) two independent Members.

(3) The Chairperson and other Members shall be persons of ability, integrity and standing, who have expertise in finance, economics, risk management, or regulation, supervision, resolution of financial firms, law or public policy in the area of financial services.

15 (4) The Chairperson and other Members, other than an *ex officio* Member, shall be appointed after obtaining the recommendation of a selection committee consisting of—

(a) Cabinet Secretary—chairperson;

(b) a Secretary to the Government of India to be nominated by the Central Government—member;

20 (c) three experts of repute from the field of finance, law, management, insolvency and related subjects, to be nominated by the Central Government—members.

(5) The term of office of the Chairperson and other Members (other than *ex officio* Members) shall be five years and shall be eligible for reappointment:

25 Provided that the Chairperson or a Member shall not hold office after he has attained the age of sixty-five years:

Provided further that an independent Member appointed under clause (h) of subsection (2) shall not hold office after he has attained the age of seventy years.

(6) A person shall not be qualified for appointment as the Chairperson or as a Member, other than an *ex officio* Member, if at the time of appointment, such person,—

30 (a) has been appointed twice as a Member ;

(b) shall not be able to serve a term of at least three years before reaching the age of retirement; or

(c) holds or has held, in three years preceding such appointment, any position which is likely to conflict with his duties as a Member.

35 (7) The salaries and allowances payable to, and other terms and conditions of service of the Chairperson and other Members (other than *ex officio* Members) shall be such as may be prescribed.

40 **5.** The Chairperson and other Members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept—

(a) any employment under the Central Government or any State Government; or

(b) any appointment under a specified service provider.

6. (1) The Central Government may remove the Chairperson or a Member from office, if he—

45 (a) has been adjudged as insolvent;

Restriction on future employment of Members.

Removal of Members.

(b) has become physically or mentally incapable of acting as a Member;

(c) has been convicted of an offence, which in the opinion of the Central Government involves moral turpitude;

(d) has so abused his position as to render his continuation in office detrimental to the public interest; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member.

(2) No Member shall be removed under this section unless he has been given a reasonable opportunity of being heard in the matter.

Powers of Chairperson. **7.** The Chairperson shall have the powers of general superintendence and control in respect of all administrative matters of the Corporation and may also exercise such other powers, except the powers exercisable under section 12, as may be delegated to him by the Corporation. 10

Meetings of Corporation. **8.** (1) The Corporation shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the Corporation. 15

(2) If, for any reason, the Chairperson is unable to attend any meeting of the Corporation, any other Member chosen by the Members present at the meeting, shall preside at the meeting.

(3) All questions which come up before a meeting of the Corporation shall be decided by a majority of votes of 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. 20

Members not to participate in meetings in certain cases. **9.** Any Member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Corporation, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Corporation, and the Member shall not take any part in any deliberation or decision of the Corporation with respect to that matter. 25

Vacancies, etc., not to invalidate proceedings. **10.** No act or proceeding of the Corporation, shall be invalid merely by reason of— 30
 (a) any vacancy in or any defect in the constitution of the Corporation;
 (b) any defect in the appointment of a person as a Member ; or
 (c) any irregularity in the procedure of the Corporation not affecting the merits of the case.

Power to appoint officers and employees. **11.** (1) The Corporation may appoint such officers and employees as it considers necessary for the efficient discharge of its functions under this Act. 35
 (2) The salaries and allowances payable to, and other terms and conditions of service of such officers and employees, shall be specified by regulations made by the Corporation.

(3) Without prejudice to sub-sections (1) and (2), it shall be lawful for the Corporation to utilise and for the appropriate regulator to make available, the services of such employees of the appropriate regulator on such terms and conditions as may be agreed upon between the Corporation and the appropriate regulator. 40

Functions of officers. **12.** The Corporation may make regulations consistent with the provisions of this Act and the rules made thereunder for authorising its officers to carry out any functions for the purposes of this Act. 45

13. (1) Subject to the provisions of this Act, the Corporation shall have the following powers and functions, namely:—

Powers and functions of Corporation.

(a) provide deposit insurance to banking institutions;

5 (b) specify the criteria for classification of a specified service provider into one of the categories of risk to viability;

(c) act as an administrator for the specified service provider which has been classified in the category of critical risk to viability;

(d) exercise powers in relation to certain termination rights in respect of specified service providers;

10 (e) resolve a specified service provider which has been classified in the category of critical risk to viability;

(f) act as a liquidator for a specified service provider against which an order of liquidation has been made;

(g) any other powers and functions as may be prescribed.

15 (2) Notwithstanding anything in any other law for the time being in force, while exercising the powers under this Act, the Corporation shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908

20 (a) the discovery and production of books of account and other documents, at such place and such time as may be specified by regulations made by the Corporation;

(b) summoning and enforcing the attendance of persons related to the specified service provider and examining them on oath;

(c) inspection of any books, registers and other documents of any person related to the specified service provider at any place;

25 (d) issuing of commissions for the examination of witnesses or documents;

(e) sharing of information or ordering disclosures as may be specified by regulations made by the Corporation; and

(f) any other matter as may be prescribed.

14. (1) Where the Corporation has reasonable grounds to believe that—

Powers of investigation.

30 (a) the activities of a specified service provider are being conducted in a manner detrimental to the interest of the consumers; or

(b) any person or entity related to the specified service provider has violated any of the provisions of this Act or the rules or regulations made or any directions issued thereunder,

35 it may, by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) mentioned in the order, to investigate the affairs of such specified service provider or persons or entity related to the specified service provider and to report its finding thereon to the Corporation.

18 of 2013. 40 (2) Without prejudice to the provisions in sections 210, 213, 214, 215, 217, 219, 220 and 223 of the Companies Act, 2013, it shall be the duty of every manager, managing director, officer and other employee of the company, in case of a company functioning as a specified service provider and every person related to a specified service provider, to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, such books, registers, other documents and records of, or relating to the specified service provider, which are in their custody or control as specified by a notice, by the

45 Investigating Authority.

(3) Subject to the Banker's Book of Evidence Act, 1891, the Investigating Authority may require any person related to the specified service provider in any manner to furnish such information to, or produce such books, or other documents, or records before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, registers, other documents and records is relevant or necessary for the purposes of its investigation. 18 of 1891. 5

(4) The Investigating Authority may keep in its custody any books, registers, other documents and records produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to the specified service provider or any person or entity related to the specified service provider by whom or on whose behalf the books, registers, other documents and records are produced: 10

Provided that the Investigating Authority may call for any book, register, other document or record if they are required again:

Provided further that if the person on whose behalf the books, registers, other documents and records are produced requires certified copies of the books, registers, other documents and records produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and records to such person or entity on whose behalf the books, registers, other documents and records were produced. 15

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath any person or entity related to the specified service provider in any manner, in relation to the affairs of the specified service provider and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally. 20

(6) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him and the specified service provider. 25

(7) Upon the conclusion of an investigation under this section, the Investigating Authority shall prepare a report of such investigation, a copy of which shall be forwarded to the appropriate regulator within such time as may be specified by regulations made by the Corporation.

Powers pending investigation.

15. (1) Without prejudice to the provisions in sections 13 and 14, the Corporation may authorise any of its Members to carry out any of the following measures, namely:— 30

(a) restrain a specified service provider from carrying out such business activities as it thinks fit;

(b) restrain any office bearer of a specified service provider from acting as such;

(c) impound and retain the proceeds in respect of any activity of a specified service provider which is under investigation; 35

(d) provisionally attach, by an order, for a period not exceeding thirty days, any assets of a specified service provider or any person related to a specified service provider, where it has reason to believe that such specified service provider or any person related to specified service provider has violated any of the provisions of this Act or the rules or regulations made thereunder: 40

Provided that only such assets, which relate to the proceeds involved in such violation shall be attached:

Provided further that a Member shall, before or after, passing the order under this clause, give to the specified service provider or persons concerned a reasonable opportunity of being heard; 45

(e) direct a specified service provider or any person related to such specified service provider in any manner not to dispose of or alienate an asset forming part of any activity which is under investigation.

(2) The Member authorised under sub-section (1) shall, within fifteen days of the order under clause (d) of sub-section (1), make an application supported by an affidavit stating the grounds on which it has issued the said order, to the District Judge having jurisdiction, for confirmation of the provisional order of attachment.

5 (3) Upon receipt of the application under sub-section (2), the District Judge having jurisdiction shall, within thirty days of the application and after considering the affidavit and providing a summary hearing to the concerned specified service provider, by order in writing, confirm or revoke the order.

10 **16.** (1) Where the Corporation, in consequence of information in its possession, has reason to believe that—

Search and seizure.

(a) any person related to a specified service provider required to produce, or cause to be produced, any books, accounts or other documents in his custody or control has omitted or failed to produce, or cause to be produced, such books, accounts or other documents; or

15 (b) any person to whom a requisition to produce any books, accounts or other documents has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which shall be useful for, or relevant to, an investigation under this Act; or

20 (c) a contravention of any provision of this Act has been committed or is likely to be committed by a specified service provider; or

(d) any claim which is due to be settled by the specified service provider, has been or is likely to be rejected or settled at an amount higher than a reasonable amount; or

25 (e) any claim which is due to be settled by a specified service provider, has been or is likely to be rejected or settled at an amount lower than a reasonable amount; or

(f) any books, accounts, papers, receipts, vouchers, survey reports or other documents, belonging to a specified service provider are likely to be tampered with, falsified or forged,

it may authorise an officer (hereinafter referred as the authorised officer) to—

30 (i) enter and search any building or place where he has reason to suspect that such books, accounts or other documents are kept;

(ii) break open the lock of any box, locker, safe, almirah or other receptacle for the purposes of clause (a) where the keys thereof are not available;

35 (iii) seize all or any such books, accounts or other documents, found as a result of such search;

(iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies therefrom.

40 (2) The authorised officer may requisition the services of any police officer to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such police officer to comply with such requisition.

45 (3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (1), serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with the provisions of this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or

other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act.

(5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Corporation for such retention is obtained: 5

Provided that the Corporation shall not authorise the retention of the books, accounts, papers, receipts, vouchers, reports or other documents for a period exceeding thirty days after all the proceedings under this Act, for which the books, accounts, papers, receipts, vouchers, reports, or other documents are relevant, are completed. 10

(6) The person from whose custody the books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by the authorised officer in this behalf at such place and time as the authorised officer may appoint in this behalf. 15

(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports or other documents seized under sub-section (1) objects for any reason to the approval given by the Corporation under sub-section (5), such person may make an application to the Tribunal stating therein the reason for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, reports or other documents. 20

(8) On receipt of the application under sub-section (7), the Tribunal may, after giving the applicant a reasonable opportunity of being heard, pass such order as it thinks fit.

(9) The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1). 2 of 1974. 25

Power to enter premises and inspect, etc.

17. Where any officer or agent of the Corporation or of the appropriate regulator, duly authorised in writing by the Corporation or the appropriate regulator, as the case may be, thinks necessary so to do for ensuring the compliance with the provisions of this Act, he may— 30

(a) enter any premises where a specified service provider carries on business;

(b) inspect any equipment, including any computer system or other documents at such premises; and

(c) call upon any employee of such specified service provider or any other person working in such premises to furnish such information or documents as may be required by such officer. 35

Conditions on exercise of powers.

18. Any power exercisable under section 14, 15, 16 or section 17, may, notwithstanding anything therein, be exercised in respect of a specified service provider only after such specified service provider has been classified in the category of —

(a) imminent risk to viability under section 43; or 40

(b) critical risk to viability under section 45.

Constitution of committees.

19. The Corporation may, for the efficient discharge of its functions, constitute such committees, as it may deem fit, consisting of a chairperson and such other members as may be specified by regulations made by the Corporation.

Consultation and transparency.

20. (1) The Corporation and the appropriate regulators shall hold due consultations with all relevant stakeholders before making any regulations under this Act. 45

(2) The Corporation shall ensure transparency in the discharge of its powers and functions, subject to the provisions of this Act.

21. (1) The Corporation shall constitute the following funds for the purposes of this Act, namely:—

Funds of Corporation.

(a) a fund for deposit insurance provided by the Corporation to the insured service providers, called the Corporation Insurance Fund;

5 (b) a fund for meeting the expenses of carrying out resolution of specified service providers, called the Corporation Resolution Fund; and

(c) a fund for all other functions of the Corporation called the Corporation General Fund.

(2) The Funds under this section shall be credited in the following manner—

10 (a) premium for deposit insurance collected from insured service providers, in the Corporation Insurance Fund;

(b) fees for resolution collected from the specified service providers in the Corporation Resolution Fund; and

(c) all other fees in the Corporation General Fund.

15 (3) The Corporation shall be prudent in investing the moneys in the Corporation Insurance Fund in such manner as may be specified by regulations made by the Corporation.

(4) The Corporation may invest the moneys in the other funds in a prudent manner.

(5) Any income from any investment made by the Corporation under sub-sections (3) and (4) shall be remitted to the respective fund from which such investment was made.

20 (6) The Corporation shall utilise the amounts in each fund only for the purpose for which the fund was constituted.

22. (1) Every specified service provider shall pay to the Corporation, such amounts at such intervals and in such manner as may be specified by regulations made by the Corporation, towards—

Fees, etc., to be paid to Corporation.

25 (a) fees for resolution; and

(b) fees for administrative expenses of the Corporation including the fees charged under section 33.

30 (2) Every insured service provider shall additionally pay such amounts, at such intervals and in such manner, as premium for deposit insurance, as may be specified by regulations made by the Corporation.

(3) Without prejudice to the generality of this section, the Corporation shall specify by regulations—

35 (a) the manner of assessment of fees and premium payable by a specified service provider or insured service provider as applicable, including different rates for different categories of specified service providers and insured service providers, based on considerations which may include the risk profile of the specified service provider, amongst others;

(b) the information which a specified service provider and an insured service provider shall provide to the Corporation for calculating fees or premium as applicable.

40 **23.** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Corporation grants or loans of such sums of money, on such terms, as the Central Government may think fit, for being utilised for the purposes of this Act:

Grants by Central Government.

45 Provided that the Central Government may require such grants to be deposited in such fund of the Corporation as the Central Government may direct.

Accounts and
audit.

24. (1) The Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Corporation shall be audited by the Comptroller and Auditor-General of India at such intervals as may be prescribed and any expenditure incurred by him in connection with such audit shall be reimbursed to him by the Corporation. 5

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Corporation. 10

(4) The accounts of the Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by the Comptroller and Auditor-General of India in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament. 15

CHAPTER III

SYSTEMICALLY IMPORTANT FINANCIAL INSTITUTIONS 20

Designation
of systemically
important
financial
institution.

25. (1) The Central Government may, in consultation with the appropriate regulator, by an order published in the Official Gazette, designate a financial service provider, which meets such criteria as may be prescribed by the Central Government in consultation with the appropriate regulator, as a systemically important financial institution:

Provided that no financial service provider shall be designated as a systemically important financial institution unless it has been given an opportunity of being heard: 25

Provided further that any person designated as Domestic Systemically Important Bank by the Reserve Bank of India shall be deemed to be a systemically important financial institution for the purposes of this Act, for a period of six months with effect from such date as the Central Government may, by notification, specify. 30

(2) The Central Government may, while designating a systemically important financial institution under sub-section (1), direct that such holding, subsidiary or associate company, or any other body corporate related to, or associated with, the financial service provider, as specified in the order shall, jointly with such financial service provider or separately, be deemed to be a systemically important financial institution, if such holding, subsidiary or associate company or any other body corporate meets with the criteria specified under sub-section (1). 35

(3) The Central Government shall, while prescribing criteria for designation of systemically important financial institution under sub-section (1), take into consideration the following attributes of a financial service provider, namely:— 40

(a) size;

(b) complexity;

(c) nature and volume of transactions with other financial service providers;

(d) interconnectedness with other financial service providers;

(e) nature of services provided by the financial service providers and whether they are difficult to substitute; and 45

(f) such other matters as may be prescribed.

(4) A person designated as a systemically important financial institution under sub-section (1) or sub-section (2) may, within thirty days of the order of such designation, prefer an appeal to the Tribunal on the ground of non-compliance with the procedural requirements of this section before such designation.

5 **26.** (1) If a person is designated as a systemically important financial institution, then, notwithstanding whether or not such person is a specified service provider, the provisions of this Act applicable to a specified service provider, shall apply to such systemically important financial institution as if it were a specified service provider. Consequence of designation.

(2) Every systemically important financial institution shall, within a period of ninety days from the publication of the order of designation under section 25, submit a restoration plan to the appropriate regulator and a resolution plan to the Corporation, in accordance with the provisions of section 38.

(3) Every systemically important financial institution shall provide such information to the Corporation at such intervals and in such manner as may be specified by regulations made by the Corporation, to monitor the safety, soundness and solvency of such systemically important financial institution.

(4) The Corporation and the appropriate regulator may, based on the information received from any systemically important financial institution or otherwise and for reasons to be recorded in writing, jointly inspect such systemically important financial institution in such manner as may be specified by regulations made by the Corporation in consultation with the appropriate regulator.

(5) Subject to the provisions of this Act, the regulation and supervision of systemically important financial institutions shall continue to be governed by the appropriate regulator with which the systemically important financial institution is registered.

25 **27.** Where a systemically important financial institution ceases to meet the criteria specified under sub-section (1) of section 25, the Central Government may, for reasons to be recorded in writing, de-designate such systemically important financial institution. De-designation of systemically important financial institution.

28. The Central Government may, by an order published in the Official Gazette, delegate any of its powers exercisable under this Chapter (except the power to make rules or issue notifications), to be exercisable by such person or committee as may be specified in the order. Delegation of powers by Central Government.

CHAPTER IV

LIABILITY OF CORPORATION TO INSURED DEPOSITORS OF INSURED SERVICE PROVIDERS

35 **29.** (1) The Corporation shall, in consultation with the appropriate regulator, specify the total amount payable by the Corporation with respect to any one depositor, as to his deposit insured under this Act, in the same capacity and in the same right. Liability of Corporation to insured depositors of insured service providers.

(2) The Corporation Insurance Fund shall be utilised by the Corporation—

(a) for payment of the specified amount or amount due, whichever is less, to a depositor of an insured service provider in respect of his deposit, in case of its liquidation;

(b) for payment under—

(i) a scheme of compromise or arrangement or amalgamation of an eligible co-operative bank, in accordance with the law governing such eligible co-operative bank; or

(ii) a scheme of resolution sanctioned under section 48, other than resolution through bail-in under section 52, in respect of any other insured service provider:

Provided that where the scheme referred to in clause (b) provides for each depositor being paid or credited with, on the date the scheme comes into force, an amount which is less than the original amount and also the specified amount, in which case, the Corporation shall be liable to pay to every such depositor in accordance with the provisions of section 29, an amount equivalent to the difference between the amount so paid or credited and the original amount, or the difference between the amount so paid or credited and the specified amount, whichever is less: 5

Provided further that where the scheme also provides that any payment made to a depositor before the coming into force of the scheme shall be reckoned towards the payment due to him under that scheme, the scheme shall be deemed to have provided for that payment being made on the date of its coming into force. 10

Explanation.—In this sub-section,—

(i) "original amount" in relation to a depositor means the total amount due by the insured service provider immediately before the date of coming into force of the scheme of compromise or arrangement or amalgamation or the scheme of resolution, as the case may be, to the depositor in respect of his deposit in the insured service provider in the same capacity and in the same right: 15

Provided that where under the first proviso to sub-section (2), the scheme is deemed to have provided for any payment being made on the date of its coming into force, the amount of such payment shall be included in calculating the original amount; 20

(ii) "specified amount" means the amount specified by the Corporation under sub-section (1).

(3) Where, during resolution of an insured service provider, the Corporation determines that the readily realisable assets of the insured service provider shall not be sufficient to pay for the insured deposits of the insured service provider, the Corporation may, after inviting offers from other insured service providers, prepare a scheme which involves— 25

(i) any insured service provider taking over the liabilities of the insured service provider in resolution to the extent of the insured liabilities to the depositors; 30

(ii) transferring the deposits of the insured depositors to the other insured service provider to the extent of the insured amount;

(iii) transferring such readily realisable assets of the insured service provider in resolution as appropriate;

(iv) making such payments, as mutually agreed by the Corporation and the other insured service provider, out of the Corporation Insurance Fund for taking over the insured deposits; and 35

(v) liquidating an insured service provider, or forming a bridge institution under this Act with such assets which are not readily realisable including all remaining liabilities of the insured service provider in resolution. 40

(4) Where a scheme of resolution is prepared under section 48, the Corporation may make such payments out of the Corporation Insurance Fund to the other insured service provider, subject to the following conditions, namely:—

(a) the amount transferred under such scheme shall not be more than the estimated liabilities of the Corporation Insurance Fund, had the insured service provider in resolution been liquidated; and 45

(b) the amount is transferred to an entity which is not related to the insured service provider in resolution.

(5) Where the Corporation resolves an insured service provider, or resolves a bridge institution under section 50, notwithstanding anything in section 80, the Corporation's claim over the amount paid out of the Corporation Insurance Fund under sub-section (2) shall have priority over other claims.

5 (6) For the purposes of this section, the amount of a deposit shall be determined after deducting any ascertained sum of money which the insured service provider may be legally entitled to claim by way of set off against the depositor in the same capacity and in the same right.

(7) The Corporation shall, within ninety days from the date of utilisation of any amount from the Corporation Insurance Fund, submit a report to the Central Government in such form and manner as may be prescribed.

(8) The Corporation shall, for the purposes of this section, by regulations specify—

(a) the process of determining readily realisable assets of an insured service provider in resolution;

15 (b) the process of inviting offers from other insured service providers and the time and manner of making offers by other insured service providers; and

(c) the process of estimation of liabilities to the Corporation Insurance Fund.

(9) For the purposes of this section,—

(a) "readily realisable assets" means the assets of the insured service provider in resolution which may be sold or transferred at a reasonable market value within a short span of time usually not exceeding six months; and

(b) a party is related to an insured service provider if it owns more than the specified percentage of the equity of the insured service provider or has a common shareholder which owns more than a specified percentage of equity and such other persons as may be specified, by regulations made by the Corporation.

20 **30.** (1) Where under any scheme of resolution under clause (b) of sub-section (2) of section 29, involving any insured service provider with any other banking institution (hereafter referred to as "the transferee insured service provider") the Corporation has become liable to pay to depositors of the insured service provider under section 29, the transferee insured service provider shall, immediately and in any case not later than one month from the date on which such scheme takes effect, furnish to the Corporation, a list showing separately, deposits in respect of each depositor and the amounts to be set off and also the amount paid or credited or deemed to have been paid under the scheme, in such form and manner as may be specified by regulations, made by the Corporation duly certified by the chief executive officer of the transferee insured service provider.

Manner of payment by Corporation.

(2) The Corporation shall, before the expiry of two months from the receipt of the list under sub-section (1), pay the amount payable under section 29 directly to the depositor or to the transferee insured service provider or the insured service provider for being credited in his account.

40 (3) The manner of payment by the Corporation in case of liquidation shall be as laid down in section 72.

31. Any amount paid by the Corporation under section 29 in respect of a deposit shall, to the extent of the amount paid, discharge the Corporation from its liability in respect of that deposit.

Discharge of liability of Corporation.

45 **32.** (1) Where any depositor, to whom any payment is to be made in accordance with the provisions of section 29 or section 73, cannot be found or is not readily traceable, adequate provisions shall be made by the Corporation for such payment and such amount shall be accounted for separately in its books.

Provision for unpaid amounts.

(2) The amount under sub-section (1) shall be payable to a *bona fide* depositor in such manner as may be specified by regulations made by the Corporation.

CHAPTER V

REGISTRATION

Registration of specified service provider.

33. (1) On the date of the commencement of this Act, every specified service provider under the Second Schedule shall be deemed to be registered under this Act: 5

Provided that where a holding company of such specified service provider or a non-regulated operational entity within a financial group or conglomerate of a specified service provider is classified into a category of risk to viability under sub-section (2) of section 36, such holding company or the non-regulated operational entity within a financial group or conglomerate of the specified service provider, shall be deemed to be registered from the date of such classification. 10

(2) Where the appropriate regulator issues a license, authorisation or permission by virtue of which a person is categorised as a specified service provider, such person shall be deemed to be registered under this Act. 15

(3) Every banking institution shall, on the grant of a banking licence by the appropriate regulator, be deemed to be registered as an insured service provider for obtaining deposit insurance under this Act:

Provided that a banking institution registered under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 shall, as on the commencement of this Act, be deemed to be registered as an insured service provider under this Act. 20 47 of 1961.

(4) The Corporation shall maintain a register with such details and information, of each specified service provider as may be specified by regulations made by the Corporation, which shall be available for inspection by any person subject to such conditions and payment of such fees as may be specified by regulations made by the Corporation. 25

(5) For the purposes of sub-section (1) and sub-section (2), the appropriate regulator shall, within fifteen days of the commencement of this Act or the issuance of a license, authorisation or permission, as the case may be, provide to the Corporation such information as may be specified by regulations made by the Corporation relevant for the maintenance of the register under this section. 30

Withdrawal or cancellation of registration of specified service provider.

34. (1) Notwithstanding the withdrawal or cancellation by the appropriate regulator of a specified service provider to carry on business, such entity shall be deemed to be a specified service provider for the purposes of this Act:

Provided that the registration of an insured service provider under this Act shall stand cancelled in the following circumstances, namely:— 35

(a) the insured service provider has been prohibited permanently from receiving fresh deposits;

(b) the insured service provider has ceased to be a banking company or a co-operative bank, as the case may be, within the meaning of sub-section (2) of section 36A of the Banking Regulation Act, 1949, or has converted itself into a non-banking institution; 40 10 of 1949.

(c) the insured service provider has been informed by notice in writing by the Reserve Bank of India that its licence has been cancelled under section 22 of the Banking Regulation Act, 1949 or that a licence under that section cannot be granted to it; 45

(d) the insured service provider has transferred all its deposit liabilities in India to any other institution;

(e) a liquidator has been appointed in respect of such insured service provider;

(f) the insured service provider has been amalgamated with any other insured service provider;

5 (g) where the insured service provider is an eligible co-operative bank, if it ceases to be so under the law governing such insured service provider; or

(h) the insured service provider has been ordered to be liquidated.

(2) The Corporation may, in consultation with the appropriate regulator, cancel the registration of an insured service provider under this Act and classify it to be at such risk to viability as may be specified by regulations made by the Corporation if it fails to pay the premium under section 22 for three consecutive periods:

Provided that no registration shall be cancelled without giving one month's notice in writing to the insured service provider calling upon it to pay the amount in default.

15 (3) The Corporation may, in consultation with the appropriate regulator, restore the registration of an insured service provider whose registration has been cancelled under sub-section (2), if the insured service provider requests the Corporation to restore the registration and pays all the amounts due by way of premia from the date of default till the date of payment together with interest due thereon, on the date of payment:

20 Provided that the Corporation shall not restore the registration of an insured service provider unless it is satisfied, on an inspection or otherwise that such insured service provider is eligible to be registered as an insured service provider.

35. (1) Where the registration of a specified service provider or an insured service provider has been withdrawn or cancelled, it shall not—

25 (i) entitle such specified service provider or insured service provider, as the case may be, to any refund for any fees or premia paid to the Corporation under this Act; or

(ii) affect the liability of such specified service provider or insured service provider, as the case may be, for payment of premium or fees for the period before such withdrawal and of any interest due under sub-section (2).

30 (2) If a specified service provider or an insured specified service provider makes any default in payment of any amount of fees or premium, it shall, for the period of such default, be liable to pay to the Corporation interest on such amount at such rate not exceeding eight per cent. over and above the bank rate, as may be specified by regulations made by the Corporation.

2 of 1934. 35 *Explanation.*— For the purposes of this sub-section, "bank rate" shall have the same meaning as assigned to it in section 49 of the Reserve Bank of India Act, 1934.

CHAPTER VI

RESOLUTION OF SPECIFIED SERVICE PROVIDER

40 **36.** (1) The appropriate regulator or, as the case may be, the Corporation may, by an order in writing, classify a specified service provider which meets the criteria laid down under sub-section (5), into any one of the categories of risk to viability:

Provided that the Corporation shall have no power to classify a specified service provider into the category of low or moderate risk to viability.

45 (2) The appropriate regulator or, as the case may be, the Corporation, shall, while classifying a specified service provider under this sub-section, if it considers expedient or necessary for the purposes of the resolution of the specified service provider under this Act, determine as to whether a holding company of such specified service provider or a

Withdrawal or cancellation of registration not to affect liability to pay premia, etc.

Classification of specified service providers into categories of risk to viability.

non-regulated operational entity within a financial group or conglomerate of a specified service provider is to be so classified, and if it so determines,—

(a) it shall classify such holding company or a non-regulated operational entity within a financial group or conglomerate; and

(b) on such classification, the holding company or a non-regulated operational entity within a financial group or conglomerate of a specified service provider, shall be deemed to be a specified service provider. 5

(3) A copy of the order of classification under sub-section (1) or sub-section (2) shall be forwarded to the Corporation or the appropriate regulator, as the case may be, within fifteen days of such order. 10

(4) For the purposes of classification under sub-section (1) of section 36, the appropriate regulator, may carry out investigation, inquiry or inspection, at such intervals as may be specified by regulations made by it.

(5) The Corporation shall, in consultation with the appropriate regulator, specify by regulations, objective criteria for classification of a specified service provider into any one of the following categories of risk to viability, namely:— 15

(a) low, where the probability of failure of a specified service provider is substantially below the acceptable probability of failure;

(b) moderate, where the probability of failure of a specified service provider is marginally below or equal to acceptable probability of failure; 20

(c) material, where the probability of failure of a specified service provider is marginally above acceptable probability of failure;

(d) imminent, where the probability of failure of a specified service provider is substantially above the acceptable probability of failure;

(e) critical, where the probability of failure of a specified service provider is substantially above the acceptable probability of failure, and the specified service provider is on the verge of failing to meet its obligations to its consumers: 25

Provided that the Corporation may specify different criteria for different categories of specified service provider.

(6) While making any regulations under sub-section (5), the Corporation shall take into account the following attributes of a specified service provider, namely:— 30

(a) adequacy of capital, assets and liability;

(b) asset quality;

(c) capability of management;

(d) earnings sufficiency; 35

(e) leverage ratio;

(f) liquidity of the specified service provider;

(g) sensitivity of the specified service provider to adverse market conditions;

(h) compliance with applicable laws;

(i) risk of failure of a holding company of a specified service provider or a connected body corporate in India or abroad; and 40

(j) any other attributes as the Corporation deems necessary:

Provided that for the purposes of classifying a specified service provider in the category of critical risk to viability, the regulations shall take into account the period for which the specified service provider has been in the category of imminent risk to viability, if applicable: 45

Provided further that the Corporation may, in consultation with the appropriate regulator, specify additional criteria in respect of risk to viability of a specified service provider which is operating in India as a branch office of a body corporate incorporated outside India.

5 (7) The classification of a specified service provider by the Corporation or the appropriate regulator, as the case may be, shall be final and the specified service provider shall comply with the requirements of such classification.

(8) The classification of a specified service provider into any of the categories of risk to viability except the category of critical risk to viability under section 45, shall be kept
10 confidential by the appropriate regulator, the Corporation and by all relevant parties.

37. (1) Where a specified service provider has been classified in the category of material risk to viability by the appropriate regulator, and the Corporation has a difference of opinion over such classification, the Corporation shall record its reasons in writing and convey the same to the appropriate regulator.

Consultation
in case of
difference of
opinion over
classification.

15 (2) Where the Corporation has conveyed a contrary opinion over the assessment under sub-section (1), there shall be a consultation of not more than fifteen days between the Corporation and the appropriate regulator with a view to arriving at a consensus over the assessment:

20 Provided that if after such consultation, the Corporation continues to hold a different view regarding the assessment, it may decide to conduct an independent inspection to confirm its own view regarding the risk to viability, and the appropriate regulator may be present during such inspection, if it deems necessary.

(3) The Corporation shall, after conducting the inspection under sub-section (2), forward a copy of the inspection report along with its findings to the appropriate regulator
25 for its comments.

(4) The Corporation may, after considering the comments of the appropriate regulator, make a determination of the imminent or critical risk to viability of the specified service provider except the classification of a central counterparty referred to in sub-section (4) of section 43 and such determination shall be final.

30 (5) The Corporation may request such information relating to the business of the specified service provider as may be specified by regulations made by the Corporation, for any specified service provider classified in the category of material, imminent or critical risk to viability.

CHAPTER VII

35 RESTORATION PLAN AND RESOLUTION PLAN

38. (1) Any specified service provider, classified in the category of material or imminent risk to viability shall submit a restoration plan to the appropriate regulator and a resolution plan to the Corporation within ninety days of such classification under section 36:

Submission of
plans.

40 Provided that the Corporation may specify a shorter period if in its opinion, it is necessary so to do.

(2) Notwithstanding anything in sub-section (1), every systemically important financial institution shall submit a restoration plan to the appropriate regulator and a resolution plan to the Corporation within ninety days of its designation under section 25.

45 (3) A copy of every restoration plan submitted to the appropriate regulator shall be submitted to the Corporation, and a copy of every resolution plan submitted to the Corporation shall be submitted to the appropriate regulator, within fifteen days of its receipt by the appropriate regulator or the Corporation, as the case may be.

Contents of
restoration
plan.

39. (1) Every restoration plan shall contain the following, namely:—

(a) distinct identification of the assets and liabilities of the specified service provider;

(b) any contingent liabilities of the specified service provider;

(c) steps which the specified service provider shall take to qualify for classification in the category of at least moderate risk to viability and how such steps may result in such classification; 5

(d) the period within which the entire restoration plan and each step of the plan will be executed; and

(e) any other relevant information specified by regulations made by the appropriate regulator. 10

(2) Where a systemically important financial institution is classified in the category of low or moderate risk to viability, it shall submit the information required under this sub-section assuming that it is classified in the category of material or imminent risk to viability.

(3) For the purposes of sub-section (1), the appropriate regulator shall, by regulations, specify the form and manner in which the restoration plan is required to be made. 15

(4) The appropriate regulator may require a specified service provider to provide any information as may be necessary to determine the efficacy of a restoration plan.

Contents of
resolution
plan.

40. (1) Every resolution plan shall contain the following, namely:—

(a) distinct identification of the assets and liabilities of the specified service provider; 20

(b) any contingent liabilities of the specified service provider;

(c) distinct identification of critical functions of the specified service provider;

(d) direct or indirect access to financial market infrastructure services; and

(e) strategy plans to exit the resolution process which may provide for the consideration of legal or regulatory requirements as may be required by the Corporation to sell or transfer the assets and liabilities of the specified service provider, or change its ownership; and 25

(f) other relevant information.

(2) The Corporation shall, by regulations, specify— 30

(a) the form and manner in which the resolution plan is required to be made; and

(b) any relevant information required by the Corporation.

(3) The Corporation may require a specified service provider to provide any information as may be necessary for the purpose of resolution, including any information required for the transfer or sale of the assets of the specified service provider. 35

Change,
revision, etc.,
of resolution
plan and
restoration
plan.

41. (1) Every restoration plan shall be revised annually and the appropriate regulator and the Corporation shall be informed of such revised restoration plan, within seven days of the revision.

(2) Every material change in the restoration plan shall be immediately informed to the appropriate regulator and the Corporation. 40

(3) The appropriate regulator shall review the information provided in the restoration plan and if after such review, it determines that the plan would not ensure restoration within a reasonable period, it shall inform the specified service provider of such deficiency, and the specified service provider shall resubmit the restoration plan within such period as may be directed by the appropriate regulator: 45

Provided that the appropriate regulator may, if it considers necessary in the interest of restoration of the specified service provider, modify such deficient restoration plan and such modified plan shall be binding on the specified service provider.

(4) Every resolution plan shall be revised annually and the Corporation and the appropriate regulator shall be informed of such revised resolution plan within seven days of such revision.

(5) Every material change in the resolution plan shall be immediately informed to the Corporation and the appropriate regulator.

(6) The Corporation shall review the information provided in the resolution plan and if after such review, the Corporation determines that the plan does not comply with the provisions of this section and is not comprehensive, it shall inform the specified service provider of such deficiency, and the specified service provider shall resubmit the resolution plan within such period as may be directed by the Corporation:

Provided that the Corporation may, if it considers necessary in the interest of orderly resolution of the specified service provider, modify such deficient resolution plan on its own and such modified plan shall be binding on the specified service provider.

(7) For the purposes of this section,—

(a) the appropriate regulator shall, by regulations, specify the meaning of "material change" in the restoration plan; and

(b) the Corporation shall, in consultation with the appropriate regulator, specify by regulations, the meaning of "material change" in the resolution plan.

CHAPTER VIII

MATERIAL, IMMINENT AND CRITICAL RISK TO VIABILITY

42. (1) Where the appropriate regulator classifies a specified service provider in the category of material risk to viability, it may carry out additional inspections to monitor the risk to viability of the specified service provider.

Material risk to viability.

(2) The appropriate regulator may, by order, prevent the specified service provider which is classified in the category of material risk to viability, from carrying out any or all of the following actions, namely:—

(a) accepting funds which increase the liabilities to consumers;

(b) declaration or payment of dividends to any shareholder of the specified service provider;

(c) payment of any bonuses to any director, employee or manager of the specified service provider;

(d) acquiring any interest in any other business;

(e) establishing new locations for carrying out business or acquiring new clients;

(f) carrying out transactions with any person related to the specified service provider; or

(g) repayment of any debt which is not due.

(3) The appropriate regulator may, by order, require the specified service provider, classified in the category of material risk to viability to carry out any or all of the following actions, namely:—

(a) increase the capital of the specified service provider through such means as may be stated in the order, which may include conversion of securities from one type to another in terms of such securities;

(b) issue new securities;

(c) sell identified assets; or 5

(d) such other action as may be required by the appropriate regulator.

(4) The appropriate regulator may, on an application of the specified service provider, vary the order made under sub-section (2) or sub-section (3), if it is satisfied that such variation shall,—

(a) reduce the financial obligation of the specified service provider; or 10

(b) restore the specified service provider to the category of low or moderate risk to viability.

Imminent risk to viability. 43. (1) A specified service provider may be classified in the category of imminent risk to viability—

(a) by the appropriate regulator— 15

(i) under sub-section (1) of section 36;

(ii) if the specified service provider has not submitted a restoration plan within the period specified under section 38; or

(iii) if the specified service provider has failed to implement the restoration plan, in full or in part, within the period indicated in its restoration plan; 20

(b) by the Corporation—

(i) under sub-section (4) of section 37; or

(ii) if the specified service provider has failed to submit a resolution plan under section 38 to the Corporation.

(c) by the appropriate regulator or by the Corporation, as the case may be, when an order is made by any court or tribunal that there has been a fraud in the conduct of the business of the specified service provider. 25

Explanation.— For the purposes of this sub-section, the term "fraud" shall have the same meaning as assigned to it in section 447 of the Companies Act, 2013 which, in the opinion of the Corporation, may have a bearing on the risk to viability of the specified service provider. 18 of 2013. 30

(2) A specified service provider classified in the category of imminent risk to viability shall, if it is not a systemically important financial institution, submit a resolution plan to the Corporation within the period specified in sub-section (1) of section 38;

(3) When a specified service provider is classified in the category of imminent risk to viability, the Corporation,— 35

(a) may appoint an officer or any person authorised by it to inspect the specified service provider, including by being present at the principal location of business and any other location of the specified service provider, and observing any meeting of the management of the specified service provider or any other functioning of the specified service provider; 40

(b) may by an order, prevent the specified service provider from undertaking any or all of the following actions, namely:—

(i) accepting funds which increase its liabilities and the number of consumers; 45

(ii) declaration or payment of dividends to any stakeholder of the specified service provider;

(iii) payment of any bonus to any director, employee or manager of the specified service provider;

5 (iv) acquiring interest in any other businesses;

(v) establishing new locations for carrying on businesses or acquiring new clients;

(vi) carrying out transactions with any person related to the specified service provider;

10 (vii) repayment of any debt which is not due;

(viii) payment of any fees to any agent or service provider of the specified service provider;

(ix) payment of any remuneration to any employee, director or manager of the specified service provider in excess of any limit set in the order;

15 (x) providing any financial service as may be specified in the order;

(xi) making of any advances;

(xii) any repatriation of capital and deployment of funds where the specified service provider is a branch office without the approval of the Corporation; or

20 (xiii) any other action, which in the opinion of the Corporation, may help in the resolution of the specified service provider;

(c) may, by order, require the specified service provider to carry out any or all of the following actions, namely:—

25 (i) increase the capital of the specified service provider through such means as may be stated in the order, which may include conversion of securities from one type to another in terms of such securities;

(ii) issue new securities;

(iii) sell identified assets; or

30 (iv) take such other action as may be required by the appropriate regulator.

(4) Notwithstanding anything in this Act, any classification of a central counterparty in the category of imminent risk to viability shall only be made by the appropriate regulator, which shall record its reasons for such classification and inform the Corporation within fifteen days of the classification.

35 (5) The appropriate regulator shall, in respect of a specified service provider classified in the category of imminent risk to viability under this section or critical risk to viability under section 45, exercise its powers under the law regulating such specified service provider, notwithstanding anything to the contrary in such law, to the extent it is not inconsistent with the provisions of this Act.

40 **44. (1)** The appropriate regulator may, in respect of a central counterparty classified in the category of material or imminent risk to viability, in addition to the actions under section 42 and section 43, take the following additional measures of recovery, namely:—

45 (a) allocate uncovered losses caused by participant default, including variation margin haircutting, utilising the initial margin of participants and making additional cash calls on its participants;

(b) address uncovered liquidity shortfalls such as obtaining additional funds from third-party institutions or from participants;

Additional powers of appropriate regulator in respect of central counterparty.

(c) replenish financial resources including by making cash calls on participants or recapitalising such central counterparty in such manner as may be specified by regulations made by the appropriate regulator;

(d) re-establish a matched book by a central counterparty, including forced allocation of contracts or partial or complete termination of contracts; 5

(e) allocate losses which are not related to participant default, including allocating additional capital;

(f) set off, close-out, netting, collateralisation and segregation of member assets;

(g) issuance of equity to the creditors;

(h) prohibition of early termination rights; or 10

(i) such other measures as may be deemed necessary by the appropriate regulator.

(2) For the purposes of this section,—

(a) "cash call" in relation to a central counterparty means a situation where such central counterparty asks its existing participants to contribute such additional funds as may be specified by regulations made by the appropriate regulator; 15

(b) "haircut" means a percentage reduction in the amount that is payable to the creditors.

Critical risk
to viability.

45. (1) Where a specified service provider is classified in the category of critical risk to viability,—

(i) by the appropriate regulator under sub-section (1) of section 36; or 20

(ii) by the Corporation under sub-section (4) of section 37,

the provisions of Chapters X, XI and XII shall apply.

(2) The appropriate regulator or the Corporation, as the case may be, before classifying a specified service provider in the category of critical risk to viability, shall consider the potential effect of such classification on— 25

(a) any person related to the specified service provider; and

(b) stability of the financial system of any other relevant jurisdiction.

(3) Any classification of a specified service provider in the category of critical risk to viability shall be by an order in writing, which shall be published in such form and manner as may be specified by regulations made by the Corporation, notwithstanding anything to the contrary in the Companies Act, 2013 or any other law for the time being in force. 30
18 of 2013.

(4) The order of classification under sub-section (3) shall be effective from the date of its publication.

(5) Upon classification of a specified service provider in the category of critical risk to viability under sub-section (3),— 35

(a) the Corporation shall be deemed to be the administrator of that specified service provider under Chapter XI;

(b) no legal action or proceeding against such specified service provider, including any arbitration proceeding, shall commence or continue until such period as may be specified in the order referred to in sub-section (3), or until conclusion of the resolution under section 56, or until the date of the order appointing the Corporation as the liquidator under section 63, as the case may be; 40

(c) no payment, repayment or acceptance of deposits shall be made or liabilities incurred, except on such terms and conditions as may be specified in the order under

sub-section (3), until the date of the order appointing the Corporation as the liquidator under section 63;

(d) if such specified service provider is an insurance company, it shall not exercise any contractual rights to surrender or terminate an insurance cover or take any action as may be determined by the Corporation to be relevant for the purposes of carrying out resolution while preserving its value; and

(e) the Corporation shall make payment of deposit insurance in accordance with the provisions of section 29.

(6) Where a central counterparty is classified in the category of critical risk to viability under sub-section (3), no restriction referred to in clause (b) or clause (c) of sub-section (5) shall apply unless so directed in the order made under sub-section (3).

(7) Upon classification of a specified service provider in the category of critical risk to viability under sub-section (3), notwithstanding anything in any law for the time being in force,—

(a) the appropriate regulator may, by notification, withdraw or modify any authorisation or licence granted to the specified service provider to carry out any financial service; and

(b) no depositor of the relevant insured service provider shall have any deposit insurance with respect to any new deposit accepted by the insured service provider from the date of the order under sub-section (3), unless otherwise provided in that order.

46. A specified service provider shall not be classified in the category of material risk to viability under section 42, imminent risk to viability under section 43, or critical risk to viability under section 45, unless—

Show cause notice.

(a) a show cause notice is issued to such specified service provider in such form and manner as may be specified by regulations made by the Corporation; and

(b) the specified service provider has been given an opportunity to present its case within such period as may be specified by regulations made by the Corporation.

CHAPTER IX

30 EFFECT ON TERMINATION RIGHTS UNDER SPECIFIED CONTRACTS

51 of 2007.
2 of 1934.
42 of 1956.

35 **47.** (1) Notwithstanding the provisions relating to netting and set off under the Payments and Settlement Systems Act, 2007, the Reserve Bank of India Act, 1934 and the Securities (Contracts) Regulation Act, 1956, entry into resolution of a specified service provider shall not cause early termination of a specified contract so long as the substantive obligations of the contract (including payment and delivery obligations, and provision of collateral) continue to be performed, subject to such other safeguards as may be specified by regulations made by the Corporation in consultation with the appropriate regulator.

Effect on termination rights under specified contracts.

51 of 2007.
2 of 1934.
42 of 1956.

40 (2) Notwithstanding anything in sub-section (1) or any provision relating to netting and set off under the Payments and Settlement Systems Act, 2007, Reserve Bank of India Act, 1934, or the Securities (Contracts) Regulation Act, 1956, if a termination right under a specified contract becomes exercisable, the Corporation shall have the power, subject to such safeguards, as may be specified by regulations made by it, to temporarily prohibit by an order in writing, the exercise of such termination rights of any party to such specified contract with the relevant specified service provider or its associate company or subsidiary (where the obligations of the associate company or subsidiary are guaranteed or otherwise supported by such specified service provider) if the relevant termination right is exercisable solely on entry into resolution or in connection with the exercise of any resolution power, except liquidation, in respect of such specified service provider or its associate company or subsidiary, as the case may be, under this Act.

- (3) The prohibition under sub-section (2) shall not—
- (a) exceed two business days; and
 - (b) affect the exercise of early termination rights of a central counterparty against a specified service provider under resolution in the event of default on the part of the specified service provider other than on grounds of an entry into resolution or the exercise of any power by the Corporation under this section. 5
- (4) The powers under sub-section (2) shall be exercised by the Corporation,—
- (a) in consultation with the appropriate regulator; and
 - (b) for ensuring systemic stability.
- (5) For the purposes of this section,— 10
- (a) "entry into resolution" shall mean entry into resolution of a specified service provider which is classified in the category of critical risk to viability under this Act;
 - (b) "specified contract" shall include such contracts or agreements as may be specified by regulations made by the Corporation in consultation with the appropriate regulator; 15
 - (c) "termination right" shall have the meaning as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator.

CHAPTER X

METHODS AND TIME LIMIT OF RESOLUTION

Methods of resolving a specified service provider.

- 48.** (1) The Corporation may resolve a specified service provider classified in the category of critical risk to viability under section 45 through a scheme or a bail-in instrument, in such form and manner as may be specified by regulations made by it, by— 20
- (a) transferring the whole or part of the assets and liabilities of the specified service provider to another person, on terms agreed between the Corporation and such person; 25
 - (b) creating a bridge service provider in accordance with section 50;
 - (c) bail-in in accordance with the provisions of section 52;
 - (d) merger or amalgamation of the specified service provider;
 - (e) acquisition of the specified service provider, in whole or in part;
 - (f) liquidation in accordance with the provisions of Chapter XII; or 30
 - (g) a combination of any of the methods listed in clauses (a) to (f).
- (2) Notwithstanding anything in sub-section (1), in the case of an insurance company, the Corporation may, in consultation with the appropriate regulator,—
- (a) classify such insurance company as a run-off entity to allow the present insurance policies to run to their expiration dates and for that purpose, the Corporation may— 35
 - (i) restrain the insurance company from writing any new business;
 - (ii) prohibit the insurance company from exercising termination rights, in accordance with the provisions of section 47;
 - (iii) take measures to replenish financial resources, including recapitalising 40 the insurance company in such manner as may be specified by regulations made by the Corporation:
- Provided that shortfall, if any, over time shall be allocated across policyholders, creditors and shareholders in accordance with section 80;

(b) sell or transfer the portfolios of the insurance company to another insurance company including a run-off entity, in such manner as may be specified by regulations made by the Corporation.

5 (3) Where the scheme of resolution referred to in sub-section (1) involves any transfer of the assets and liabilities of the specified service provider or the acquisition, amalgamation or merger of a specified service provider or any combination thereof, no such scheme shall be made by the Corporation unless the proposed transferee entity has obtained the consent of the appropriate regulator in this regard.

(4) A scheme made under this section shall have regard to,—

10 (a) the treatment of all liabilities of the specified service provider in accordance with the priority they would have in liquidation; and

(b) the treatment of such persons affected adversely by the order of classification in the category of critical risk to viability under section 45, in accordance with the priority they would have on a liquidation, to bear losses on an equal footing with each other,

15 except in such circumstances as the Corporation may, for the reasons to be recorded in writing, specify.

(5) The scheme prepared under sub-section (1) shall be published by the Corporation in the Official Gazette and a copy thereof shall be forwarded to the Central Government to be laid before both Houses of Parliament.

(6) All expenses towards the resolution costs shall be made in the following manner, namely:—

(i) the fees paid by the specified service provider to the Corporation under clause (a) of sub-section (1) of section 22, shall be utilised first;

25 (ii) the resources of the specified service provider under resolution or other external source of funding, if any, shall be utilised next, keeping in view the objectives of the Act; and

(iii) the Corporation shall pay for the remaining costs from the amounts excluding the fees utilised under clause (i) in the Corporation Resolution Fund:

30 Provided that in drawing any additional amount from the Corporation Resolution Fund, the grants, if any, received from the Government shall be utilised after exhausting the money received from all other sources in that Fund:

35 Provided further that the Corporation may recover any amounts drawn from the Corporation Resolution Fund by imposing an *ex post* fee on the specified service provider under resolution wherever possible, keeping in view the objectives of this Act, or in such manner as may be specified in the scheme, subject to any regulations made by the Corporation in this regard.

40 **49. (1)** Any scheme prepared under section 48 may contain any or all of the following matters, namely:—

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations, of the transferee specified service provider;

45 (b) the transfer to the transferee specified service provider of the business, properties, assets and liabilities of the specified service provider on such terms and conditions as may be specified in the scheme;

(c) any change in the board of directors, or the appointment of a new board of directors, of the specified service provider or of the transferee specified service provider,

and the authority by whom, the manner in which, and the other terms and conditions subject to which, such change or appointment shall be made and in the case of appointment of a new board of directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum and articles of association of the specified service provider or of the transferee specified service provider for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the resolution; 5

(e) subject to the provisions of the scheme, the continuation by or against the specified service provider or, as the case may be, the transferee specified service provider, of any legal action or proceeding pending against the specified service provider, including any arbitration proceeding immediately before the date of the order of stay under clause (b) of sub-section (5) of section 45; 10

(f) the reduction of interest or rights which the members, consumers (including depositors) and other creditors have in or against the specified service provider before its resolution, to such extent as the Corporation and the appropriate regulator consider necessary in the public interest or in the interests of the members, consumers (including depositors) and other creditors or for the maintenance of the business of the specified service provider; 15

(g) the payment in cash or otherwise to consumers (including depositors) and other creditors in full satisfaction of their claim— 20

(i) in respect of their interest or rights in or against the specified service provider before its resolution; or

(ii) where their interest or rights in or against the specified service provider has or have been reduced under sub-clause (f) in respect of such interest or rights as so reduced; 25

(h) the allotment to the members of the specified service provider for shares held by them in the specified service provider before its resolution whether their interest in such shares has been reduced under sub-clause (f) or not, of shares in the specified service provider in the transferee specified service provider and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim— 30

(i) in respect of their interest in shares in the specified service provider before its resolution; or 35

(ii) where such interest has been reduced under sub-clause (f), in respect of their interest in shares so reduced; or

(i) the continuance of the service of all the employees of the specified service provider excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947, as specifically mentioned in the scheme, in the transferee specified service provider, at the same remuneration and on the same terms and conditions of service, which they were getting, or as the case may be, by which they were being governed, immediately before the date of the order of classification in the category of critical risk to viability under stay under section 45: 40 14 of 1947.

Provided that the scheme may contain a provision that— 45

(i) the specified service provider shall pay or grant not later than three years from the date on which the scheme is made under section 48, to the said employees the same remuneration and upon the same terms and conditions of

service as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of a comparable specified service provider to be determined for this purpose by the appropriate regulator;

5 (ii) the transferee specified service provider shall pay or grant not later than three years from the date on which the scheme is made under section 48, to the said employees the same remuneration and upon the same terms and conditions of service as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of the transferee specified service provider subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee specified service provider:

15 Provided further that if in any case under clause (ii) of the first proviso, any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee specified service provider, the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause, to the appropriate regulator whose decision thereon shall be final;

20 (j) notwithstanding anything in clause (i), where any of the employees of the specified service provider not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme under clause (i) or where 14 of 1947. any employees of the specified service provider have by notice in writing given to the specified service provider or, as the case may be, the transferee specified service provider at any time before the expiry of one month next following the date on which the scheme is made under section 48, intimated their intention of not becoming employees of the transferee specified service provider, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund and other retirement benefits 25 ordinarily admissible to them under the rules or authorisations of the specified service provider immediately before the date of the order of classification in the category of critical risk to viability made under section 45;

(k) any other terms and conditions for the resolution of the specified service provider as may be specified by regulations made by the Corporation;

35 (l) such incidental, consequential and supplemental matters as are necessary to secure that the resolution shall be fully and effectively carried out; and

(m) the effect of the resolution action on any person related to the specified service provider.

40 (2) On and from the date of the coming into effect of the scheme or any provision thereof under section 48, the scheme or such provision shall be binding on the specified service provider or, as the case may be, on the transferee specified service provider and any other specified service provider concerned in the resolution and also on all the members, consumers (including depositors) and other creditors and employees of each of the specified service providers, and on any other person having any right or liability in relation to any of 45 those specified service providers, including the trustees or other persons, managing, or connected in any other manner with, any provident fund or other fund maintained by any person or the specified service provider.

(3) If any difficulty arises in giving effect to the provisions of the scheme, the Corporation, in consultation with the appropriate regulator may, by an order, do anything 50 not inconsistent with the provisions of the scheme, which appears to it necessary or expedient for the purpose of removing the difficulty.

(4) Nothing in this section shall be deemed to prevent the resolution of a specified service provider by a single scheme of several specified service providers in respect of each of which an order of classification in the category of critical risk to viability under section 45 has been made.

(5) The provisions of this section and the scheme prepared under section 48 shall have effect, notwithstanding anything to the contrary in this Act or in any other law or any agreement, award or other instrument, for the time being in force. 5

(6) Any scheme prepared under section 48 may contain all or any of the matters specified under this section to the extent it is relevant for the methods of resolution under that section, used for resolving a specified service provider. 10

(7) For the purposes of this section,—

(a) “transferee specified service provider” means an acquirer of a specified service provider under resolution;

(b) any reference to the terms and conditions of service of an employee, shall not be construed as extending to the rank or status of such employee. 15

Transfer of assets and liabilities to bridge service provider.

50. (1) The Corporation may create a bridge service provider by incorporating a company under the provisions of the Companies Act, 2013, for the purpose of resolving a specified service provider, with the aim of eventual resolution under sub-section (12). 18 of 2013.

(2) Notwithstanding anything to the contrary in the Companies Act, 2013, the shares of the bridge service provider shall be held entirely by the Corporation. 18 of 2013. 20

(3) The articles of association of the bridge service provider shall be,—

(a) approved by the Corporation; and 25

(b) executed by at least three Members of the Corporation.

(4) The bridge service provider shall have a board of directors comprising of at least three directors and not more than ten directors, as appointed by the Corporation. 30

(5) Upon an application being made by the Corporation, the appropriate regulator shall, subject to such terms and conditions as it deems fit, provide such authorisation to the bridge service provider, as may be required, as expeditiously as possible.

(6) After the appropriate regulator has granted the appropriate authorisation to the bridge service provider,— 35

(a) the Corporation may by a scheme under section 48, transfer the whole or part of the assets, liabilities, businesses, properties and undertakings of the specified service provider to such bridge service provider;

(b) the Corporation may by the scheme under section 48, provide for different arrangements for management and control at different stages; 40

(c) the bridge service provider shall have the same powers and be subject to the same laws as a specified service provider carrying out similar financial services.

(7) The Corporation may direct the bridge service provider in respect of any matter relating to its functions and the bridge service provider shall comply with such directions.

(8) The Corporation or the appropriate regulator may exempt the bridge service provider from complying with the provisions of any Act or the rules or regulations administered by the Corporation, or the appropriate regulator, as the case may be, for a period not exceeding one year. 45

(9) The bridge service provider shall be entitled to any other exemption which the Central Government may, by order, determine. 50

(10) The Corporation may provide the bridge service provider with such funds from the Corporation Resolution Fund, as may be required by the bridge service provider to carry on its business.

(11) The Corporation shall resolve the bridge service provider as expeditiously as possible, and in any event, within one year from the date of its incorporation.

(12) The Corporation shall resolve the bridge service provider by—

(a) transferring, by way of a scheme under section 48, the whole or any part of the assets, liabilities, businesses, properties or undertakings of the bridge service provider to another person capable of providing the services of a specified service provider, on such terms as may be agreed between the Corporation and such person;

(b) sale, by way of a scheme under section 48, of the shares of the bridge service provider constituting more than three-fourths of the equity capital of the bridge service provider; or

(c) liquidation of the bridge service provider under this Act and the provisions of Chapter XII shall apply, *mutatis mutandis*, to such bridge service provider.

51. (1) A specified service provider shall submit to the appropriate regulator, such details of remuneration paid to its chairperson, director, chief executive officer (by whatever name called) and such other officer, in such form and manner, within such period, as may be specified by regulations made by the appropriate regulator, in consultation with the Corporation:

Claw-back of performance incentive.

Provided that no specified service provider shall be required to submit details of remuneration when it is classified in the category of low or moderate risk to viability.

(2) The appropriate regulator shall specify by regulations made by it, the manner in which certain portion of such remuneration may be designated as performance based incentive for such chairperson, director, chief executive officer, (by whatever name called) and such other officer referred to in sub-section (1).

(3) The specified service provider may, by an order in writing, after providing an opportunity of being heard, in compliance with regulations made under sub-section (2), designate such part of the remuneration of such officers, as performance based incentive, as it considers fit.

(4) If a specified service provider is classified in the category of critical risk to viability by the appropriate regulator or by the Corporation under section 45, the Corporation may, by an order, after giving a reasonable opportunity of being heard, require an officer referred to in sub-section (5) to return the performance based incentive to the specified service provider.

(5) An officer of a specified service provider shall be subject to an order under sub-section (4), if—

(a) the officer acted, or omitted to act in a manner that caused, or materially contributed to, the specified service provider to be classified in the category of critical risk to viability; and

(b) the act was done, or the omission was made, intentionally, recklessly or negligently.

(6) The Corporation shall ensure that any act or omission referred to in sub-section (5) is commensurate with the proportion of performance based incentive which is to be returned under sub-section (4).

(7) No payment made before three years from the date on which the specified service provider was classified in the category of critical risk to viability, shall be required to be returned to the specified service provider under this section.

(8) The order under sub-section (4) shall be applicable to a chairperson, director, chief executive officer (by whatever name called) and such other officer even if such chairperson, director, chief executive officer or other officer has ceased to hold the office as such before the order was made, but held such office within the period mentioned in sub-section (7).

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(9) If a chairperson, director, chief executive officer, (by whatever name called) or such other officer fails to comply with an order made under sub-section (4), the Corporation may, by order in writing, proceed to realise the amount in the manner set out in the Second Schedule to the Income-tax Act, 1961.

43 of 1961.

Bail-in.

52. (1) Notwithstanding anything in section 49, the Corporation may, in consultation with the appropriate regulator, if it is satisfied that it necessary to bail-in a specified service provider to absorb the losses incurred, or reasonably expected to be incurred, by the specified service provider and to provide a measure of capital so as to enable it to carry on business for a reasonable period and maintain market confidence, take an action under this section by a bail-in instrument or a scheme to be made under section 48.

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(2) The bail-in instrument or scheme referred to in sub-section (1) shall be in such form and manner as may be specified by regulations made by the Corporation, and contain—

(a) a bail-in provision; or

(b) a provision for the purposes of or in connection with any bail-in provision made by that instrument or by another instrument.

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(3) Subject to sub-section (5), a bail-in provision means any or a combination of the following, namely:—

(a) a provision cancelling a liability owed by a specified service provider;

(b) a provision modifying or changing the form of a liability owed by a specified service provider; and

25

(c) a provision that a contract or agreement under which a specified service provider has a liability shall have effect as if a specified right had been exercised under it.

Explanation.—In this sub-section, the expressions,—

(a) “cancelling a liability owed by the specified service provider” includes cancelling a contract under which the specified service provider has a liability;

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(b) “modifying a liability owed by specified service provider” includes modifying the terms or the effect of the terms of a contract under which the specified service provider has a liability;

(c) “changing the form of a liability” includes—

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(i) converting an instrument under which the specified service provider owes a liability from one form or class to another;

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(ii) replacing such an instrument with another instrument of a different form or class;

(iii) creating a new security of any form or class in connection with the modification of such an instrument.

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(4) The Corporation shall, by regulations, specify the liabilities or classes of liabilities of a specified service provider, which may be subject to bail-in.

(5) The appropriate regulator may, in consultation with the Corporation, require specified service providers or classes of specified service providers to maintain liabilities that may be subject to bail-in and the terms and conditions for such liabilities to contain a provision to the effect that such liabilities are subject to bail-in.

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(6) In addition to the actions laid down in sub-section (3), the Corporation may, in consultation with the appropriate regulator, take the following actions in respect of a central counterparty, namely:—

(a) direct the haircutting of the collaterals and margins;

5 (b) direct the issuance of equity to the creditors.

Explanation.—For the purposes of this sub-section, “haircut” shall have the same meaning as assigned to it in section 44.

(7) The bail-in instrument or scheme under this section shall not affect—

10 (a) any liability owed by a specified service provider to the depositors to the extent such deposits are covered by deposit insurance;

(b) any liability that the specified service provider has by virtue of holding client assets.

Explanation.—In this clause, the expression, “client assets” shall include such assets as may be specified by regulations made by the appropriate regulator;

15 (c) any liability of original maturities upto seven days;

(d) any obligation to a central counter party;

(e) any liability, so far as it is secured;

20 (f) any liability owed to employees or workmen including pension liabilities of the specified service provider except for liabilities designated as performance based incentive under section 51;

(g) any transaction covered under section 47; and

(h) such other liabilities as may be specified by regulations made by the appropriate regulator in consultation with the Corporation and the Central Government.

25 (8) The Corporation shall forward the bail-in instrument made under this section to the Central Government together with a report in such form and manner as may be prescribed, which shall contain—

(a) the reasons why a bail-in instrument under this section was made;

(b) the effect of the bail-in instrument; and

30 (c) the deviations, if any, from the requirements of sub-section (3) and the reasons therefor.

(9) A copy of the report received under sub-section (8) shall, as soon as may be after it is received by the Central Government, be laid before each House of Parliament.

(10) The provisions of sub-sections (3) and (6) of section 49 shall apply, *mutatis mutandis*, to the bail-in instrument or scheme under this section.

35 **53.** Without prejudice to the provisions of section 52, a bail-in instrument may—

(a) cancel or modify any securities to which section 52 applies;

(b) convert any such securities from one class to another, including the creation of a new security in modification of an existing security;

40 (c) make provision with respect to the rights attaching to securities issued by the specified service provider, including—

(i) that the specified rights attaching to securities are to be treated as having been exercised;

(ii) that the Corporation is authorised to exercise such specified rights attaching to securities;

Bail-in instrument in relation to securities.

(iii) that the specified rights attaching to securities may not be exercised for a period specified in the bail-in instrument;

(d) provide for the listing of securities issued by the specified service provider to be discontinued;

(e) provide for securities issued by the specified service provider to be transferred to the Corporation or any other entity;

(f) make such other provision for or in connection with the transfer of securities issued by the specified service provider, as it may consider appropriate, whether or not the transfer was the subject of that bail-in instrument.

Onward transfer of securities.

54. (1) Where the Corporation has made a provision for transfer of securities in the bail-in instrument under clause (e) of section 53, the Corporation may make one or more onward transfer bail-in instruments.

(2) The onward transfer bail-in instrument under sub-section (1) may,—

(a) provide for the transfer of—

(i) securities issued by the specified service provider before the bail-in instrument was made and transferred by such bail-in instrument; or

(ii) securities issued by the specified service provider after the bail-in instrument was made; or

(b) make any other provision for, or in connection with the transfer of securities issued by the specified service provider whether or not the transfer was the subject of that bail-in instrument.

(3) The form and manner of the bail-in instrument under section 52 shall apply to the onward transfer bail-in instrument.

Safeguards for applying methods of resolution.

55. (1) For the purposes of this Chapter, the Corporation shall have regard to the following safeguards to the extent possible keeping in view the objectives of this Act, namely:—

(a) ensuring the continuity of critical functions of the specified service provider;

(b) ensuring that no creditor of the specified service provider is left in a worse position as a result of application of any method of resolution under section 48, than such creditor would have been in the event of its liquidation under Chapter XII;

(c) protecting the client funds, and client assets of the specified service provider, to no less an extent than they would be protected in liquidation under Chapter XII; and

(d) such other safeguards as may be specified by regulations made by the Corporation.

(2) Notwithstanding anything in sub-section (1), for the purposes of bail-in under section 52, the Corporation shall also have regard to the following additional safeguards, namely:—

(a) cancellation of the liabilities of any specified service provider to its creditors shall be done in accordance with the order of priority laid down in section 80;

(b) such liabilities may be cancelled where the instrument creating it contains a provision to the effect that the parties to the contract agree to the liability being eligible for a bail-in;

(c) equal treatment shall be given to all rights and liabilities of the same class;

(d) such other safeguards as may be specified by regulations made by the Corporation in consultation with the appropriate regulator.

(3) The Corporation shall, while exercising powers under this Act, take measures to ensure the protection of such collateral arrangements, set off or netting arrangements so as to prevent—

5 (a) the transfer of some, but not all, of the rights and liabilities that are protected under the collateral arrangements, set off or netting arrangements; and

(b) the modification or termination of rights and liabilities that are protected under collateral arrangements, set off or netting arrangements.

(4) For the purposes of sub-section (3), rights and liabilities are to be treated as protected under such arrangement if the parties to the arrangement are entitled to set-off or net those rights and liabilities:

10 Provided that the Corporation may, if it considers necessary to ensure the availability of the covered deposits—

(i) transfer covered deposits which are part of an arrangement under sub-section (3), without transferring other assets, rights or liabilities that are part of the same arrangement; or

(ii) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

(5) For the purposes of this section, the expressions,—

(a) “client assets” and “client funds” shall mean such assets or funds as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator;

(b) the expressions “collateral arrangements”, “set off and netting arrangements”, “covered deposits”, shall mean such arrangements or deposits as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator.

25 **56.** (1) The resolution of the specified service provider under this Act, shall be completed expeditiously and not later than one year from the date on which such specified service provider is classified to be at critical risk to viability:

Time limit on resolution.

Provided that the period of one year may be extended by the Corporation, by an order, for a further period not exceeding one year for reasons to be recorded in writing:

30 Provided further that the one year time limit shall not be applicable in case of liquidation under Chapter XII.

(2) In case resolution of the specified service provider is not completed within the period provided in sub-section (1), the Corporation shall liquidate such specified service provider under Chapter XII.

35 (3) The Corporation may, subject to sub-section (1), specify different time periods for resolution of specified service provider, depending on the process of resolution, the size and complexity of the specified service provider.

40 **57.** (1) The supply of services relating to the continuance of the critical functions of the specified service provider or any other person as determined by the Corporation shall not be terminated, suspended or interrupted during the resolution of such specified service provider.

Continuity of certain functions.

(2) For the purposes of sub-section (1), the Corporation may, in consultation with the appropriate regulator make such regulations as it may consider necessary .

CHAPTER XI

45 ADMINISTRATION

58. (1) From the date of classification of a specified service provider in the category of critical risk to viability under section 45,—

Powers of Corporation as an administrator.

(a) the management of the affairs of the specified service provider shall vest in the Corporation as the administrator;

(b) the powers of the board of directors of the specified service provider shall stand suspended and be exercised by the administrator;

(c) the officers and other employees of the specified service provider shall extend all assistance and co-operation to the administrator as may be required by the administrator in managing the affairs of the specified service provider; 5

(d) the financial institutions maintaining accounts of the specified service provider shall act on the instructions of the administrator in relation to such accounts and furnish all information relating to the specified service provider available with them to the administrator as may be required by him; and

(e) the Corporation shall have such other powers in relation to administration of the specified service provider, as may be specified by notification by the Central Government. 10

(2) The administrator referred to in sub-section (1), shall—

(a) act and execute in the name and on behalf of the specified service provider, all deeds, receipts, and other documents, if any; 15

(b) take such actions, in the manner and subject to such restrictions, as may be specified by notification by the Central Government;

(c) have the authority to—

(i) access the electronic records of specified service provider from any information utility or credit information system regulated under any law for the time being in force having financial information of the specified service provider; 20

(ii) access the books of account, records, and other relevant documents of specified service provider available with government authorities, statutory auditors, accountants, and such other persons as may be specified by regulations made by the Corporation; 25

(iii) appoint, in consultation with the appropriate regulator, for such period as it may determine, an officer of the Corporation to oversee the affairs of the specified service provider; and

(d) undertake any action under section 48, except liquidation of the specified service provider. 30

(3) While the Corporation is the administrator of the specified service provider,—

(a) no shareholders of the specified service provider or any other person shall nominate or appoint any person to be a director of such specified service provider;

(b) no resolution passed at any meeting of the shareholders of such specified service provider shall be given effect to, unless approved by the Corporation; and 35

(c) no person shall, notwithstanding anything in any other law or in any contract, or the memorandum or articles of association of the specified service provider, be entitled to claim any compensation for the loss or termination of his office.

(4) Notwithstanding anything in sub-section (1), the Corporation may, in consultation with the appropriate regulator, in respect of a central counterparty, take such additional measures in the manner as may be specified by regulations by the Corporation, to— 40

(a) allocate uncovered losses caused by participant default, including variation margin haircutting, utilising the initial margin of participants and making additional cash calls on its participants; 45

(b) address uncovered liquidity shortfalls such as obtaining additional funds from third-party institutions or from participants;

(c) replenish financial resources, including making cash calls on participants or recapitalising such central counterparties in such manner as may be specified by regulations made by the Corporation in consultation with the appropriate regulator;

5 (d) re-establish a matched book by a central counterparty, including forced allocation of contracts or partial or complete termination of contracts;

(e) allocate losses which are not related to participant default, including allocating additional capital;

(f) carry out set-off, close-out netting, collateralisation and segregation of member assets;

10 (g) issue equity to the creditors;

(h) impose a temporary prohibition on early termination rights; or

(i) take such other measures as may be deemed necessary by the Corporation.

(5) For the purposes of this sub-section,—

15 (a) "cash-call" shall have the same meaning as assigned to it in sub-section (2) of section 44;

(b) "haircut" shall have the same meaning as assigned to it in sub-section (2) of section 44.

20 (6) The Corporation may, subject to the provisions of sections 48 and section 49, place the specified service provider, except a central counterparty, in liquidation in accordance with the provisions of Chapter XII.

59. (1) The administrator shall perform the following functions, namely:—

Functions of administrator.

25 (a) take control and custody of any asset over which the specified service provider has ownership rights as recorded in the balance sheet of the specified service provider, or with information utility or credit information system regulated under any law for the time being in force or the depository of securities or any other registry that records the ownership of assets, including—

(i) assets over which the specified service provider has ownership rights which may be located in a foreign country;

30 (ii) assets that may or may not be in possession of the specified service provider;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets, including intellectual property;

35 (v) securities, including shares, held in any subsidiary of the specified service provider, financial instruments and insurance policies of the specified service provider; and

(vi) assets subject to the determination of ownership by a court or authority; and

(b) perform such other functions as may be prescribed.

(2) For the purposes of sub-section (1), "assets" shall not include—

40 (a) assets owned by a third party in possession of the specified service provider held under trust or under contractual arrangements, including bailment;

(b) assets of any Indian or foreign subsidiary of the specified service provider; and

45 (c) such other assets as may be notified by the Central Government in consultation with the Corporation and the appropriate regulator.

Power of Corporation to remove managerial and other persons from office.

60. (1) Without prejudice to the provisions of section 58, the Corporation may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any chairperson, director, chief executive officer (by whatever name called) or other officer or employee of the specified service provider which has been classified in the category of imminent risk to viability under section 43 or critical risk to viability under section 45, as the case may be. 5

(2) No order under sub-section (1) shall be made unless the chairperson, director or chief executive officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Corporation against the proposed order:

Provided that if in the opinion of the Corporation any delay would be detrimental to the interests of the specified service provider, the Corporation may, while giving the opportunity of making the representation, by order direct that, pending the consideration of the representation, if any, the chairperson or director or chief executive officer or other officer or employee, as the case may be, shall not, with effect from the date of such order,— 10

(a) act as such chairperson or director or chief executive officer or other officer or employee; 15

(b) in any way, whether directly or indirectly, be concerned with, or take part in the management of the specified service provider.

(3) Any person who has been removed under sub-section (1) may, within thirty days from the date of the receipt of the order, prefer an appeal to the Tribunal. 20

(4) Where any chairperson, director or chief executive officer or other officer or employee of a specified service provider has been removed under sub-section (1), he shall—

(a) cease to be the chairperson or director, chief executive officer or other officer or employee of the specified service provider; and 25

(b) not be concerned with, or take part in the management of, any specified service provider, in any way, whether directly or indirectly, for such period not exceeding five years as may be mentioned in the order.

(5) Where any chairperson, director or chief executive officer or other officer or employee of a specified service provider has been removed under sub-section (1), the Corporation may, by order in writing, appoint a person in place of the chairperson or director, or chief executive officer or other officer or employee, as the case may be, with effect from such date as may be mentioned in the order. 30

(6) Any person appointed as chairperson, director or chief executive officer or other officer or employee under this section, shall,— 35

(a) hold office, during the pleasure of the Corporation, for a period not exceeding the period of resolution specified in section 56;

(b) not incur any obligation or liability by reason only of being a chairperson, director or chief executive officer or other officer or employee or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and 40

(c) not be required to hold qualification shares in the specified service provider.

(7) Notwithstanding anything in any other law or in any contract, memorandum or articles of association of the specified service provider, on the removal of a person from office under this section, such person shall not be entitled to claim any compensation for the loss or termination of office. 45

(8) Any appointment or removal of a director, chief executive officer or other officer or employee under this section shall have effect, notwithstanding anything to the contrary in

18 of 2013. the Companies Act, 2013 or any other law for the time being in force, or in any contract or any other instrument.

5 **61.** (1) Where the Corporation is of the opinion that in the public interest or in the interests of the specified service provider, it is necessary to do so, it may, by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the specified service provider classified in the category of imminent risk to viability under section 43 or critical risk to viability under section 45, as the case may be.

Power of Corporation to appoint additional directors.

(2) Any person appointed as an additional director under this section, shall—

10 (a) hold office during the pleasure of the Corporation;

(b) not incur any obligation or liability by reason only of being a director or for anything done or omitted to be done in good faith in the execution of the duties of the office or in relation thereto; and

(c) not be required to hold qualification shares in the specified service provider.

15 (3) For the purpose of reckoning any proportion of the total number of directors of the specified service provider, any additional director appointed under this section shall not be taken into account.

20 **62.** (1) Without prejudice to the powers of the Corporation under section 58, where a specified service provider has been classified in the category of imminent risk to viability under section 43 or critical risk to viability under section 45 and the Corporation is satisfied that in the public interest or for preventing the affairs of such specified service provider from being conducted in a manner detrimental to the interest of the consumers or depositors of the specified service provider or for securing the proper management of the specified service provider, it is necessary to do so, the Corporation may, for reasons to be recorded in writing, by an order, supersede the board of directors of such specified service provider for a period not exceeding two years, as may be specified in the order.

Supersession of board of directors.

(2) The Corporation may, on supersession of the board of directors of the specified service provider under sub-section (1), appoint an officer of the Corporation as an administrator for such period as it may determine.

30 (3) The Corporation may issue such directions to the administrator as it may deem appropriate, and the administrator shall be bound to follow such directions.

(4) Upon making the order of supersession of the board of directors of a specified service provider,—

35 (a) the chairperson, managing director and other directors as on the date of such supersession shall vacate their offices;

(b) all the powers, functions and duties of the board of directors shall, until the board of directors of such specified service provider is reconstituted, be exercised and discharged by the administrator appointed under sub-section (2):

40 Provided that the power exercised by the administrator under this Act shall have effect, notwithstanding that such power is exercisable by a resolution passed in the general meeting of such specified service provider.

(5) The Corporation may constitute a committee consisting of such persons, not exceeding three, who have experience in law, finance, banking, administration or accountancy to assist the administrator in discharge of his duties.

45 (6) The committee constituted under sub-section (5), shall meet at such times and places and observe such rules of procedure as may be specified by regulations made by the Corporation.

(7) The salary and allowances payable to the administrator and the members of the committee constituted under sub-section (5), shall be such as may be specified by regulations made by the Corporation and be payable by the specified service provider.

(8) Before the expiry of the period of supersession of the board of directors under sub-section (1), the administrator shall call the general meeting of the specified service provider to elect new directors. 5

(9) Notwithstanding anything in any other law or in any other contract, or bye-laws of the specified service provider, no person shall be entitled to claim any compensation for the loss or termination of his office on supersession under this section.

(10) The administrator appointed under sub-section (2) shall vacate his office immediately after the board of directors of the specified service provider has been constituted. 10

CHAPTER XII

LIQUIDATION

Order of liquidation.

63. (1) Where the Corporation determines that liquidation is the most appropriate method for the resolution of a specified service provider under section 48, notwithstanding anything in any other law for the time being in force relating to liquidation and winding up, the Corporation shall make an application to the Tribunal for an order of liquidation in respect of such specified service provider. 15

(2) The Tribunal shall, within a period of fourteen days from the date on which an application under sub-section (1) or section 93 is received, pass an order of liquidation and appoint the Corporation as a liquidator for a specified service provider, in accordance with the provisions of this Chapter: 20

Provided that the Corporation may designate any of its officers as the liquidator for the purposes of this Chapter.

(3) The Tribunal may, while passing the order of liquidation under sub-section (2), make an order prohibiting the commencement or continuance of all legal actions and proceedings against such specified service provider, till such period as the liquidation is in continuance under this Chapter. 25

(4) On the appointment of the liquidator under sub-section (2), all powers of the board of directors, key managerial personnel and the partners of the specified service provider, shall cease to have effect and shall vest in the liquidator. 30

(5) Any person aggrieved by the order of the Tribunal under this section may, within thirty days from the receipt of the order, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days, but within a further period not exceeding fifteen days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. 35

(6) Any person aggrieved by an order of the Appellate Tribunal may, within forty-five days from the date of receipt of the order, prefer an appeal to the Supreme Court on a question of law arising out of such order under this Act: 40

Provided that the Supreme Court may, entertain an appeal after the expiry of the said period of forty-five days, but within a further period not exceeding fifteen days, if it is satisfied that such person was prevented by sufficient cause from filing an appeal within that period.

(7) The order of liquidation under sub-section (2) shall be deemed to be a notice of discharge to the officers, employees and workmen of the specified service provider, except when the business of the specified service provider is continued during the liquidation process by the liquidator. 45

64. The liability of an insured service provider to pay premium under section 21 shall cease upon the appointment of the Corporation as the liquidator under section 63.

Cessation of liability to pay premium.

65. (1) Notwithstanding anything in any other law for the time being in force, no proceeding for liquidation of a specified service provider shall be entertained by any court or tribunal other than the Tribunal, in accordance with the provisions of this Act.

Bar on jurisdiction and transfer of proceedings.

(2) Any liquidation proceeding or any other claims, suits, applications or proceedings connected thereto, pending against any specified service provider, before any court or tribunal, on the commencement of this Act, shall stand transferred to the Tribunal.

(3) Subject to section 93, when an order of liquidation has been passed under section 63,—

(a) no suit or other legal proceeding shall be instituted by or against the specified service provider before any court, tribunal or authority, except before the Tribunal; and

(b) such suit or other legal proceedings pending before any court, tribunal or authority prior to the order of liquidation under section 63 shall stand transferred to the Tribunal:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the specified service provider, with the prior approval of the Tribunal.

(4) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

66. (1) The liquidator shall have the power—

Powers of Corporation as a liquidator.

(a) to verify claims of all the creditors;

(b) to take into its custody or control all the assets, property, effects and actionable claims of the specified service provider;

(c) to carry on the business of the specified service provider for its beneficial liquidation as is considered necessary;

(d) subject to section 79, to sell the immovable and movable property and actionable claims of the specified service provider in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified by regulations made by the Corporation;

(e) to draw, accept, make and endorse any negotiable instrument including a bill of exchange, hundi or promissory note in the name and on behalf of the specified service provider, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the specified service provider in the ordinary course of its business;

(f) to take out, in its official name, a letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the specified service provider, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(g) to obtain professional assistance from any person or appoint any professional, in discharge of its duties, obligations and responsibilities and for protection of the assets of the specified service provider;

(h) to appoint an agent to do any business which the liquidator is entitled to do;

(i) to continue the employment of some or all employees of the specified service provider on such terms as may be agreed upon;

(j) to invite and settle claims of creditors (including depositors) and claimants and distribute proceeds in accordance with the provisions of this Act;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on the behalf of the specified service provider; 5

(l) to investigate the financial affairs of the specified service provider to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt, document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of its duties and obligations and functions as liquidator; 10

(n) to apply to the Tribunal for such orders or directions as may be necessary for the liquidation of the specified service provider and to report the progress of the liquidation process to the Tribunal in a manner as may be specified by regulations made by the Corporation; 15

(o) in respect of a specified service provider which is an insurance company, to reduce the amount of the insurance contracts of such specified service provider or other insurer, upon such terms and conditions as the Corporation deems fit; 20

(p) subject to the provisions of Chapter XV, engage with the resolution authorities of other jurisdictions for the purpose of giving effect to this Act; and

(q) to perform such other functions as may be prescribed.

(2) The liquidator shall have the power to consult any person entitled to proceeds from liquidation under section 80: 25

Provided that such consultation shall not be binding on the liquidator:

Provided further that the records of such consultation shall be made available to all other entitled persons not so consulted, in writing.

(3) The Central Government may make rules governing the actions of the Corporation as a liquidator under this section. 30

Liquidation estate.

67. (1) The liquidator shall, for the purposes of liquidation, form an estate of the assets mentioned in sub-section (3), which shall be called the liquidation estate in relation to the specified service provider.

(2) The liquidator shall hold the liquidation estate as a fiduciary.

(3) Subject to sub-section (4), the liquidation estate shall comprise of all assets, including— 35

(a) any tangible or intangible assets over which the specified service provider has ownership rights, all rights and interests therein as evidenced in the balance sheet of the specified service provider or an information utility or credit information system regulated under any law for the time being in force or records in the registry or any depository recording securities of the specified service provider or by any other means as may be specified by regulations made by the Corporation, and shares held in any subsidiary of the specified service provider; 40

(b) assets that may or may not be in possession of the specified service provider, including encumbered assets; 45

(c) assets subject to the determination of ownership by any court or authority;

(d) any asset or its value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(e) any asset of the specified service provider in respect of which a secured creditor has relinquished security interest;

(f) any other property belonging to or vested in the specified service provider from the date of the order of liquidation; and

5 (g) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate and shall not be used for recovery in the liquidation, namely:—

(a) assets owned by a third party which are in possession of the specified service provider, including—

10 (i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

15 (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with the appropriate regulator;

(b) assets held by a specified service provider as collateral which are subject to netting, set-off or adjustment in multi-lateral trading or clearing transactions;

20 (c) personal assets of any shareholder or partner of a specified service provider as the case may be, provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the specified service provider; or

25 (e) any other assets as may be specified by regulations made by the Corporation in consultation with the appropriate regulator.

(5) Notwithstanding anything in sub-section (3) and sub-section (4), the following shall not be included in the liquidation estate and shall not be used for recovery in the liquidation, namely:—

30 (a) any collateral or assets collected in terms of any law applicable to central counterparties;

35 (b) assets of a member of a central counterparty or the client of a member of a central counterparty held by the central counterparty or by an insured service provider, or a depository, or a custodian on behalf of the central counterparty and such assets may be subject to netting and set-off in multi-lateral trading or clearing transactions in accordance with the provisions of the rules, bye-laws, and regulations of the central counterparty.

40 (6) The payments and recoveries for the matters enumerated in sub-section (5) shall be in accordance with the, rules, bye-laws or regulations of the central counterparty and such liabilities shall be discharged before making any distributions under section 80.

68. (1) Notwithstanding anything in any other law for the time being in force, the liquidator shall have the power to access any information system for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the specified service provider from the following sources, namely:—

Power of liquidator to access information.

45 (a) an information utility;

(b) credit information systems regulated under any law for the time being in force;

(c) any agency of the Central Government, State Government or local Government, including any registration authorities;

(d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;

(e) information systems for securities and assets posted as security interest regulated under any law for the time being in force; or 5

(f) any other source as may be specified by regulations made by the Corporation.

(2) The creditors of the specified service provider may require the liquidator to provide them with any financial information relating to such specified service provider in such form and manner as may be specified by regulations made by the Corporation. 10

(3) The liquidator shall provide the information referred to in sub-section (2) to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

Consolidation of claims.

69. (1) The liquidator shall receive or collect the claims of all consumers and creditors in such manner as may be specified by regulations made by the Corporation, within a period of ninety days from the date of the commencement of the liquidation process. 15

(2) A financial creditor (other than a depositor) may submit a claim to the liquidator by providing a record of such claim with an information utility:

Provided that where the information relating to such claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor under sub-section (3). 20

(3) A depositor or operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by regulations made by the Corporation:

Provided that every depositor of a specified service provider which is a banking institution shall be deemed to have submitted its claim for the amount shown in the books of the specified service provider as standing to its credit and, notwithstanding anything to the contrary in the Companies Act, 2013 or this Act or any other law for the time being in force, the liquidator shall presume such claims to have been proved, unless it has reason for doubting its correctness. 25
18 of 2013.
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(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of the financial debt in the manner as provided in sub-section (2) and to the extent the operational debt under sub-section (3).

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission. 35

(6) For the purposes of this section, the expressions "financial creditor", "operational creditor", "financial debt" and "operational debt" shall have the meanings respectively assigned to them in section 5 of the Insolvency and Bankruptcy Code, 2016. 31 of 2016.

Verification of claims.

70. (1) The liquidator shall verify the claims submitted under section 69 within such period and in such manner as may be specified by regulations made by the Corporation. 40

(2) The liquidator may require any creditor or the specified service provider or any other person to produce any other document or evidence which in the opinion of the liquidator is necessary for the purpose of verifying the whole or any part of the claim.

Special provisions to make calls on contributories.

71. Notwithstanding anything in any other law for the time being in force, the Tribunal may, if it appears to it to be necessary or expedient so to do at any time after the appointment of the liquidator, make a call on and order payment by any contributory, if such contributory has been placed on the list of contributories by the liquidator and has not appeared to dispute his liability. 45

72. (1) Where an insured service provider has been ordered to be liquidated and the Corporation has been appointed as a liquidator under section 63, or where a liquidator, by whatever name called, has been appointed for an insured service provider, which is an eligible co-operative bank, the Corporation or the liquidator, as the case may be, shall prepare, with the least possible delay and in any case not later than ninety days from the date of its appointment as liquidator, a list in such form and manner as may be specified by regulations made by the Corporation, showing separately the deposits in respect of each depositor and the amounts of set-off in the same capacity and in the same right as referred to in section 29.

Manner of payment of deposit insurance by Corporation in case of liquidation.

(2) Before the expiry of sixty days from the receipt of such list from the insured service provider, the liquidator shall pay to the depositor, the amount payable under section 29 in respect of the deposit of each depositor—

(i) directly; or

(ii) through such agency as the liquidator may determine.

(3) Any expenses incurred by the liquidator in making payments under sub-section (2) shall be treated as expenses incurred in the liquidation of the insured service provider.

73. (1) The liquidator may, after verification of claims under section 70, admit or reject the claim, in whole or in part, as the case may be:

Admission or rejection of claims and payment of deposit insurance.

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate the decision of admission or rejection of claims to the depositor, the creditor and the insured service provider within sixty days of such admission or rejection of claims in such manner as may be specified by regulations made by the Corporation.

(3) Where the liquidator has admitted the claims of the depositors under sub-section (1), it shall proceed to pay out any amounts covered under deposit insurance in such manner as may be specified by regulations made by the Corporation.

74. A creditor or depositor aggrieved by the decision of the liquidator rejecting the claims under section 73 may, within fourteen days of the receipt of the decision, prefer an appeal to the Tribunal:

Appeal against decision of liquidator.

Provided that the Tribunal may entertain an appeal after the expiry of the said period of fourteen days, but within a further period not exceeding fifteen days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

75. The liquidator shall determine the value of claims admitted under section 73 in such manner as may be specified by regulations made by the Corporation.

Determination of valuation of claims.

76. (1) The entries in the books of account or other documents of a specified service provider which is being liquidated shall be admitted in evidence in all legal proceedings, and all such entries may be proved by the production of the books of accounts or other documents of the specified service provider containing such entries or by the production of a copy of the entries, certified by the liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the specified service provider in his possession.

Documents of specified service provider to be evidence.

(2) Notwithstanding anything in the Indian Evidence Act, 1872 all such entries in the books of account or other documents of a specified service provider shall, as against the directors, officers and other employees of the specified service provider in respect of which an order of liquidation has been made, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Public examination of directors and auditors.

77. (1) Where an order has been made for the liquidation of a specified service provider under section 63, the liquidator shall examine whether in its opinion any loss has been caused to the specified service provider since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of any person in the promotion or formation of the specified service provider or of any director or auditor of the specified service provider. 5

(2) If after examination under sub-section (1), the liquidator is of the opinion that any promoter or any person who has taken part in the conduct of business of the specified service provider or has been a director or an auditor of the specified service provider should be publicly examined, it may file an application before the Tribunal to hold a public sitting on a date to be appointed for that purpose and thereupon, the Tribunal may direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the specified service provider, or as to his conduct and dealings, provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be examined. 10 15

(3) The liquidator shall take part in the examination and for that purpose may, if specifically authorised by the Tribunal in that behalf, avail of such legal assistance as may be directed by the Tribunal.

(4) Any creditor or contributory may also take part in the examination either personally or through any person entitled to appear before the Tribunal. 20

(5) The Tribunal may put such question to the person examined as it thinks fit.

(6) The person ordered to be examined shall be examined on oath and shall answer all such questions as the Tribunal may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the Tribunal who shall be at liberty to put to him such question as the Tribunal may deem just for the purpose of enabling him to explain or qualify any answer given by him: 25

Provided that if, in the opinion of the Tribunal, he is exculpated from any charges made or suggested against him, the Tribunal may allow him such costs in its discretion as it may deem fit. 30

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory as may be necessary.

(9) Where on such examination, the Tribunal is of the opinion, as to whether or not a fraud has been committed,— 35

(a) that the person, who has been a director of a specified service provider, is not fit to be a director of a specified service provider, or

(b) that the person, who has been an auditor of a specified service provider or a partner of a firm acting as such auditor, is not fit to act as an auditor of a specified service provider or to be a partner of a firm acting as such auditor, 40

the Tribunal may make an order that the person shall not, without the leave of the Tribunal, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any specified service provider or, as the case may be, act as an auditor of, or be partner of a firm acting as auditors of any specified service provider, for such period not exceeding five years, as may be specified in the order. 45

Power of Tribunal to assess damages against delinquent directors, etc.

78. (1) Where in a proceeding of liquidation under this Act, it appears to the Tribunal that any person, who has taken part in the promotion or formation of, or who is or has been a director, manager, or officer of the specified service provider,—

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the specified service provider; or 50

(b) has been guilty of any misfeasance or breach of trust in relation to the specified service provider,

the Tribunal may, on an application made by the liquidator or any creditor or contributor, within the period specified in sub-section (2), inquire into the conduct of the person, and order him to repay or restore the money or property or any part thereof, with interest at such rate, or to contribute such sum to the assets of the specified service provider by way of compensation in respect of such misapplication or retention of any money or property or any misfeasance or breach of trust, in relation to the specified service provider, as the Tribunal considers appropriate:

10 Provided that where the specified service provider under liquidation is a banking institution, the Tribunal,—

(a) shall make an order against such person to repay and restore the money or property, unless he proves that he is not liable to make the repayment or restoration either wholly or in part;

15 (b) has reason to believe that a property belongs to that person, whether or not the property is in his name, the Tribunal may, at any time, whether before or after making an order under clause (a), direct the attachment of such property, or such portion thereof, as it considers fit and the property so attached shall remain subject to attachment, unless the owner proves to the satisfaction of the Tribunal that he is the real owner, and the provisions of the Code of Civil Procedure, 1908 relating to attachment of property shall, as far as may be, apply to such attachment.

5 of 1908. 20

(2) An application under sub-section (1) shall be made within five years from the date of the order of liquidation under section 63, or of the date when the alleged misapplication or retention of any money or property or, misfeasance or breach of trust in relation to the specified service provider, as the case may be, has been noticed, whichever is longer.

25 (3) This section shall apply, notwithstanding that the matter is one for which the person may be criminally liable.

79. (1) A secured creditor in the liquidation proceedings may—

30 (a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 80; or

(b) notwithstanding anything in sub-section (3) of section 63, realise its security interest in the manner specified under this section.

(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

35 (3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved—

40 (a) by the records of such security interest maintained by an information utility; or

(b) by such other means as may be specified by regulations made by the Corporation.

45 (4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as may be applicable to the security interest being realised, and to the secured creditor, and apply the proceeds to recover the debts due to it.

50 (5) If in the course of realising a secured asset, any secured creditor faces resistance from the specified service provider or any person connected therewith in taking possession of, selling or otherwise disposing of the security, the secured creditor may make an application to the Tribunal for an order to realise such security interest in accordance with the law for the time being in force.

Secured
creditor in
liquidation
proceedings.

(6) The Tribunal, on the receipt of an application under sub-section (5), may pass such order as may be necessary to permit a secured creditor to realise security interest.

(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall—

(a) account to the liquidator for such surplus; and

(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

(8) The amount of resolution costs (including the costs for liquidation) under clause (b) of sub-section (1) of section 80 due from secured creditors who realise their security interests under this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in section 80.

Distribution
of assets.

80. (1) Notwithstanding anything in any other law for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified by regulations made by the Corporation, namely:—

(a) the sums paid by the Corporation to a depositor of an insured service provider which is covered by deposit insurance;

(b) the resolution costs, including costs for the process of liquidation;

(c) the following debts which shall rank equally between and among the following, namely:—

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 79;

(d) wages owed to employees other than workmen for the period of twelve months preceding the date of the commencement of liquidation commencement date;

(e) the following debts which shall rank equally between and among the following, namely:—

(i) amounts due to uninsured depositors;

(ii) such amounts due to insurance policy holders as may be specified by regulations made by the Corporation;

(f) financial debts owed to unsecured creditors;

(g) the following dues shall rank equally between and among the following, namely:—

(i) any amount due to the Central Government and the State Government, including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(h) any remaining debts and dues;

- (i) preference shareholders, if any; and
- (j) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

(4) For the purposes of this section,—

(a) it is clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts shall be paid in full, or in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(b) the expression, "workmen's dues" shall have the same meaning as assigned to it in section 325 of the Companies Act, 2013.

81. (1) Where the assets of the specified service provider have been completely liquidated, the liquidator shall make an application to the Tribunal for the dissolution of such specified service provider.

Dissolution of specified service provider.

(2) The Tribunal shall, on an application made under sub-section (1), order that the specified service provider shall be dissolved from the date of that order and the specified service provider shall be dissolved accordingly.

(3) A copy of the order under sub-section (2) shall, within seven days from the date of such order, be forwarded to the authority with which the specified service provider is registered.

82. (1) Where the liquidator, is of the opinion that the specified service provider has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Tribunal for avoidance of preferential transactions and for, one or more of the orders referred to in section 83.

Preferential transactions and relevant time.

(2) A specified service provider shall be deemed to have given a preference, if—

(a) there is a transfer of property or an interest thereof of the specified service provider for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the specified service provider; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 80.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers—

(a) transfer made in the ordinary course of the business or financial affairs of the specified service provider or the transferee;

(b) any transfer creating a security interest in property acquired by the specified service provider to the extent that—

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by the specified service provider to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the specified service provider receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the specified service provider. 5

(4) For the purposes of sub-section (3), "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt. 10

(5) A preference shall be deemed to be given at a relevant time, if—

(a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the liquidation commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the liquidation commencement date. 15

Orders in case of preferential transactions.

83. (1) The Tribunal may, on an application made by the liquidator under sub-section (1) of section 82, by an order,—

(a) require any property transferred in connection with the giving of the preference to be vested in the specified service provider; 20

(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security interest created by the specified service provider;

(d) require any person to pay such sums in respect of benefits received by him from the specified service provider to the liquidator, as the Tribunal may direct; 25

(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Tribunal deems appropriate; 30

(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) direct for providing the extent to which any person whose property is so vested in the specified service provider, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference: 35

Provided that an order under this section shall not— 40

(a) affect any interest in property which was acquired from a person other than the specified service provider or any interest derived from such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator. 45

(2) For the purposes of this section,—

(a) it is clarified that where a person, who has acquired an interest in property from another person other than the specified service provider, or who has received a benefit from the preference or such another person to whom the specified service provider gave the preference,—

5 (i) had sufficient information of the initiation or commencement of liquidation process of the specified service provider;

(ii) is a related party,

it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown;

10 (b) a person shall be deemed to have sufficient information or opportunity to avail such information if an order of liquidation has been made under section 63.

15 **84. (1)** If the liquidator, on an examination of the transactions of the specified service provider referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 85, which were undervalued, he shall make an application to the Tribunal to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

Avoidance of undervalued transactions.

(2) A transaction shall be considered undervalued where the specified service provider—

(a) makes a gift to a person; or

20 (b) enters into a transaction with a person which involves the transfer of one or more assets by the specified service provider for a consideration the value of which is significantly less than the value of the consideration provided by the specified service provider, and such transaction has not taken place in the ordinary course of business of the specified service provider.

25 **85. (1)** In an application for avoiding a transaction which has been undervalued, the liquidator shall demonstrate that—

Relevant period for avoidable transactions.

(a) such transaction was made with any person within the period of one year preceding the liquidation commencement date; or

30 (b) such transaction was made with a related party within the period of two years preceding the liquidation commencement date.

(2) The Tribunal may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.

35 **86. (1)** Where an undervalued transaction has taken place and the liquidator has not reported it to the Tribunal, a creditor, Member or a partner of a specified service provider, as the case may be, may make an application to the Tribunal to declare such transactions void and reverse their effect in accordance with this Chapter.

Application by creditor in cases of undervalued transactions.

(2) Where the Tribunal, after examination of the application made under sub-section (1), is satisfied that—

(a) undervalued transactions had occurred; and

40 (b) the liquidator after having sufficient information or opportunity to avail information of such transactions did not report such transactions to the Tribunal,

it shall pass an order restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 84 and section 87.

45 **87.** The order of the Tribunal declaring the undervalued transactions as void under sub-section (1) of section 84 may provide for the following, namely:—

Order in cases of undervalued transaction.

(a) require any property transferred as part of the transaction, to be vested in the specified service provider;

(b) release or discharge (in whole or in part) any security interest granted by the specified service provider;

(c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator, as the Tribunal may direct; or

(d) require the payment of such consideration for the transaction as may be determined by an independent expert. 5

Transactions defrauding creditors.

88. Where the specified service provider has entered into an undervalued transaction as referred to in sub-section (2) of section 84 and the Tribunal is satisfied that such transaction was deliberately entered into by such specified service provider—

(a) for keeping assets of the specified service provider beyond the reach of any person who is entitled to make a claim against the specified service provider; or 10

(b) in order to adversely affect the interests of such person in relation to the claim,

the Tribunal shall make an order—

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and 15

(ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this sections shall not—

(a) affect any interest in property which was acquired from a person other than the specified service provider and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such interest; and 20

(b) require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction. 25

Extortionate credit transactions.

89. (1) Where the specified service provider has been a party to an extortionate credit transaction involving a financial or operational debt during the period within two years preceding the liquidation commencement date, the liquidator, may make an application for avoidance of such transaction to the Tribunal if the terms of such transaction required exorbitant payments to be made by the specified service provider. 30

(2) The Corporation may specify by regulations the circumstances in which a transaction shall be covered under sub-section (1).

(3) For the purposes of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall not be considered as an extortionate credit transaction. 35

Orders of Tribunal in respect of extortionate credit transactions.

90. Where the Tribunal after examining the application made under sub-section (1) of section 89 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the specified service provider, it shall, by an order—

(a) restore the position as it existed prior to such transaction;

(b) set aside the whole or part of the debt created on account of the extortionate credit transaction; 40

(c) modify the terms of the transaction;

(d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or

(e) require any security interest that was credited as part of the extortionate credit transaction to be relinquished in favour of the liquidation estate. 45

5 **91.** (1) On being appointed as a liquidator or an administrator of a specified service provider, the Corporation may, by an order in writing, require parties related to the specified service provider to continue to provide such services or honour such contracts as the Corporation may direct, for a period not exceeding two years from the date of such appointment, for effective resolution of the specified service provider. Assistance by related parties.

18 of 2013. (2) For the purposes of this section, the expression "related party" includes a "holding company", "subsidiary company" or "associate company" as defined in the Companies Act, 2013 and any other person with similar relationship with the specified service provider.

10 **92.** (1) The appropriate regulator shall provide necessary assistance and co-operation to the Corporation in the discharge of its duties under this Chapter. Assistance and co-operation.

15 (2) For the purpose of enabling the Corporation to take into its custody or under its control, all property, effects and actionable claims to which a specified service provider under liquidation, is or appears to be entitled, the Corporation may request in writing the District Magistrate within whose jurisdiction any property, books of account or other documents of such specified service provider may be situated or be found, to take possession thereof, and the District Magistrate shall, on such request,—

(a) take possession of such property, books of account or other documents; and

(b) forward them to the Corporation.

20 (3) Where any property or effects of the specified service provider under liquidation, are in the possession of the District Magistrate, such Magistrate shall, on an application made by the Corporation, sell such property and effects and forward the net proceeds of the sale to the Corporation:

Provided that such sale shall, as far as practicable, be by public auction.

25 (4) For the purpose of securing compliance with the provisions of sub-section (3), the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary and shall provide necessary assistance and co-operation to the Corporation in the discharge of its duties under this Chapter.

CHAPTER XIII

30 VOLUNTARY LIQUIDATION AND WINDING-UP

31 of 2016. **93.** (1) A specified service provider classified in the category of low or moderate risk to viability may close its business and liquidate itself voluntarily under section 59 of the Insolvency and Bankruptcy Code, 2016, subject to such conditions as may be specified by regulations made by the appropriate regulator: Voluntary liquidation.

35 Provided that if the risk to viability classification of such specified service provider is changed to material or higher category at any stage of such voluntary liquidation proceedings, the proceedings shall lapse and the specified service provider shall be resolved in accordance with the provisions of this Act.

40 (2) A specified service provider classified in the category of material or higher risk to viability shall not be eligible for voluntary liquidation.

18 of 2013. **94.** (1) Notwithstanding anything in the Companies Act, 2013, the Tribunal shall not entertain any application for winding-up of a specified service provider or bridge service provider under section 271 of that Act, unless the Tribunal obtains a report from the Corporation stating that such a specified service provider should be liquidated: Winding-up under section 271 of the Companies Act, 2013.

45 Provided that, where the specified service provider is classified in the category of low, moderate or material risk to viability, the Corporation shall require the appropriate regulator to furnish the report for submission before the Tribunal.

(2) Upon submission of the report by the Corporation, if the Tribunal is satisfied that the specified service provider has to be liquidated, it shall appoint the Corporation as the liquidator, and the specified service provider shall be liquidated as per the provisions of this Act.

CHAPTER XIV

5

FOREIGN RESOLUTION ACTION

Power to enter into memorandum of understanding.

95. (1) The Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of this Act.

(2) Without prejudice to sub-section (1), the Corporation may, with the prior approval of the Central Government, enter into memorandum of understanding with such international organisations or other authorities outside India, which have functions similar to those of the Corporation, for sharing information on reciprocal basis to the extent permissible under any law for the time being in force in India.

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(3) Subject to the provisions of this Act or any other law for the time being in force in India, the information received by the Corporation from the authorities referred to in sub-section (2), shall be treated as confidential.

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(4) The Corporation shall require the authority outside India to maintain confidentiality of the information furnished by it under the memorandum of understanding and not to disclose the information to any person or authority:

Provided that in case the laws of the country of the authority outside India do not provide immunity from disclosure of the information furnished by the Corporation and such authority is directed by a court of law, Tribunal or other authority to disclose such information, the said authority shall inform the Corporation forthwith of such direction.

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(5) Subject to the provisions of this Act, the Corporation shall assist on a reciprocal basis the authority outside India with whom it has entered into a memorandum of understanding under sub-section (2), in the resolution of a branch office, situated in India and which is a specified service provider, of a person situated in the country of such authority.

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(6) Notwithstanding anything in this Act or any law for the time being in force in India, if in the course of resolution or liquidation proceedings, as the case may be, under this Act, the Corporation is of the opinion that assets of the specified service provider, are situated in a country outside India with which reciprocal arrangements have been made under this section, the Corporation may make an application to the Tribunal that the evidence or action relating to such assets is required in connection with such process or proceeding.

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(7) The Tribunal on receipt of an application under sub-section (6) and, on being satisfied that evidence or action relating to assets under that sub-section is required in connection with resolution or liquidation proceedings, may issue a letter of request to a court or an authority of such country competent to deal with such request.

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Recognition and enforcement or refusal of recognition and enforcement of foreign resolution actions.

96. (1) Subject to any agreement or memorandum of understanding referred to in section 95, if the Corporation receives a written request from a foreign resolution authority for the recognition of a foreign resolution action in relation to,—

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(a) a body corporate incorporated outside India, whose branch office is a specified service provider; or

(b) a holding company of such body corporate which is a specified service provider,

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it may, with the prior approval of the Central Government, make a recognition and enforcement order, recognising such resolution action or a part thereof in accordance with this section.

(2) A recognition and enforcement order under sub-section (1) shall be made after consultation with the appropriate regulator, and shall be subject to such conditions as may be specified in the order.

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(3) Where the Corporation recognises a resolution action and makes an order under sub-section (1), it shall, within seven days of such order, publish the recognition and enforcement order in such manner as may be specified by regulations made by the Corporation, and send copies thereof to the specified service provider, the appropriate regulator, the appropriate resolution authority of the body corporate incorporated outside India, and to the Central Government.

(4) The foreign resolution action referred to in sub-section (1) shall not be recognised, unless the following conditions are satisfied, namely:—

(i) the foreign resolution action shall not be in derogation of the safeguards contained in section 55 of this Act in relation to the Indian stakeholders affected by such resolution action;

(ii) subject to any netting or set off in accordance with the provisions of the Reserve Bank of India Act, 1934, the Securities Contracts (Regulation) Act, 1956 or the Payment and Settlement Systems Act, 2007, as applicable, the creditors of the specified service provider which is a branch office in India of a body corporate incorporated outside India shall have the first charge on the unencumbered assets of the specified service provider in relation to which such recognition and enforcement order is being made.

(5) Without prejudice to sub-sections (1), (2) (3) and (4) of section 95, the Corporation may refuse to recognise a resolution action if in the opinion of the Corporation—

(i) the action may have an adverse impact on the financial stability of India;

(ii) the action is not consistent with the objectives of this Act;

(iii) the action is not consistent with the laws of India;

(iv) the action is opposed to the public policy of India;

(v) independent resolution action under the provisions of this Act is necessary to achieve the objectives of this Act.

(6) For the purposes of this section,—

(a) "holding company", in relation to a body corporate means a company of which such body corporate referred to in sub-section (1) is a subsidiary through any number of layers;

(b) "layer" in relation to a holding company, means its subsidiary or subsidiaries.

97. (1) Notwithstanding anything in this Act, but subject to any agreement or memorandum of understanding referred to in section 95, in the event of a foreign resolution action, including liquidation, in respect of a body corporate incorporated outside India, whose branch office in India is a specified service provider,—

Rights of local creditors in certain cases.

(a) such branch office may be classified in the category of critical risk to viability by the appropriate regulator, and resolved in accordance with the provisions of this Act; and

(b) subject to any netting or set off in accordance with the Reserve Bank of India Act, 1934, the Securities Contracts (Regulation) Act, 1956 or the Payment and Settlement Systems Act, 2007, as applicable, the creditors of such specified service provider which is a branch office in India of a body corporate incorporated outside India shall have first charge on the unencumbered assets of the specified service provider for the purpose of resolution or liquidation under this Act:

Provided that where a body corporate incorporated outside India has not entered into resolution or liquidation, but its branch office in India, being a specified service provider, has been classified in the category of critical risk to viability under section 45 and is being resolved under this Act, the creditors of such branch office shall, subject to any agreement or memorandum of understanding referred to in section 95, have first charge under clause (b).

(2) For the purposes of this Chapter, the expression "foreign resolution action" shall have such meaning as may be determined by the Corporation in consultation with the appropriate regulator.

CHAPTER XV

OFFENCES AND PENALTIES

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Punishment for concealment of property.

98. Where any officer of the specified service provider has,—

(i) within the twelve months immediately preceding the date of the order of liquidation,—

(a) wilfully concealed any property or part of such property of the specified service provider or concealed any debt due to, or from, the specified service provider, of the value of ten thousand rupees or more; or 10

(b) fraudulently removed any part of the property of the specified service provider of the value of ten thousand rupees or more; or

(c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the specified service provider or its affairs, or 15

(d) wilfully made any false entry in any book or paper affecting or relating to the property of the specified service provider or its affairs; or

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the specified service provider or its affairs; or 20

(f) wilfully created any security interest over, transferred or disposed of any property of the specified service provider which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the specified service provider; or 25

(g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in sub-clauses (c), (d) or (e); or

(ii) at any time after the date of the order of liquidation, committed any of the acts mentioned in sub-clauses (a) to (f) of clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of the said clause; or 30

(iii) at any time after the date of the order of liquidation, taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed, such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both: 35

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the specified service provider.

Punishment for transactions defrauding creditors.

99. On or after the date of the order of liquidation, if an officer of the specified service provider or the specified service provider— 40

(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the specified service provider;

(b) has concealed or removed any part of the property of the specified service provider within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the specified service provider, 45

such officer of the specified service provider or the person in control of such specified service provider shall be punishable with imprisonment for a term which shall not be less

than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both:

5 Provided that a person shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the date of the order of liquidation, or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the specified service provider.

100. On or after the date of the order of liquidation under section 63, where an officer of the specified service provider or the bridge service provider, as the case may be,—

Punishment for misconduct on liquidation.

10 (a) does not disclose to the Corporation all the details of property of the specified service provider or the bridge service provider, and details of transactions thereof, or any such other information as the Corporation may require; or

(b) does not deliver to the Corporation all or part of the property of the specified service provider or the bridge service provider in his control or custody and which he is required to deliver; or

15 (c) does not deliver to the Corporation all books and papers in his control or custody and which he is required to deliver; or

(d) fails to inform the Corporation the information in his knowledge that a debt has been falsely proved by any person during the liquidation; or

20 (e) prevents the production of any book or paper affecting or relating to the property or affairs of the specified service provider or the bridge service provider; or

25 (f) accounts for any part of the property of the specified service provider or the bridge service provider by fictitious losses or expenses, or if he has attempted to so account at any meeting of the creditors of the specified service provider or the bridge service provider within the twelve months immediately preceding the date of the order of liquidation,

he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both:

30 Provided that nothing in this section shall render a person liable to any punishment under this section, if he proves that he had no intent to do so in relation to the state of affairs of the specified service provider.

35 **101.** On and after the date of the order of liquidation, where any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the specified service provider with an intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

Punishment for falsification of books of specified service provider.

40 **102.** Where an officer of the specified service provider makes any material and wilful omission in any statement relating to the affairs of the specified service provider, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

Punishment for wilful and material omissions from statements relating to affairs of specified service provider.

45 **103.** (1) Where the specified service provider or any of its officer contravenes the provisions of sub-section (5) of section 45 or section 63, any such officer who knowingly or wilfully committed or authorised or permitted such contravention, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to

Punishment for contravention of prohibition made under this Act.

five years or with fine which shall not be less than one lakh rupees, but which may extend to three lakh rupees, or with both.

(2) Where any creditor contravenes the provisions of sub-section (5) of section 45 or sub-section (3) of section 63, any person who knowingly and wilfully authorised or permitted such contravention by a creditor, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both. 5

Punishment for interference in investigation.

104. If any person fails without reasonable cause or refuses—

(a) to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document or record or to furnish any information which it is his duty under sub-section (2) or sub-section (3) of section 14 to furnish; or 10

(b) to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him in pursuance thereof by the Investigating Authority under sub-section (4) of section 14; or 15

(c) to sign the notes of any examination referred to in sub-section (5) of section 14,

such person shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to twenty-five crore rupees, or with both, and if the contravention is a continuing one, with a further fine which may extend to ten lakh rupees for every day after the first during which the contravention continues. 20

Other offences.

105. (1) Where any employee, manager or person in control of a specified service provider,—

(a) transfers any assets of the specified service provider in violation of any order of the appropriate regulator or the Corporation under this Act; 25

(b) transfers any assets of the specified service provider after such specified service provider has been classified in the category of imminent risk to viability;

(c) transfers any assets of the specified service provider before it is classified in the category of imminent risk to viability, with the objective of reducing the amount of assets available to the Corporation as an administrator or liquidator; 30

(d) refuses to provide information regarding the specified service provider in liquidation when required to do so by the Corporation; or

(e) conceals or provides false information regarding a specified service provider in resolution when required by the Corporation to so provide, 35

such employee, manager or person in control of the specified service provider shall, in addition to the payment of the amount disgorged, if any, be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, and with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees. 40

(2) If any person,—

(a) assists a person in committing any offence under sub-section (1);

(b) knowingly accepts or deals in any asset of a specified service provider which is in resolution; or

(c) causes any asset of a specified service provider in resolution to be hidden from the Corporation, 45

such person shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, and with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees.

(3) Whoever in any return, balance-sheet, or other document or in any information required or furnished by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment which may extend to three years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

(4) If any person fails to produce any book, account or other document, or to furnish any statement or information which under the provisions of this Act, it is his duty to produce or furnish, he shall be punishable with a fine which may extend to two thousand rupees in respect of each offence and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day after the first during which the contravention continues.

(5) Where a specified service provider,—

(a) fails to intimate a material change in the restoration plan or a resolution plan under section 41; or

(b) fails to modify and resubmit a restoration plan or the resolution plan under section 41,

every officer in default of such specified service provider shall be punishable with fine which may extend to one crore rupees or imprisonment for a term which may extend to five years or with both.

106. (1) Where an offence 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:

Offences by companies.

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

(2) Notwithstanding anything in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary, or other officer or employee of the company, such director, manager, secretary, other officer or employee shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Any offence punishable under this Act shall be deemed to have been committed at the place where the registered office or the principal place of business as the case may be, of the company in India, is situated.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a Corporation, statutory body, a co-operative society or a firm or other association of individuals; and

(b) “director”, in relation to a firm means a partner in the firm.

107. (1) Any person who deliberately contravenes any of the provisions of this Act or the rules or regulations made under this Act, shall be liable to a penalty which shall not be less than the amount of unlawful gains accrued out of such contravention, but which may extend to three times the said amount of unlawful gains or twenty-five crore rupees, whichever is higher.

Penalty for contravention of provisions of this Act or rules and regulations made thereunder.

(2) Any person who by gross negligence or any person related to the specified service provider, who violates any order, regulation or rule under this Act, shall be liable to a penalty which may extend up to two times the amount of unlawful gains accrued out of such violation or extend up to five crore rupees, whichever is higher.

Penalty in relation to restoration and resolution plans.

108. (1) Any specified service provider which fails to submit a restoration plan or resolution plan under section 38 shall be liable to a penalty which may extend to twenty-five crore rupees. 5

(2) Any specified service provider which fails to update a restoration plan or resolution plan under section 41 shall be liable to a penalty which may extend to five crore rupees.

(3) Any systemically important financial institution which fails to update a restoration plan or a resolution plan under section 41 shall be liable to a penalty which may extend to ten crore rupees. 10

(4) Any specified service provider which fails to intimate a material change in the restoration plan or a resolution plan under section 41 shall be liable to a penalty which may extend to ten crore rupees. 15

(5) Any systemically important financial institution which fails to intimate a material change shall be liable to a penalty which may extend to twenty-five crore rupees.

(6) Any specified service provider which fails to modify and resubmit a restoration plan or the resolution plan under section 41 shall be liable to a penalty which may extend to ten crore rupees. 20

(7) Any systemically important financial institution which fails to modify and resubmit its restoration plan or the resolution plan under section 41 shall be liable to a penalty which may extend to twenty-five crore rupees.

Power to adjudicate penalty.

109. (1) For the purposes of imposition of penalty under section 107 or section 108, the Corporation or the appropriate regulator, as the case may be, shall appoint an officer of such rank and in such manner as may be prescribed, to be an adjudicating officer for holding an inquiry in the prescribed manner after giving the relevant specified service provider or the person a reasonable opportunity of being heard for the purpose of imposing any penalty. 25

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, after being satisfied that the person has failed to comply with the provisions of section 107 or section 108, may impose such penalty as the adjudicating officer thinks fit in accordance with the provisions of this section. 30 35

(3) The Corporation or the appropriate regulator, as the case may be, may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in accordance with the provisions of this Act, it may, after making or causing to be made such inquiry as it deems necessary, pass an order modifying the quantum of penalty, if the circumstances of the case so justify: 40

Provided that no such order shall be passed unless the relevant specified service provider or the person has been given an opportunity of being heard in the matter:

Provided further that nothing in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 111, whichever is earlier. 45

(4) While adjudging the quantum of penalty under this section, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the nature and seriousness of the violation committed by the relevant specified service provider or person;

5 (b) the consequences and impact of the violation including the extent of benefit or unfair advantage gained by the relevant specified service provider or person or loss caused or likely to be caused to other persons as a result of the violation;

(c) the amount of loss caused to a consumer or a group of consumers as a result of the default;

10 (d) the conduct of the relevant specified service provider or person after discovery of the occurrence of the violation;

(e) the repetitive nature of the default;

(f) the deliberate, reckless or negligent nature of the contravention;

15 (g) offences committed by the relevant specified service provider or person under this Act.

43 of 1961. **110.** If any person fails to comply with an order issued under this Chapter requiring him to pay any amount by way of penalty, the Corporation may, by order in writing, recover the amount of penalty in accordance with the provisions of the Second Schedule to the Income-tax Act, 1961. Recovery of penalty under this Chapter.

20 **111.** (1) Any person aggrieved by an order imposing penalty under section 109 may prefer an appeal to the Tribunal. Appeal against order of penalty.

25 (2) An appeal under this section shall be filed within a period of forty-five days from the date on which a copy of the order made by the Corporation or the appropriate regulator is received by the aggrieved person and shall be in such form and manner and be accompanied by such fee as may be prescribed:

Provided that the Tribunal may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

2 of 1974. 30 **112.** (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, all offences under this Act shall be triable by the Special Court established under section 435 of the Companies Act, 2013. Trial of offences by Special Court.

(2) No court shall take cognizance of any offence under this Act, except on the complaint in writing made by the Central Government, Corporation or any person authorised by the Central Government in this behalf.

2 of 1974. 35 (3) Save as provided under this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

2 of 1974. 40 (4) Notwithstanding anything in the Code of Criminal Procedure, 1973, where the complainant under sub-section (2) is the Central Government or Corporation or an officer authorised by the Central Government, the presence of such officer before the court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

2 of 1974. 45 **113.** The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court. Appeal and revision.

CHAPTER XVI

COMPENSATION

Application and appointment of valuer.	<p>114. (1) If the outcome of a resolution action of the Corporation is not in consonance with the safeguard for applying methods of resolution specified in clause (b) of sub-section (1) of section 55, any person aggrieved by such action may, within sixty days of completion of the resolution, make an application for compensation to the Tribunal.</p> <p>(2) The Tribunal shall, within fifteen days of the receipt of the application under sub-section (1), appoint a registered valuer as an independent valuer for the purpose of this Chapter, subject to such criteria as may be prescribed.</p> <p>(3) Upon appointment under sub-section (2), the independent valuer shall assess whether the applicant has received less favourable treatment in resolution than he would have in the event of liquidation of the specified service provider in accordance with Chapter XII.</p> <p>(4) For the purposes of this Chapter, the expression, "registered valuer" means a person registered as such in accordance with the Companies Act, 2013 and the rules made thereunder.</p>	5
Access to information.	<p>115. The Corporation and the specified service provider shall provide such records, documents and information to the independent valuer as may be required for the purposes of this Chapter.</p>	
Valuation report.	<p>116. (1) The independent valuer appointed under section 114 shall, within sixty days from the date of appointment, submit a report to the Tribunal setting out its assessment of whether any compensation is to be awarded to the applicant.</p> <p>(2) The copies of the report submitted under sub-section (1) shall be forwarded, within seven days of its submission, to the applicant, the specified service provider, the Corporation, and the appropriate regulator.</p> <p>(3) On receipt of the valuation report, where the Tribunal is of the opinion that—</p> <p style="padding-left: 40px;">(i) the valuation report was not prepared in accordance with this Chapter; or</p> <p style="padding-left: 40px;">(ii) the valuer should have had regard to any additional circumstances not taken into account in the valuation report,</p> <p>the Tribunal, may by an order in writing, direct the valuer to reconsider the valuation report or any aspect thereof and submit a revised report or replace the valuer, and pass such other orders as may be required.</p>	20 25 30
Confidentiality.	<p>117. (1) The independent valuer shall not divulge any information relating to any specified service provider, its consumers, the Corporation, or the appropriate regulator except as required under any other law, or when so authorised by this Act.</p> <p>(2) The obligation to maintain confidentiality under this section shall continue after the independent valuer has ceased to perform his functions under this Chapter.</p>	35
Award of compensation.	<p>118. (1) The Tribunal may, within thirty days from the receipt of the valuation report under section 116, if it is satisfied, direct the Corporation to make arrangements to pay such compensation to the applicant from the Corporation Resolution Fund, as the Tribunal deems fit.</p> <p>(2) The Corporation shall pay to the applicant amount of compensation awarded under sub-section (1) within seven days from the receipt of the order.</p>	40
Appeal and finality of resolution action.	<p>119. (1) The applicant or the Corporation aggrieved by the decision of the Tribunal under section 118 may, within sixty days of such decision, prefer an appeal to the Appellate Tribunal.</p>	45

(2) Any decision under this Chapter shall not affect anything done or any action taken under Chapters IX, X and XI except to the extent provided under this chapter.

CHAPTER XVII

SPECIAL PROVISIONS RELATING TO ELIGIBLE CO-OPERATIVE BANKS

5 **120.** (1) On the commencement of this Act, an eligible co-operative bank as defined
 47 of 1961. under clause (gg) of section 2 of the Deposit Insurance and Credit Guarantee Corporation
 Act, 1961, shall, be deemed to be an eligible co-operative bank for the purposes of this Act
 for a period of two years which may be extended by a further period not exceeding one year,
 as may be notified by the Central Government or until the law governing such eligible
 10 co-operative bank meets with the requirements of this Act, whichever is earlier.

Continuation
 of deposit
 insurance for
 eligible co-
 operative
 banks.

(2) If on the expiry of the period specified in sub-section (1), the law for the time being governing the co-operative bank fails to meet the requirements of this Act, the cooperative bank shall cease to be an insured service provider under this Act.

15 **121.** (1) An eligible co-operative bank may be wound up in the following
 circumstances, namely:—

Circumstances
 in which
 winding up of
 eligible co-
 operative
 banks can be
 sought under
 this Act.

10 of 1949. (a) the co-operative bank has failed to comply with the requirements specified
 in section 11 of the Banking Regulation Act, 1949;

10 of 1949. (b) the co-operative bank has by reason of the provisions of section 22 of the
 20 Banking Regulation Act, 1949 become disentitled to carry on banking business in
 India;

10 of 1949. (c) the co-operative bank has been prohibited from receiving fresh deposits by
 an order under sub-section (4) of section 35 of the Banking Regulation Act, 1949 or
 2 of 1934. under clause (b) of sub-section (3A) of section 42 of the Reserve Bank of India
 Act, 1934;

25 (d) the co-operative bank having failed to comply with any requirement of the
 10 of 1949. Banking Regulation Act, 1949 other than the requirements laid down in section 11
 thereof, has continued such failure or, having contravened any provision of that Act
 has continued such contravention beyond such period or periods as may be stipulated
 in that behalf by the Reserve Bank of India, from time to time, after notice in writing of
 30 such failure or contravention has been conveyed to the co-operative bank;

(e) the co-operative bank is unable to pay its debts; or

(f) in the opinion of the Reserve Bank of India,—

35 (i) a compromise or arrangement sanctioned by a competent authority in
 respect of the co-operative bank cannot be worked satisfactorily with or without
 modifications; or

(ii) the continuance of the co-operative bank is prejudicial to the interests
 of its depositors.

40 (2) Without prejudice to the provisions of any other law for the time being in force, a
 co-operative bank shall, for the purpose of clause (e) of sub-section (1), be deemed to be
 unable to pay its debts—

10 of 1949. (i) if, on the basis of the returns, statements or information furnished to the
 Reserve Bank of India in pursuance of the provisions of the Banking Regulation Act,
 1949, the Reserve Bank of India is of opinion that the co-operative bank is unable to
 pay its debts; or

45 (ii) if the co-operative bank has refused to meet any lawful demand made at any
 of its offices or branches within two working days, if such demand is made at a place
 where there is an office, branch or agency of the Reserve Bank of India, or within

five working days if such demand is made elsewhere and, in either case, the Reserve Bank of India certifies in writing that the co-operative bank is unable to pay its debts.

CHAPTER XVIII

MISCELLANEOUS

Repayment of amount to Corporation.	<p>122. (1) Where any amount has been paid by the Corporation under section 30 or section 72, or any provision for which has been made under section 32, the Corporation shall furnish to the liquidator or to the insured service provider or to the transferee insured service provider, as the case may be, information as regards the amount so paid or provided for.</p> <p>(2) On receipt of the information under sub-section (1), notwithstanding anything to the contrary in any other law for the time being in force,—</p> <p>(a) the liquidator shall, within such period and in such manner as may be prescribed, repay to the Corporation out of the amount, if any, payable by him in respect of any deposit, such sum as to make up the amount paid or provided for by the Corporation in respect of that deposit;</p> <p><i>Explanation.</i>—Where the Corporation has been appointed as the liquidator under section 63, repayment to the Corporation may be by way of an adjustment to the funds of the Corporation in such manner as may be specified by regulations made by the Corporation;</p> <p>(b) the insured service provider or, the transferee insured service provider, as the case may be, shall within such period and in such manner as may be prescribed, repay to the Corporation out of the amount, if any, to be paid or credited in respect of any deposit after the date of the coming into force of the scheme referred to in section 30, such sum as to make up the amount paid or provided for by the Corporation in respect of that deposit.</p>	5 10 15 20 25
Declaration of fidelity.	<p>123. Every Member, officer or employee, or independent valuer or any other person whose services are utilised by the Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Third Schedule.</p>	
Disclosure of information.	<p>124. (1) The Corporation or the appropriate regulator shall not divulge any information relating to any specified service provider or its consumers, except as otherwise required by section 128, or under any other law for the time being in force, or when so authorised by this Act.</p> <p>(2) Notwithstanding anything in any other law for the time being in force, no court, tribunal or other authority shall compel the Corporation or the appropriate regulator to produce, or to give information on any inspection relating to a specified service provider or its consumers, by the Corporation, or the appropriate regulator, as the case may be, under this Act.</p>	30 35
Indemnity of Members.	<p>125. (1) Every Member shall be indemnified by the Corporation against all losses and expenses incurred by him in, or in relation to, the discharge of his duties under this Act except such as have been caused by his own wilful act or default.</p> <p>(2) A Member shall not be responsible for any other Member or for any other officer or other employee of the Corporation, or for any loss or expenses resulting to the Corporation from the insufficiency or deficiency of value of or title to any property or security acquired or taken on behalf of the Corporation or the wrongful act of any debtor or any person under obligation to the Corporation or anything done in good faith in the execution of the duties of his office or in relation thereto.</p>	40 45

	126. No suit or other legal proceeding shall lie against the Corporation or the appropriate regulator, or any Member or officer of the Corporation or of the appropriate regulator for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulations made thereunder.	Protection of action taken under this Act.
12 of 2003. 5	127. Nothing in the Competition Act, 2002, shall apply to any action taken by the Corporation or the appropriate regulator under Chapters X, XI and XII of this Act.	Provisions of the Competition Act, 2002 not to apply in certain cases.
	128. Notwithstanding anything in section 124, the Corporation and the appropriate regulator shall—	Information sharing between appropriate regulator and Corporation.
10	(a) share and exchange, supervisory information, including inspection reports, relating to such specified service providers which have been classified in the category of material, imminent or critical risk to viability and in such form and manner as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator, or whenever any material information comes to light:	
15	Provided that the Corporation and the appropriate regulator may share and exchange such information on a reciprocal basis relating to specified service providers which have been classified in the category of low or moderate risk to viability;	
	(b) hold regular meetings to discuss any matter under this Act;	
	(c) have the power to enter into memorandum of understanding;	
20	(d) consult each other regarding any cross-border establishment or investment by the specified service providers and the insured service providers; and	
	(e) keep the supervisory information shared confidential and to restrict the sharing, use and onward disclosure of such information in accordance with the provisions of the arrangements:	
25	Provided that the appropriate regulator shall submit to the Corporation its findings on the inspections and the basis of classification of a specified service provider in any of the categories of risk to viability, in such manner as may be specified by regulations made by the Corporation.	
30	129. The Corporation shall prepare, in such form and at such time in the financial year as may be prescribed, the budget for the next financial year, showing the estimated receipts and expenditure of the Corporation.	Budget.
35	130. (1) The Corporation shall, as soon as may be, after the end of each financial year, prepare and submit to the Central Government, in such form as may be prescribed, a report giving an account of its activities during that financial year and the report shall also give an account of the activities which are likely to be undertaken by the Corporation during the next financial year.	Annual report.
	(2) The Central Government shall cause such report to be laid before both Houses of Parliament, as soon as may be, after it is received.	
	131. (1) If at any time the Central Government is of the opinion,—	Power of Central Government to supersede Corporation.
40	(a) that on account of a grave emergency, the Corporation is unable to discharge the functions and duties imposed on it by or under this Act;	
45	(b) that the Corporation has persistently defaulted in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default, the financial position of the Corporation or the administration of the Corporation has deteriorated; or	

(c) that circumstances exist which render it necessary in the public interest to do so, the Central Government, may, by notification, supersede the Corporation for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Central Government shall give reasonable opportunity to the Corporation to show cause as to why it should not be superseded and shall consider the explanations and objections, if any, of the Corporation. 5

(2) Upon the publication of a notification under sub-section (1), superseding the Corporation,—

(a) all the Members shall, as from the date of supersession, vacate their offices as such; 10

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Corporation shall, until the Corporation is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and 15

(c) all property owned or controlled by the Corporation shall, until the Corporation is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Corporation by a fresh appointment and in such case the Members who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for appointment: 20

Provided that the Central Government may, at any time before the expiry of the period of supersession, take action under this section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before both Houses of Parliament in the immediate subsequent session of Parliament. 25

Power to exempt central counterparties from application of certain provisions of this Act.

132. (1) Notwithstanding anything to the contrary in this Act, the Central Government, on being satisfied that it is necessary to do so in the interest of management or operation of any central counterparty or in public interest for ensuring the stability of the financial system, may, by notification direct that any of the provisions of this Act (other than section 142) or any notification or order issued or direction given thereunder (other than the provisions relating to the making of rules or regulations), specified in the notification— 30

(a) shall not apply to a central counterparty or a class of central counterparties; or 35

(b) shall apply to a central counterparty or a class of central counterparties with such exceptions, modifications and adaptations, as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses. 40 45

Bar of jurisdiction.

133. Unless otherwise provided in this Act, no court or other tribunal shall have jurisdiction to entertain or adjudicate upon any matter which the Corporation, the appropriate regulator, the Tribunal or the Appellate Tribunal is empowered to decide or determine under this Act and no court or tribunal shall grant any injunction in respect of any actions proposed or reverse any such action. 50

45 of 1860	<p>134. The Chairperson, Members, officers and other employees of the Corporation shall, while acting or purporting to act in pursuance of the provisions of this Act, or of any rule or regulation made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.</p>	<p>Members, officers and employees of Corporation to be public servants.</p>
5	<p>135. Any amount collected as a penalty under this Act, shall be credited to the Consolidated Fund of India.</p>	<p>Amounts collected as penalties.</p>
43 of 1961. 32 of 1994.	<p>136. Notwithstanding anything in the Income-tax Act, 1961, the Finance Act, 1994 or any other law for the time being in force, the Corporation shall not be liable to pay income-tax, or any other tax with respect to its income, expenditure, profits or gains, or the services provided to or received by the Corporation.</p>	<p>Exemption from tax on income, profits and gains.</p>
10	<p>137. (1) Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith in any other law for the time being in force or any instrument having effect by virtue of any law for the time being in force other than this Act.</p>	<p>Provisions of this Act to override other laws.</p>
15	<p>(2) Without prejudice to sub-section (1), the provisions of this Act shall override the provisions of any other law for the time being in force in relation to resolution or liquidation of a specified service provider notwithstanding anything to the contrary in such law:</p>	
51 of 2007. 42 of 1956.	<p>Provided that nothing in this Act, other than section 47, shall affect the application of the Payment and Settlement Systems Act, 2007 and the Securities Contract Regulation Act, 1956 or regulations made thereunder, in respect of the central counterparties.</p>	
20	<p>138. Notwithstanding anything to the contrary in the Insolvency and Bankruptcy Code, 2016, the provisions relating to the information utilities under this Act shall apply to the specified service providers in such manner as may be specified by regulations made by the Corporation.</p>	<p>Information utility.</p>
18 of 2013.	<p>139. (1) Nothing in the Companies Act, 2013 relating to liquidation shall apply to the liquidation of the Corporation under this Act.</p>	<p>Liquidation of the Corporation.</p>
25	<p>(2) The Corporation shall not be placed in liquidation save by order of the Central Government and in such manner as that Government may direct in consultation with the Insolvency and Bankruptcy Board of India, established under the Insolvency and Bankruptcy Code, 2016:</p>	
31 of 2016.	<p>Provided that the Central Government and the Insolvency and Bankruptcy Board of India may be guided by the liquidation process under the Insolvency and Bankruptcy Code, 2016.</p>	
30	<p>(3) On the liquidation of the Corporation,—</p>	
35	<p>(a) the outstanding assets of the Corporation insofar as they relate to the Corporation Insurance Fund shall be distributed among the insured service providers in such manner and in such proportion as may be determined by the Central Government having regard to the amount of premium paid by them during any prescribed period or the deposits of the said insured service providers as on the date of liquidation of the Corporation or other relevant circumstances;</p>	
40	<p>(b) the remaining outstanding assets of the Corporation shall be transferred to the Central Government.</p>	
45	<p>140. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.</p>	<p>Power to make rules.</p>
45	<p>(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—</p>	

(a) the salaries and allowances and other terms and conditions of service of, the Chairperson and Members (other than *ex officio* Members), under sub-section (7) of section 4;

(b) any other powers and functions of the Corporation under clause (g) of sub-section (1) of section 13; 5

(c) any other matter on which the Corporation may have powers under clause (f) of sub-section (2) of section 13;

(d) the form and manner of the annual statement of accounts, under sub-section (1), and the intervals in which such accounts shall be audited under sub-section (2), of section 24; 10

(e) the criteria for designation of a financial service provider as a systemically important financial institution under sub-section (1) of section 25;

(f) the other matters which shall be taken into consideration while prescribing criteria for designation of a systemically important financial institutions under clause (f) of sub-section (3) of section 25; 15

(g) the form and manner of submission of report of utilisation of the any amount from the Corporation Insurance Fund under sub-section (7) of section 29;

(h) the form and manner of the report under sub-section (8) of section 52;

(i) the other functions of the administrator under clause (b) of sub-section (1) of section 59; 20

(j) the other functions to be performed by the liquidator under clause (g) of sub-section (1), and the rules governing the actions of the Corporation as liquidator under sub-section (3), of section 66 ;

(k) the rank of officer to be appointed as an adjudicating officer and the manner of making inquiry for adjudication of penalty under sub-section (1) of section 109; 25

(l) the form and manner of filing of appeal and the fee to be accompanied with it under sub-section (2) of section 111;

(m) the criteria for appointment of valuer under sub-section (2) of section 114;

(n) the form and manner of repayment under clause (a) of sub-section (2) of section 122; 30

(o) the form and the time for preparation of the budget by the Corporation under section 129;

(p) the form for preparation of the annual report by the Corporation under sub-section (1) of section 130;

(q) any other matter which is required to be, or may be prescribed, or in respect of which any provision is to be or may be made by rules. 35

Power to
make
regulations.

141. (1) The Corporation or the appropriate regulator may, as the case may be, by notification, make regulations not inconsistent with this Act and the rules made thereunder for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:— 40

(i) the time and place of meeting of the Corporation and the procedure to be followed in regard to the transaction of business at such meetings (including quorum at such meetings) under sub-section (1) of section 8;

(ii) the salary and allowances payable to and other terms and conditions of service of, such officers and employees of the Corporation under sub-section (2) of section 11;

5 (iii) regulations for authorising its officers to carry out any functions for the purposes of this Act under section 12;

(iv) the place and time of discovery and production of books of account and other documents under sub-section (2), sharing of information or disclosures under clause (e) of sub-section (2) of section 13;

10 (v) the time for submission of report by the Investigating Authority under sub-section (7) of section 14;

(vi) the manner of constituting committees and the number of members thereof under section 19;

(vii) the manner of investing moneys by the Corporation under sub-section (3) of section 21;

15 (viii) the amount of fee, the manner of payments of such amount and the time within which it is to be paid under sub-section (1) of section 22;

(ix) the amount of premium and the manner of payment thereof under sub-section (2), and the manner under sub-section (3), of section 22;

20 (x) the manner and the period for submission of reports by systemically important financial institutions under sub-section (3), and the manner of inspection of the systemically important financial institutions under sub-section (4), of section 26;

(xi) the matters under sub-section (8) of section 29;

25 (xii) the form and manner of preparation and submission of list of depositors under any scheme of resolution under sub-section (1) of section 30;

(xiii) manner of payment of unpaid amount to a *bona fide* depositor under sub-section (2) of section 32;

30 (xiv) the form and manner of maintaining registers of specified service providers and conditions, if any, and the fee to be paid for inspection of such register under sub-section (4), and the information to be provided by the appropriate regulators under subsection (5), of section 33;

(xv) the insured service provider which may be subject to cancellation of registration on the ground of non-payment of the premium under sub-section (2) of section 34;

35 (xvi) the rate of interest to be paid for default in payment of premium under sub-section (2) of section 35;

40 (xvii) time period for investigation, inquiry or inspection for the purpose of classification of a specified service provider in a category of risk to viability under sub-section (4), the objective criteria for classification of specified service providers under sub-section (5) of section 36;

(xviii) the information relating to business which may be relevant for classification of material, imminent or critical risk to viability under sub-section (5) of section 37;

45 (xix) any other relevant information to be contained in the restoration plan under clause (e) of sub-section (1), the form and manner of restoration plan under sub-section (3) of section 39;

(xx) the form and manner of resolution plan and the relevant information required by the Corporation under sub-section (2) of section 40;

(xxi) the meaning of the material change in the resolution plan or restoration plan under sub-section (7) of section 41;

(xxii) the manner replenishing financial resources by such central counterparty under clause (c) of sub-section (1), and the additional funds to be contributed by its existing participants for the purposes of meaning of "cash call" under sub-section (2), of section 44; 5

(xxiii) the form and manner of publication of classification under sub-section (3) of section 45;

(xxiv) the form and manner of giving show cause notice and the period of opportunity of being heard to be given under section 46; 10

(xxv) the other safeguards under sub-sections (1) and (2), and the contracts and agreements and the meaning of termination rights under sub-section (5), of section 47;

(xxvi) the form and manner of schemes or bail-in instruments for resolution of a specified service provider under sub-section (1), the measures to be taken and manner of sell or transfer under sub-clause (iii) of clause (a) and clause (b) of sub-section (2), manner of recovery of amounts under proviso to sub-section (6) of section 48; 15

(xxvii) any other terms and conditions of resolution of the specified service providers under clause (k) of sub-section (1) of section 49;

(xxviii) the form and manner of details of remuneration paid to chairperson, director etc., under sub-section (1) and the portion of such remuneration to be designated as performance based incentives under sub-section (2), of section 51; 20

(xxix) the form and manner of bail-in instrument or scheme under sub-section (2), and the liabilities or class of liabilities under sub-section (4) and clause (h) of sub-section (7), of section 52; 25

(xxx) the client assets, under clause (b) of sub-section (7) of section 52;

(xxxi) other safeguards relating to the methods of resolution under clause (d) of sub-section (1) and relating to bail-in under clause (d) of sub-section (2), the "client assets" and "collateral arrangements" under sub-section (5), of section 55;

(xxxii) the continuity of certain function under section 57; 30

(xxxiii) the access the books of account, records, and other relevant documents available to such authority, statutory authority and other persons under sub-clause (ii) of clause (c) of sub-section (2) of section 58;

(xxxiv) manner and additional measures for central counterparties under sub-section (4) of section 58; 35

(xxxv) manner and measures to replenish financial resources under clause (c) of sub-section (4) of section 58;

(xxxvi) the times, places and rules of procedure to be observed by the committee under sub-section (6) of section 62;

(xxxvii) salary and allowances to the administrator and the members of the committee constituted by the Corporation under sub-section (7) of section 62; 40

(xxxviii) manner of selling the immovable and movable property and actionable claims of the covered service provider in liquidation under clause (d) sub-section (1) of section 66;

(*xxxix*) the manner of reporting the progress of the liquidation process under clause (*n*) of sub-section (*1*) of section 66;

(*xl*) other means under clause (*a*) of sub-section (*3*) of section 67;

(*xli*) other assets under clause (*e*) of sub-section (*4*) of section 67;

5 (*xlii*) other source under clause (*f*) of sub-section (*1*) of section 68;

(*xliii*) the form and manner of providing financial information relating to the covered service under sub-section (*2*) of section 68;

(*xliv*) the manner of receiving or collecting the claims of all consumers and creditors under sub-section (*1*) of section 69;

10 (*xlv*) the form and manner and supporting documents required to prove the claim of a depositor or operational creditor under sub-section (*3*) of section 69;

(*xlvi*) the manner of verification of claims under sub-section (*1*) of section 70;

(*xlvii*) the form, manner and procedure of the list under sub-section (*1*) of section 72;

15 (*xlviii*) the manner of communication of admission or rejection of claims under sub-section (*2*), and the manner of payment of amounts covered under deposit insurance under sub-section (*3*), of section 73;

(*xliv*) the manner of determination of value of claims under section 75;

20 (*l*) the manner of realising security interest under clause (*b*) of sub-section (*3*) of section 79;

(*li*) the period and manner of distribution of liquidation assets; and the amounts due to insurance policy holders under item (*ii*) of clause (*e*), of sub-section (*1*) of section 80;

25 (*lii*) the circumstances in which transactions may be covered under sub-section (*2*) of section 89;

(*liii*) the conditions for voluntary liquidation under sub-section (*1*) of section 93;

(*liv*) the manner of publication of recognition and enforcement order under sub-section (*3*) of section 96;

30 (*lv*) the manner of adjustment of funds in case of repayment of amount to Corporation under the explanation to clause (*a*) of sub-section (*2*) of section 122;

(*lvi*) the form and manner of sharing and exchange of supervisory information of certain categories of specified service providers under clause (*a*) of section 128, and the manner of submitting findings of information under the proviso to thereof;

35 13 of 2016. (*lvii*) the manner of application of the provisions relating to information utilities in the Insolvency and Bankruptcy Code, 2016 to the specified service providers under this Act under section 138;

(*lviii*) any other matter as may be necessary to give effect to the provisions of this Act.

40 **142.** Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation,
45 as the case may be, or both Houses agree that the rule or regulation, as the case may be,

Rules and regulations to be laid before Parliament.

should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to
remove
difficulties.

143. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty: 5

Provided that no such order shall be made after the expiry of a period of five years from the commencement of this Act. 10

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

Power of
Central
Government
to give
directions.

144. (1) Without prejudice to the foregoing provisions of this Act, the Corporation shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time: 15

Provided that the Corporation shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Repeal and
savings.

145. (1) The Deposit Insurance and Credit Guarantee Corporation Act, 1961 is hereby repealed. 20 47 of 1961.

(2) Notwithstanding the repeal under sub-section (1),—

(a) anything done or any action taken or purported to have been done or taken under the repealed Act, shall insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act; 25

(b) all offences committed, and existing proceedings with respect to offences which may have been committed under the repealed Act, shall continue to be governed by the provisions of that Act as if that Act had not been repealed and the Corporation may continue the existing proceedings as if those proceedings had been initiated by it: 30

Provided that the Corporation may initiate a fresh proceeding related to an offence under the repealed Act, within a period of three years from the date of such repeal.

(3) On and from the date of repeal under sub-section (1),— 35

(a) the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the repealed Act, including the Board or any committees constituted under that Act, shall stand dissolved and every member of such Board or committee shall cease to hold office as such:

Provided that no such member shall be entitled to any compensation for the loss of office due to such repeal and the consequent dissolution of the Deposit Insurance and Credit Guarantee Corporation or for the premature termination of any contract of management entered into by such member with the said Corporation and no such claim shall be entertained by any court, tribunal or other authority; 40

(b) notwithstanding anything in section 54AA of the Reserve Bank of India Act, 1934, the employees of the Reserve Bank of India holding any office under the Deposit Insurance and Credit Guarantee Corporation under the repealed Act, shall,— 45
2 of 1934.

(i) for a period of one year, hold an office under the Corporation;

(ii) on the completion of one year, and before the completion of two years, have the option to continue in the Corporation or return to the Reserve Bank of India:

5 Provided that such employees shall be eligible for deputation and other allowances during the course of their employment in the Corporation and the seniority of such employees returning to the Reserve Bank of India shall be protected;

10 (c) the assets, liabilities, properties, undertakings, rights and claims of the Deposit Insurance and Credit Guarantee Corporation under the repealed Act, shall stand transferred to, and vested with, the Corporation;

 (d) the assets of the Deposit Insurance and Credit Guarantee Corporation insofar as they relate to the Deposit Insurance Fund under section 23 of the repealed Act, shall stand transferred to the Corporation Insurance Fund under this Act;

15 (e) the assets, including rights and liabilities, if any, of the Deposit Insurance and Credit Guarantee Corporation insofar as they relate to the Credit Guarantee Fund under section 23A of the repealed Act, shall—

2 of 1934. (i) stand transferred to the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934; and

20 (ii) all proceedings relating to the Credit Guarantee Fund pending under the repealed Act, shall be continued and may be enforced by or against the Reserve Bank of India under the provisions of that Act, as if that Act had not been repealed;

 (f) the assets of the Deposit Insurance and Credit Guarantee Corporation insofar as they relate to the General Fund under section 24 of the repealed Act, shall stand transferred to the Reserve Bank of India;

25 (g) every banking institution registered as an insured bank under the repealed Act, shall be deemed to be an insured service provider under this Act;

 (h) every insured service provider referred to in clause (g), shall pay the premium determined under section 15 of that Act, as if that Act had not been repealed, to the Corporation, till the Corporation determines the applicable premium to be paid under this Act and such premium shall be credited to the Corporation Insurance Fund constituted under section 21;

30

 (i) any proceeding or cause of action or rights or claims against the Deposit Insurance and Credit Guarantee Corporation in relation to its assets, liabilities, properties and undertakings (other than the Credit Guarantee Fund) under the repealed Act, may be continued or enforced by or against the Corporation as if that Act had not been repealed;

35

 (j) any amount repayable to the Deposit Insurance and Credit Guarantee Corporation under the repealed Act or under any law governing an eligible cooperative bank shall, notwithstanding such repeal be payable to the Corporation as if the obligation to repay such amount was to the Corporation under this Act;

40

 (k) every officer or employee holding any office under the Deposit Insurance and Credit Guarantee Corporation immediately before the date of such repeal, shall hold office in the Corporation, for the same tenure and on the same terms and conditions of service as such employee would have held such office if the Deposit Insurance and Credit Guarantee Corporation had not been dissolved:

45

 Provided that nothing in any other law for the time being in force shall entitle any employee of the Deposit Insurance and Credit Guarantee Corporation to any

compensation for the loss of office due to such repeal, and the consequent dissolution of the Deposit Insurance and Credit Guarantee Corporation, and no such claim shall be entertained by any court, tribunal or other authority;

(l) the concessions, privileges, benefits and exemptions with regard to the payment of any tax, duty and cess granted to the Deposit Insurance and Credit Guarantee Corporation with respect to its undertaking shall be transferred to the Corporation and the Corporation shall be entitled to such concessions, privileges, benefits and exemptions. 5

(4) The mention of particular matters under sub-section (2) and sub-section (3) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal. 10
10 of 1897.

Amendment
of certain
enactments.

146. The enactments specified in the Fourth Schedule shall be amended in the manner specified therein.

THE FIRST SCHEDULE

[See section 2(2)]

APPROPRIATE REGULATOR

1. The Reserve Bank of India, as constituted under sub-section (1) of section 3 of the
5 Reserve Bank of India Act, 1934 (2 of 1934), for banking institutions, non-banking financial
companies, and payment systems under the Payment and Settlement Systems Act, 2007
(51 of 2007).

2. The Insurance Regulatory and Development Authority of India, as established
under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority
10 of India Act, 1999 (41 of 1999), for insurance companies.

3. The Securities and Exchange Board of India, as established under sub-section (1)
of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) for all
entities requiring registration under section 12 of the said Act, recognised stock exchange
as defined in clause (f) of section 2 and clearing corporation as referred to in section 8A of
15 Securities Contracts (Regulation) Act, 1956 (42 of 1956), and depository as defined under
clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996).

4. The Pension Fund Regulatory Development Authority, as established under
sub-section (1) of section 3 of the Pension Fund Regulatory and Development Authority
Act, 2013 (23 of 2013) for any entities regulated by them which may be notified as specified
20 service provider under the Second Schedule to this Act.

5. Any other regulator as may be notified by the Central Government.

THE SECOND SCHEDULE

[See section 2(34) and section 33(1)]

SPECIFIED SERVICE PROVIDER

1. Any banking institution, other than eligible co-operative bank including an insured service provider. 5
2. Any insurance company.
3. Any Financial Market Infrastructure.
4. Any payment system, as defined under the Payment and Settlement Systems Act, 2007 (51 of 2007), not notified under section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016). 10
5. Any non-banking financial company, not notified under section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).
6. Any systemically important financial institution.
7. Any other financial service provider (excluding individuals and partnership firms), not notified under section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016). 15
8. A holding company of any specified service provider enumerated under items 1 to 7, registered in India which is not notified under section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), subject to the determination by the Corporation under the proviso to sub-section (1) of section 33.
9. Non-regulated operational entities within a financial group or conglomerate of a specified service provider enumerated under items 1 to 7 subject to the determination by the Corporation under the proviso to sub-section (1) of section 33. 20
10. Branch offices of body corporates incorporated outside India, carrying on the business of providing financial service in India.
11. Any other entity or fund which may be notified by the Central Government. 25

THE THIRD SCHEDULE

[See section 123]

DECLARATION OF FIDELITY AND SECRECY

5 I, ----- (name of person) do hereby declare that I shall faithfully,
truly and to the best of my skill and ability execute and perform the duties required of me as
Member, auditor, officer independent valuer or other employee (strike out which is not
applicable) of the Corporation and which properly relate to the office or position held by me
in the Corporation.

10 I further declare that I shall not communicate or allow to be communicated to any
person not legally entitled thereto any information relating to the affairs of the Corporation
or to the affairs of any person having any dealing with the Corporation; nor will I allow any
such person to inspect or have access to any books or documents belonging to or in the
possession of the Corporation and relating to the business of the Corporation or the business
of any person having any dealing with the Corporation.

15 Place: _____

(Signature)

Date: _____

Name and Designation

Signed before me:

THE FOURTH SCHEDULE

[See section 145]

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE INDIAN STAMP ACT, 1899

5

(2 OF 1899)

Amendment of section 8F. Income of Resolution Corporation to be exempt from stamp duty.

After section 8F, the following section shall be inserted, namely:—

"8G. Notwithstanding anything in this Act or any other law for the time being in force, any property acquired, held or disposed of, or any contract entered into, by the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 in accordance with the provisions of that Act, shall not be liable to duty under this Act."

10

PART II

AMENDMENTS TO THE RESERVE BANK OF INDIA ACT, 1934

(2 OF 1934)

15

Amendment of section 45 MC.

1. In section 45MC,—

(i) in sub-section (1), in clause (d), for the words and figures "the Companies Act, 1956", the words and figures "the Financial Resolution and Deposit Insurance Act, 2017 or the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be substituted;

1 of 1956.
31 of 2016.
20

(ii) in sub-section (4), for the words and figures "the Companies Act, 1956", the words and figures "the Financial Resolution and Deposit Insurance Act, 2017 or the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be substituted.

1 of 1956.
31 of 2016.

Insertion of new section 45 XA.

2. After section 45X, the following section shall be inserted, namely:—

'45XA.(1) Where one of the parties to the specified transaction is a party referred to in section 45V, notwithstanding anything to the contrary in any other law for the time being in force, netting shall be applicable in the case of insolvency, winding up, liquidation or resolution of a party to such transaction.

25

Netting in insolvency, winding up or resolution.

Explanation.— For the purposes of this sub-section,—

(i) "netting" means determination of any payment or other obligation arising out of any specified transaction between the parties, whether or not due or payable, by set-off or adjustment between the parties and a net obligation is arrived at in the manner specified by the Bank;

30

(ii) "resolution" shall have the same meaning as assigned to it in clause (28) of sub-section (1) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017;

35

(iii) "specified transaction" means a transaction in securities, money market instruments, derivatives or such other instruments or transactions, as may be specified by the Bank.

(2) For the purpose of netting under sub-section (1), the following shall be taken into account, namely:—

(a) the value of cash or security or collateral provided by either party or a guarantor or other person in respect of such party and the proceeds of sale of securities available with either parties to the transaction; and

(b) the current value of payment or other obligations due at a future date arrived at by prematurely terminating the transactions.

(3) The amount payable or other claims that may be made or determined under sub-section (1), shall be final and irrevocable and shall be binding on the liquidator, administrator, receiver or trustee, (by whatever name called), of the party in insolvency, winding up, or liquidation or resolution.

(4) Notwithstanding anything to the contrary in any agreement or contract between the parties, for the realisation or appropriation or liquidation of any collateral to determine the amount payable or other claims that may be made under sub-section (1), no prior notice to, or consent of, the party in insolvency, winding up, liquidation or resolution or its liquidator, administrator or receiver or trustee (by whatever name called) shall be required.¹.

PART III

AMENDMENTS TO THE INSURANCE ACT, 1938

(4 OF 1938)

1. In section 33, in sub-section (6), for clause (c), the following clause shall be substituted, namely:— Amendment of section 33.

"(c) recommend to the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017, to make an application to the National Company Law Tribunal for the winding up of the insurer under Chapter XII of that Act, if it is a company, whether the registration of the insurer has been cancelled under clause (b) or not."

2. In section 35, after sub-section (3), the following sub-section shall be inserted, namely:— Amendment of section 35.

"(4) Where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under this section, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act."

3. Section 36, shall be renumbered as sub-section (1) there of and after the sub-section so renumbered, the following sub-section shall be inserted, namely:— Amendment of section 36.

"(2) Where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under this section, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act"

4. In section 37, the following proviso shall be inserted, namely:— Amendment of section 37.

"Provided that where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under this section, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act."

Amendment of section 37A.	<p>5. In section 37A, after sub-section (13), the following sub-section shall be inserted, namely:—</p> <p>"(14) Where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under this section, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act."</p>	5
Amendment of section 52B.	<p>6. In section 52B, in sub-section (1), for clause (c), the following clause shall be substituted, namely:—</p> <p>"(c) the winding up of the insurer, in accordance with the provisions of the Financial Resolution and Deposit Insurance Act, 2017;"</p>	10
Amendment of section 52G.	<p>7. After section 52G, the following section shall be inserted, namely:—</p>	
Resolution of an insurance company.	<p>"52GA. Where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under sections 52A, 52B, 52C, 52D, 52E, 52F and 52G, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act."</p>	15
Amendment of section 53.	<p>8. For section 53, the following section shall be substituted namely:—</p>	
Winding up of an insurer.	<p>"53.(1) Where the Authority is satisfied,—</p> <p>(i) that the company having failed to comply with any requirement of this Act has continued such failure or having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure or contravention has been conveyed to the company by the Authority,</p> <p>(ii) that it appears from any returns or statements furnished under the provisions of this Act or from the results of any investigation made there under that the company is , or is deemed to be insolvent, or</p> <p>(iii) that the continuance of the company is prejudicial to the interest of the policy-holders or the public interest generally,</p> <p>it may make a recommendation to the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017, to make an application to the National Company Law Tribunal for the winding up of the insurer under Chapter XII of that Act.</p> <p>(2) All the provisions of the Financial Resolution and Deposit Insurance Act, 2017 relating to winding up shall apply to a proceeding under this section."</p>	20 25 30
Amendment of section 54.	<p>9. In section 54, after the words and figures, "the Companies Act, 2013", the words and figures "but without prejudice to section 93 of the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.</p>	18 of 2013.
Amendment of section 55.	<p>10. In section 55, sub-section (3) shall be omitted.</p>	
Amendment of section 57.	<p>11. In section 57, after sub-section (6), the following sub-section shall be inserted, namely:—</p> <p>"(7) All the provisions of the Financial Resolution and Deposit Insurance Act, 2017, relating to liquidation shall <i>mutatis mutandis</i>, apply to a proceeding under this section."</p>	40

12. In section 58, after sub-section (4), the following sub-section shall be inserted, namely:— Amendment of section 58.

"(5) Where the insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the Authority shall not exercise any power under this section."

13. In section 60, the following proviso shall be inserted, namely:— Amendment of section 60.

"Provided that where the insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the liquidator or assignee under this section shall be exercised by the liquidator appointed under that Act."

14. In section 61, for sub-section (3), the following sub-section shall be substituted, namely:— Amendment of section 61.

"(3) The Resolution Corporation established under section 3 of the Financial and Resolution and Deposit Insurance Act, 2017 may, in consultation with the Authority, make an application for an order in accordance with the provisions of that Act."

15. In section 64VA, after sub-section (7), the following sub-section shall be inserted, namely:— Amendment of section 64VA.

"(8) Notwithstanding anything in this section, the powers under this section shall not be exercised by the Authority where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."

PART IV

AMENDMENTS TO THE BANKING REGULATION ACT, 1949

(10 OF 1949)

1. In section 5, after clause (ne), the following clause shall be inserted namely:— Amendment of section 5.

"(nf) "Tribunal" means the National Company Law Tribunal" established under section 408 of the Companies Act, 2013;"

2. In section 35, in sub-section (4) sub-clause (b) shall be omitted. Amendment of section 35.

3. Part IIC and sections 36AE, 36AF, 36AG, 36AH, 36AI and 36AJ shall be omitted. Omission of Part IIC.

4. Sections 36B and 37 shall be omitted. Omission of sections 36B and 37.

5. In section 38,— Amendment of section 38.

(a) in sub-section (1),—

(i) for the words and figures "section 391, section 392, section 433 and section 583 of the Companies Act, 1956", the words and figures "section 230, section 231, section 271 and section 375 of the Companies Act, 2013" shall be substituted;

(ii) for the word "High Court", the word "Tribunal" shall be substituted;

(b) in sub-section (3), in clause (b), in sub-clause (i), for the word "court", the word "Tribunal" shall be substituted;

(c) in sub-section (4), for the words and figures "section 434 of the Companies Act, 1956", the words, figures and brackets "sub-section (2) of section 271 of the Companies Act, 2013" shall be substituted;

(d) after sub-section (5), the following sub-section shall be inserted, namely:—

"(6) All the provisions of the Financial Resolution and Deposit Insurance Act, 2017, relating to liquidation shall apply to a proceeding of winding up initiated on the application made by the Reserve Bank under this section."

Amendment
of sections
38A, 39,
39A, 40, 41,
41A, 42, 43,
43A and 44.

5. Sections 38A, 39, 39A, 40, 41, 41A, 42, 43, 43A and 44 shall be omitted. 5

Amendment
of section
44A.

6. In section 44A, after sub-section (7), the following sub-section shall be inserted, namely:—

"(8) Where the banking company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the Reserve Bank shall not exercise any powers under this section."

10

Amendment
of section
44B.

7. In section 44B,—

(a) in sub-section (1), for the words "High Court", the word "Tribunal" shall be substituted;

(b) in sub-section (2),—

(i) for the words and figures "section 391 of the Companies Act, 1956", the words and figures "section 230 of the Companies Act, 2013" shall be substituted; 15 1 of 1956.
18 of 2013.

(ii) for the words "High Court" at both the places, wherever they occur, the word "Tribunal" shall be substituted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Where a banking company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers of the Reserve Bank exercisable under sub-section (1) or sub-section (2), shall be exercised by the Resolution Corporation established under section 3 of that Act."

20

Amendment
of section 45.

8. In section 45, after sub-section (14), the following sub-section shall be inserted, namely:— 25

"(14A) Where a banking company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers under this section shall not be exercised by the Reserve Bank."

Omission of
sections 45B,
45C, 45D,
45E, 45F, 45G,
45H, 45-I and
45J.

9. Sections 45B, 45C, 45D, 45E, 45F, 45G, 45H, 45-I and 45J shall be omitted. 30

Amendment
of section 45L.

10. In section 45L,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Where an application for sanction of a compromise or arrangement in respect of a banking company is made under section 230 of the Companies Act, 2013, or where such sanction has been given and the Tribunal is of the opinion, whether on a report of the Reserve Bank or the Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017,

35 18 of 2013.

that any person who has taken part in the promotion and formation of the banking company or has been a director or auditor of the banking company should be publically examined it may direct such examination of such person and the provisions of section 77 of that Act shall apply to the banking company as they apply to a specified service provider which is being liquidated under that Act.";

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Where a compromise or arrangement is sanctioned under section 230 of the Companies Act, 2013, in respect of a company, the provisions of section 340 of the said Act and of section 78 of the Financial Resolution and Deposit Insurance Act, 2017, shall apply to the banking company as they apply to a specified service provider which is being liquidated under that Act, as if the order sanctioning the compromise or arrangement were an order for the liquidation of the banking company."

(c) in sub-section (3), for the words "High Court" at both places, wherever they occur, the word "Tribunal" shall be substituted;

(d) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) Where a scheme of reconstruction of a banking company has been sanctioned by the Central Government under section 45, the provisions of section 340 of the Companies Act, 2013, and of section 78 of the Financial Resolution and Deposit Insurance Act, 2017 shall apply to the banking company as they apply to specified service provider which is being liquidated under that Act, as if the order sanctioning the scheme of reconstruction or amalgamation, as the case may be, were an order for liquidation of the specified service provider; and any reference in said section 340 to the application of the official liquidator shall be construed as a reference to the application of the Central Government."

11. Sections 45M, 45N, 45-O, 45P, 45Q, 45S, 45T and 45U shall be omitted.

Omission of sections 45M, 45N, 45-O, 45P, 45Q, 45S, 45T and 45U.

PART V

AMENDMENTS TO THE STATE BANK OF INDIA ACT, 1955

(23 OF 1955)

1. In section 24A, after sub-section (10), the following sub-section shall be inserted, namely:—

"(11) The powers of supersession of the Central Board under this section shall not be exercised where the State Bank is classified in the category of imminent or critical risk to viability under the provisions of the Financial Resolution and Deposit Insurance Act, 2017."

Amendment of section 24A.

2. In section 35, after sub-section (13), the following sub-section shall be inserted, namely:—

"(14) The powers of acquisition under this section shall not be exercised where the State Bank or the relevant banking institution, as the case may be, is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."

Amendment of section 35.

3. In section 45, the following proviso shall be inserted, namely:—

"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

Amendment of section 45.

Insertion of new section 45A.	4. After section 45, the following section shall be inserted, namely:—	
Power of Resolution Corporation.	'45A. Notwithstanding anything in this Act, the Resolution Corporation established under section of the Financial Resolution and Deposit Insurance Act, 2017, shall have the powers to carry out resolution of the State Bank under that Act (other than powers in relation to liquidation).	5
	<i>Explanation.</i> —For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.	
	PART VI	
	AMENDMENTS TO THE LIFE INSURANCE CORPORATION ACT, 1956	10
	(31 OF 1956)	
Amendment of section 38.	1. In section 38, the following proviso shall be inserted, namely:—	
	"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."	15
Insertion of new section 38A.	2. After section 38, the following section to be inserted, namely:—	
Powers of Resolution Corporation.	'38A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of the Corporation under that Act (other than powers in relation to liquidation).	20
	<i>Explanation.</i> —For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.	
	PART VII	
	AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956	25
	(42 OF 1956)	
Amendment of section 2.	1. In section 2, after clause (c), the following clause shall be inserted, namely—	
	'(ca) "netting" means the determination by clearing corporation of net payment or delivery obligations of the clearing members of a recognised clearing corporation by setting off or adjustment of the inter-se obligations or claims arising out of buying and selling of securities, including the claims and obligations arising out of the determination by the clearing corporation or stock exchange, on the insolvency, winding-up, liquidation or resolution of any clearing member or trading member or client or such other circumstances as the clearing corporation may specify in its bye-laws, of the transactions admitted for settlement at a future date so that only a net claim be demanded, or a net obligation be owned;'	30 35
Insertion of new sections 19A and 19B.	2. After section 19, the following sections shall be inserted, namely:—	
Right of clearing corporation.	"19A. Notwithstanding anything in any other law for the time being in force, the right of clearing corporation to recover their dues from clearing members, incurred in discharge of their clearing and settlement functions, from the collaterals, deposits and the assets of clearing members held by the clearing corporation for this purpose, in	40

case of insolvency, winding-up, liquidation or resolution, as the case may be, of such clearing member, shall take precedence over the rights of other persons in such insolvency, winding-up, liquidation or resolution proceedings.

5 19B. (1) The payment and settlement in respect of transactions in a recognised stock exchange a recognised clearing corporation shall be determined in accordance with the netting (or gross) procedure as per the bye-laws of a recognised stock exchange, or clearing corporation, as the case may be, with the prior approval of the Securities and Exchange Board of India. Settlement and netting.

10 (2) Notwithstanding anything in any other law for the time being in force, a payment and settlement referred to in sub-section (1), between the parties thereto, effected as per the bye-laws of a recognised stock exchange or clearing corporation, as the case may be, shall be final, irrevocable and binding on such parties.

15 (3) Where a trading member or a clearing member or an investor client is declared by a court of competent jurisdiction as insolvent or is dissolved or wound-up or resolved, or a liquidator, administrator, receiver or assignee (by whatever name called), whether provisional or otherwise, is appointed in a proceeding relating to insolvency, resolution or dissolution or winding up of a system participant, then such order of adjudication, dissolution, winding-up, or resolution, as the case may be, shall not affect any settlement that has become final and irrevocable and the right of the recognised clearing corporation or recognised stock exchange, as the case may be, to appropriate any collaterals or deposits or margins contributed by the said trading member or clearing member or client towards its settlement or other obligations in accordance with the bye-laws of such recognised stock exchange or clearing corporation, as the case may be.

25 *Explanation.*—For removal of doubts, it is hereby clarified that the settlement, whether gross or net, referred to in this section shall be final and irrevocable as soon as the money, securities or other transactions payable as a result of such settlement is determined, whether or not such money, securities or other transactions is actually paid.

30 (4) Where an order referred to in sub-section (3) is made with respect to a clearing corporation or a stock exchange, then, notwithstanding such order or anything in any other law for the time being in force, the payment obligations and settlement instructions between the clearing corporation and the clearing members including those arising from transactions admitted for settlement at a future date, shall be determined forthwith by the clearing corporation, in accordance with the gross or netting procedure, as the case may be, in accordance with the bye-laws of such clearing corporation, and such determination shall be final and irrevocable.

40 (5) Notwithstanding anything in any other law for the time being in force, the liquidator, administrator, receiver or assignee (by whatever name called) of the clearing corporation, whether appointed as provisional or otherwise, shall—

(a) not re-open any determination that has become final and irrevocable;

45 (b) after appropriating in accordance with the bye-laws of the clearing corporation, the collaterals provided by the clearing members towards their settlement or other obligations, return the collaterals held in excess to the clearing members concerned;

(c) while distributing the assets, apply the assets in priority against the dues arising out of settlement obligations of the clearing corporation and only thereafter apply the assets against third party claims."

PART VIII

AMENDMENTS TO THE STATE BANK OF INDIA (SUBSIDIARY BANKS)
ACT, 1959

(38 OF 1959)

Amendment of section 38.	1. In section 38, after sub-section (13), the following sub-section shall be inserted, namely:—	5
	"(13A) The powers of acquisition under this section shall not be exercised where the relevant banking institution or the subsidiary bank, as the case may be, is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."	10
Amendment of section 57.	2. In section 57, the following proviso shall be inserted, namely:—	
	"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."	
Insertion of new section 57A.	3. After section 57, the following section to be inserted, namely:—	15
Powers of Resolution Corporation.	'57A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution for any subsidiary bank under that Act (other than powers in relation to liquidation).	
	<i>Explanation.</i> —For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'	20

PART IX

AMENDMENT TO THE INCOME-TAX ACT, 1961

(43 OF 1961)

Amendment of section 178.	In section 178, in sub-section (6), after the words and figures "except the provisions of the Insolvency and Bankruptcy Code, 2016", the words and figures "and the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.	25 31 of 2016.
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PART X

AMENDMENT TO THE CUSTOMS ACT, 1962

(52 OF 1962)

Amendment of section 142 A.	In section 142A, for the words and figures "and the Insolvency and Bankruptcy Code, 2016", the words and figures " , the insolvency and Bankruptcy Code, 2016 and the Financial Resolution and Deposit Insurance Act, 2017" shall be substituted.	30 31 of 2016.
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PART XI

AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS)
ACT, 1970

(5 OF 1970)

Amendment of section 18.	1. In section 18, the following proviso shall be inserted, namely:—	
	"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."	35 40

	<p>2. In section 18A, after sub-section (10), the following sub-section shall be inserted, namely:—</p>	<p>Amendment of section 18A.</p>
5	<p>"(11) The powers of supersession of Board under this section shall not be exercised where the relevant corresponding new bank is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."</p>	
	<p>3. After section 18A, the following section shall be inserted, namely:—</p>	<p>Insertion of new section 18B.</p>
10	<p>'18B. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of any corresponding new bank under that Act (other than powers in relation to liquidation).</p>	<p>Powers of Resolution Corporation.</p>
	<p><i>Explanation.</i>— For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.</p>	
15	<p>PART XII AMENDMENTS TO THE GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972 (57 OF 1972)</p>	
	<p>1. In section 16, after sub-section (8), the following sub-section shall be inserted, namely:—</p>	<p>Amendment of section 16.</p>
20	<p>"(9) The powers relating to merger under this section shall not be exercised where the relevant Indian insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."</p>	
	<p>2. In section 33, the following proviso shall be inserted, namely:—</p>	<p>Amendment of section 33.</p>
25	<p>"Provided that the Central Government may appoint the Resolution Corporation as established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."</p>	
	<p>3. After section 33, the following section shall be inserted, namely:—</p>	<p>Insertion of new section 33A.</p>
30	<p>'33A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of the Corporation and any acquiring company under that Act (other than powers in relation to liquidation).</p>	<p>Powers of Resolution Corporation.</p>
35	<p><i>Explanation.</i>—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.</p>	
	<p>PART XIII AMENDMENTS TO THE REGIONAL RURAL BANKS ACT, 1976 (26 OF 1976)</p>	
40	<p>1. In section 26, the following proviso shall be inserted, namely:—</p>	<p>Amendment of section 26.</p>
	<p>"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."</p>	

Insertion of new section 26A. Powers of Resolution Corporation.	<p>2. After section 26, the following section shall be inserted, namely:—</p> <p>"26A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the provisions of the Financial Resolution and Deposit Insurance Act, 2017, shall have the powers to carry out resolution of the Regional Rural Bank under that Act (other than powers in relation to liquidation)."</p> <p><i>Explanation.</i>—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.</p>	5
<p>PART XIV</p> <p>AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1980</p> <p>(40 OF 1980)</p>		
Amendment of section 18.	<p>1. In section 18, the following provisions shall be inserted, namely:—</p> <p>"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."</p>	15
Amendment of section 18A.	<p>2. In section 18A, after sub-section (10), the following sub-section shall be inserted, namely:—</p> <p>"(11) The powers of supersession of Board under this section shall not be exercised where the relevant corresponding new bank is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."</p>	20
Insertion of new section 18B. Powers of Resolution Corporation.	<p>3. After section 18A, the following section shall be inserted, namely:—</p> <p>'18B. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the provisions of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of any corresponding new bank under that Act (other than powers in relation to liquidation).</p> <p><i>Explanation.</i>—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.</p>	25 30
<p>PART XV</p> <p>AMENDMENTS TO THE EXPORT-IMPORT BANK OF INDIA ACT, 1981</p> <p>(28 OF 1981)</p>		
Amendment of Section 38.	<p>1. In section 38, the following proviso shall be inserted, namely:—</p> <p>"Provided that the Central Government may appoint Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."</p>	35
Insertion of new section 38A. Powers of Resolution Corporation.	<p>2. After section 38, the following section to be inserted, namely:—</p> <p>'38A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of the Exim Bank under that Act (other than powers in relation to liquidation).</p> <p><i>Explanation.</i>—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.</p>	40 45

PART XVI

AMENDMENTS TO THE NATIONAL HOUSING BANK ACT, 1987

(53 OF 1987)

1. In section 54, the following proviso shall be inserted, namely:—

Amendment of section 54.

5 "Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

2. After section 54, the following section to be inserted, namely:—

Insertion of new section 54A.

10 '54A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of the National Housing Bank under that Act (other than powers in relation to liquidation).

Powers of Resolution Corporation.

15 *Explanation.*— For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.!

PART XVII

AMENDMENT TO THE FINANCE ACT, 1994

(32 OF 1994)

31 of 2016. 20 In section 88, after the words and figures "the Insolvency and Bankruptcy Code, 2016", the words and figures "the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.

Amendment of section 88.

PART XVIII

AMENDMENTS TO THE MULTI-STATE COOPERATIVE SOCIETIES ACT, 2002

(39 OF 2002)

25 1. In section 3, after clause (v), the following clause shall be inserted, namely:—

Amendment of section 3.

(va) "Resolution Corporation" means the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017;"

30 2. In section 17, in sub-section (6), in clause (a), after the words "has been obtained", the words "and in the case of a co-operative bank, previous sanction in writing of the Reserve Bank has also been obtained" shall be inserted.

Amendment of section 17.

3. After section 18, the following section shall be inserted, namely:—

Insertion of new section 18A.

35 '18A. (1) Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of any co-operative bank under that Act.

Powers of the Resolution Corporation.

40 (2) The exercise of powers by the Resolution Corporation under the Financial Resolution and Deposit Insurance Act, 2017 for resolution of a co-operative bank referred to in sub-section (1) or the resolution methods used by the Resolution Corporation for such resolution, shall not be subject to any limitation contained in this Act.

Explanation.—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.!

Substitution of new section for section 20.	4. For section 20, the following shall be substituted, namely:—	
Liability to Resolution Corporation in case of resolution of co-operative bank.	"20. Notwithstanding anything in section 17 or any other provision of this Act, where a co-operative bank, is under resolution under the provisions of the Financial Resolution and Deposit Insurance Act, 2017 and the Resolution Corporation has become liable to pay to the depositors of such insured service provider under section 29 of that Act, the transferee or acquiring entity under the scheme sanctioned for such resolution or the liquidator in case of liquidation of co-operative bank, shall be under an obligation to repay to the Resolution Corporation in the circumstances, to the extent and in the manner referred to in section 122 of that Act."	5
Amendment of section 86.	5. In section 86, for sub-section (5), the following sub-section shall be substituted, namely:—	10
	"(5) Notwithstanding anything in this section, no co-operative bank shall be wound up, except in accordance with the provisions of section 87."	
Substitution of new section for section 87.	6. For section 87, the following section shall be substituted, namely:—	
Winding up of co-operative bank.	"87. Notwithstanding anything to the contrary in this Act, the National Company Law Tribunal established under section 408 of the Companies Act, 2013 shall make an order for the winding up of a co-operative bank, if so required, on an application—	15 18 of 2013.
	(i) by the Resolution Corporation in accordance with the provisions of section 63 of the Financial Resolution and Deposit Insurance Act, 2017; or	
	(ii) by the Reserve Bank, if any, in the circumstances mentioned in clauses (a) to (f) of sub-section (1) of section 121 of the Financial Resolution and Deposit Insurance Act, 2017.	20
	<i>Explanation.</i> —For removal of doubts, it is clarified that all the provisions of Financial Resolution and Deposit Insurance Act, 2017 relating to winding up shall apply to a proceeding under this section."	25
Omission of section 88.	7. Section 88 shall be omitted.	
PART XIX		
AMENDMENTS TO THE COMPANIES ACT, 2013		
(18 OF 2013)		
Amendment of section 419.	1. In section 419, in sub-section (1), the following proviso shall be inserted, namely:—	30
	"Provided that the Central Government may, by notification, specify such number of benches of the Tribunal as may be necessary for the purposes of exercising the jurisdiction under the Financial Resolution and Deposit Insurance Act, 2017."	
Amendment of section 424.	2. In section 424,—	
	(i) in sub-section (1), after the words and figures "or of the Insolvency and Bankruptcy Code, 2016", the words and figures "or the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted;	35 31 of 2016.
	(ii) in sub-section (2), after the words and figures "or under the Insolvency and Bankruptcy Code, 2016", the words and figures "or the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.	31 of 2016. 40
Amendment of section 429.	3. In section 429, in sub-section (1), after the words and figures "the Insolvency and Bankruptcy Code, 2016", the words and figures "and the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.	31 of 2016.

PART XX

AMENDMENT TO THE PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY ACT, 2013

(23 OF 2013)

After section 19, the following section shall be inserted, namely:—

Amendment of section 19.

5 '19A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of any pension fund or any other entity connected to such pension fund, as the case may be.

Powers of Resolution Corporation.

10 *Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'

PART XXI

AMENDMENT TO THE INSOLVENCY AND BANKRUPTCY CODE, 2016

(31 OF 2016)

15 In section 59, after sub-section (9), the following sub-section shall be inserted, namely:—

Amendment of section 59.

'(10) Notwithstanding anything to the contrary in this Code, a specified service provider eligible to be voluntarily liquidated in accordance with section 93 of the Financial Resolution and Deposit Insurance Act, 2017, may be voluntarily liquidated under this section, subject to such conditions as may be specified by the regulations made by appropriate regulator:

20 Provided that the proceeds of liquidation shall be distributed in accordance with section 80 of the Financial Resolution and Deposit Insurance Act, 2017.

25 *Explanation 1.*—The expressions "specified service provider" and "appropriate regulator" shall have the same meaning as respectively assigned to them under the Financial Resolution and Deposit Insurance Act, 2017.

Explanation 2.—The constitution of liquidation estate for the purpose of voluntary liquidation of a specified service provider under this section shall be in accordance with the provisions of section 67 of the Financial Resolution and Deposit Insurance Act, 2017.'

30 PART XXII

AMENDMENT TO THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

(12 OF 2017)

31 of 2016. In section 82, after the words and figures "the Insolvency and Bankruptcy Code, 2016", the words and figures "and the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.

Amendment of section 82.



STATEMENT OF OBJECTS AND REASONS

At present, there is no specific law in India for resolution of failures of financial service providers. However, some provisions relating to the failures of financial service providers can be found scattered in certain enactments, such as, the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Life Insurance Corporation Act, 1956, the General Insurance Business (Nationalisation) India Act, 1972, the Regional Rural Banks Act, 1976, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959 and the Multi-State Co-operative Societies Act, 2002.

2. The impact of failures of financial service providers is much wider and can have a systemic effect on the economy and financial stability of a country, unlike traditional insolvency, where the affected parties are limited to the creditors of the insolvent entity. Since financial service providers handle consumer funds, some of them are critical for stability of the financial system, it is important to resolve failing financial service providers expeditiously through a specialised resolution process, as lengthy resolution proceedings can lead to losses for consumers, or instability in the financial system. The existing laws are inadequate, ineffective and fail to address the larger issue of preserving financial stability as they do not provide effective resolution tools and powers to the resolution authorities. Therefore, with a view to comply with the emerging international norms for establishing effective resolution regime for financial sector, it is proposed to regulate certain categories of financial service providers listed in the Second Schedule to the proposed legislation.

3. The Insolvency and Bankruptcy Code, 2016 has been enacted with a view to comprehensively reform the legislative framework for insolvency and bankruptcy. However, at present the said Code does not automatically cover financial service providers. The proposed legislation together with the Insolvency and Bankruptcy Code, 2016 is expected to provide a comprehensive resolution mechanism for our economy with the objective of protecting consumers of specified service providers and public funds, thereby contributing to the stability and resilience of the financial system.

4. The proposed Financial Resolution and Deposit Insurance Bill, 2017, *inter alia*, provides for,—

(a) establishment of a Resolution Corporation and to confer upon the Corporation certain powers of resolution relating to transfer of assets to a healthy financial firm, merger or amalgamation, liquidation to be initiated by an order of the National Company Law Tribunal and some new methods of resolution, such as bail-in and creation of a bridge service provider;

(b) designation of certain financial service providers as Systemically Important Financial Institutions, based on the criteria to be determined by the Central Government, the failure of which may disrupt the entire financial system and in view of their importance for the economy, the proposed legislation confers some additional powers in respect of such institutions;

(c) constitution of certain funds for the purposes of the proposed legislation, namely, (i) the Corporation Insurance Fund for deposit insurance provided by the Corporation to the insured service providers; (ii) the Corporation Resolution Fund for meeting the expenses of carrying out resolution of specified service providers; and (iii) the Corporation General Fund for all other functions of the Corporation;

(d) repeal of the Deposit insurance and Credit Guarantee Corporation Act, 1961;

(e) amendment of certain enactments, in the manner provided in the Fourth Schedule to the proposed legislation, with a view to give resolution powers to the Resolution Corporation under those Acts.

5. The Bill seeks to achieve the above objectives.

ARUN JAITLEY

NEW DELHI;
The 28th July, 2017.

Notes on clauses

Clause 2 defines the various expressions used in the Bill.

Clause 3 provides for the establishment of a body corporate by the name of Resolution Corporation, with perpetual succession, a common seal, power to acquire, hold or dispose of property, power to enter into contracts and the power to sue and be sued in its own name, with its headquarters in Mumbai.

Clause 4 seeks to provide that the general superintendence, direction and management of the affairs of the Corporation shall vest in the Members of the Corporation, which may exercise all powers and do all acts and things which may be exercised by the Corporation. It further provides for the constitution of the Corporation, including the qualifications, term, salaries and allowances of the Chairperson and the Members.

Clause 5 seeks to impose restrictions on future employment of the Chairperson and Members, including the time period applicable for such restriction and the requirement of previous approval of the Central Government before obtaining certain types of employment.

Clause 6 seeks to specify the circumstances in which the Central Government may remove the Chairperson or a Member from the Corporation, including being declared an insolvent, physical or mental incapacity, conviction for an offence which involves moral turpitude, and abuse of position which renders the continuation in office detrimental to public interest. It further provides for all Members to be given a reasonable opportunity of being heard, before being removed.

Clause 7 seeks to provide that the Chairperson shall have the powers of general superintendence and control in respect of all administrative matters of the Corporation and may also exercise such other powers, except the powers exercisable under clause 12, as may be delegated to him by the Corporation.

Clause 8 seeks to provide that the Corporation shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by it.

Clause 9 prohibits Members from participating in meetings in certain cases. It provides that any Member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Corporation, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Corporation, and the Member shall not take any part in any deliberation or decision of the Corporation with respect to that matter.

Clause 10 seeks to provide that no act or proceeding of the Corporation shall be invalid merely by reason of any vacancy in or any defect in the constitution of the Corporation or any defect in the appointment of a person as a Member or any irregularity in the procedure of the Corporation not affecting the merits of the case.

Clause 11 seeks to empower the Corporation to appoint officers and employees, for the efficient discharge of its functions under the Bill. It further makes provision for the Corporation to utilise and for the appropriate regulator to make available, the services of such employees of the appropriate regulator on such terms and conditions as may be agreed upon by the Corporation and the appropriate regulator.

Clause 12 seeks to empower the Corporation to make suitable regulations, consistent with the provisions of the Bill and to authorise officers to carry out functions under the Bill.

Clause 13 seeks to specify the powers and functions of the Corporation, including the functions relating to the provision for deposit insurance, specifying objective criteria for the classification of a specified service provider into one of the categories of risk to viability, powers in relation to exercise of early termination rights, resolution of a specified service provider, and acting as an administrator. It further vests the Corporation with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in matters relating to the discovery and production of books of accounts and other documents, summoning, and enforcing the attendance of persons and examining them on oath; issuance of commissions for the examination of witnesses or documents; and other matters which may be prescribed in the rules.

Clause 14 seeks to empower the Corporation with the powers of investigation where the Corporation has reasonable grounds to believe that the activities of a specified service provider are being conducted in a manner detrimental to the interest of the consumers or any person or entity related to the specified service provider has violated any of the provisions of the Bill or the rules or regulations made or any directions issued thereunder. It further requires the managers, managing directors, officers and employees of the specified service provider or the related entity to preserve and produce to the Investigating Authority any specified books, registers, documents and records. It also subjects the Investigating Authority to the Banker's Book of Evidence Act, 1891, and requires him to furnish a report to the Corporation. It also empowers the Investigating Authority to keep such books and registers in its custody, and to examine persons and entities and requires such examination report to be recorded in writing and forwarded to the appropriate regulator.

Clause 15 seeks to provide for the powers of the Corporation, pending an investigation. It empowers the Corporation to authorise any of its Members to carry out certain functions, *inter alia*, including restraining a specified service provider, or an office bearer of a specified service provider from carrying out any business activity; impounding and retaining the proceeds of an activity under investigation, and provisional attachment.

Clause 16 seeks to empower the Corporation to conduct search and seizure in certain cases. It empowers the Corporation to authorise an officer to enter and search any building, break open the lock, seize books, accounts and other documents, and place marks of identification on the seized documents. It further authorises the Corporation, or its authorised officer to requisition the services of a police officer. It further provides that the Code of Criminal Procedure, 1973 shall apply on matters relating to such search and seizure.

Clause 17 seeks to empower any officer or agent of the Corporation or of the appropriate regulator to enter the place of business of a specified service provider; to inspect any equipment and documents at the premises; and to call upon any employees of the specified service provider to furnish documents and information as may be required.

Clause 18 seeks to provide that the Corporation shall exercise its investigation powers under clauses 14, 15, 16 and 17 only when the relevant specified service provider is classified to be at imminent or critical risk to viability under the Bill.

Clause 19 seeks to empower the Corporation to constitute committees for the efficient discharge of its functions.

Clause 20 seeks to provide that the Corporation or the appropriate regulator shall hold due consultations with all relevant stakeholders before making any regulations under the Bill and shall ensure transparency in the discharge of its powers and functions.

Clause 21 seeks to provide that the Corporation shall create the following funds, namely, the Corporation Insurance Fund, the Corporation Resolution Fund and the

Corporation General Fund, for the purposes of providing deposit insurance, meeting expenses of the process of resolution, and for other functions. It further requires that the Corporation shall utilise the amounts in each fund only for the purpose for which the Fund was created.

Clause 22 seeks to specify the fees to be paid to the Corporation by all specified service providers for resolution and for administrative expenses. It further requires all insured service providers to additionally pay premium for the cover of deposit insurance under the Bill.

Clause 23 seeks to provide for the payment of grants and loans to the Corporation, after due appropriation made by Parliament by law in this behalf, on such terms, as the Central Government may think fit, for being utilised for the purposes of this Bill.

Clause 24 seeks to provide that the Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. It further provides that the accounts of the Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by the Comptroller and Auditor-General of India in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government who shall cause the same to be laid before each House of Parliament.

Clause 25 seeks to provide that the Central Government may, in consultation with the appropriate regulator, designate a financial service provider, which meets such criteria as may be prescribed by the Central Government in consultation with the appropriate regulator, as a systemically important financial institution after giving such systemically important financial institution an opportunity of being heard. It further seeks to provide that any person designated as Domestic Systemically Important Bank by the Reserve Bank of India shall be deemed to be a systemically important financial institution for the purposes of the Bill, for a period of six months with effect from such date as the Central Government may, by notification, specify. It also empowers the Central Government to designate any holding, subsidiary or associate companies, or such other body corporate related to, or associated with the financial service provider as systemically important financial institutions, jointly with the financial service provider, or separately. It also provides that persons designated as such shall have a right of appeal to the Tribunal.

Clause 26 seeks to provide that the provisions of the Bill shall apply to a systemically important financial institution, as if it were a specified service provider, whether or not it is a specified service provider. It further provides that every systemically important financial institution shall submit a restoration plan to the appropriate regulator and a resolution plan to the Corporation. It also seeks to provide that the regulation and supervision of systemically important financial institutions shall continue to be governed by the appropriate regulator with which the systemically important financial institution is registered, subject to the provisions of the Bill.

Clause 27 seeks to empower the Central Government to de-designate a systemically important financial institution if it ceases to meet the criteria specified therein, for reasons to be recorded in writing.

Clause 28 seeks to empower the Central Government to delegate its powers under Chapter III of the Bill (except the powers to prescribe rules or issue notifications), by an order published in the Official Gazette, to such person or committee as may be specified in the order.

Clause 29 seeks to specify the liability of the Corporation in respect of insured deposits, and provides that the Corporation, in consultation with the appropriate regulator shall specify the amount to be paid to insured depositors. It further provides that the Corporation Insurance Fund shall be utilised for specified purposes, including the payment

in cases of liquidation; for payment under a scheme of compromise or arrangement or amalgamation sanctioned for an eligible co-operative bank; or a scheme of resolution, except bail-in; and that the payment out of the Corporation Insurance Fund will have priority over other claims in resolution.

Clause 30 provides for the manner of payment of insurance deposits by the Corporation to the insured service providers, except in case of the liquidation, where the manner of payment by the Corporation shall be as laid down under clause 72 of the Bill.

Clause 31 provides for the discharge of liability of the Corporation from the payment of deposit insurance, to the extent already paid by it under clause 29 of the Bill.

Clause 32 seeks to provide for payments in cases where any depositor, to whom any payment is to be made in accordance with the provisions of clause 29 or clause 72, cannot be found or is not readily traceable.

Clause 33 seeks to provide for registration of the specified service provider. It deems, every specified service provider under the Second Schedule to be registered under the Bill and provides that a holding company or the non-regulated operational entity within a financial group or conglomerate of the specified service provider which is classified into a category of risk to viability, shall be deemed to be registered from the date of such classification. It further deems, *inter alia*, a banking institution registered under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 to be registered as an insured service provider under the Bill. It also makes provision for the Corporation to maintain a register with such details and information, of each specified service provider.

Clause 34 seeks to provide that notwithstanding the withdrawal or cancellation by the appropriate regulator of a specified service provider to carry on business, such entity shall be deemed to be a specified service provider for the purposes of the Bill. It further seeks to specify the circumstances in which the registration of an insured service provider shall be withdrawn, including, when there is a permanent prohibition on the receipt of fresh deposits; or when the insured service provider has ceased to be a banking company or a co-operative bank; or on the cancellation of the license of an insured service provider by the Reserve Bank of India; or on the appointment of a liquidator in respect of such insured service provider; or the non-payment of premium for three consecutive years by an insured service provider classified to be at imminent risk to viability. It also specifies cases where the Corporation, in consultation with the appropriate regulator may restore the registration of an insured service provider.

Clause 35 seeks to provide that the withdrawal or cancellation of registration of the specified service provider or the insured service provider shall not entitle such specified service provider or insured service provider, as the case may be, to any refund for any fees or premia paid to the Corporation; or affect their liability for payment of premium or fees and of any interest due for the period before such withdrawal.

Clause 36 seeks to specify the various stages of risk to viability, and provides some of the objective criterion for the classification of specified service providers by the Corporation and by the appropriate regulator, as the case may be, into low, moderate, material, imminent and critical risk to viability. It further specifies the factors to be considered for the classification, such as, capital, asset and liquidity adequacy, capability of the management, asset quality, earnings sufficiency, leverage ratio, risk of failure of a holding company, and the sensitivity of the covered service provider to adverse market conditions. It also provides that the classification by the Corporation or by the appropriate regulator shall be final and such classification shall be confidential, except the classification in the category of critical risk to viability.

Clause 37 seeks to provide for consultation process to be followed by the Corporation and the appropriate regulator, in case of a difference in opinion over a classification, between the Corporation and the appropriate regulator. It further provides

that in case such a consultation process does not lead to a consensus over the assessment of the classification, the Corporation is empowered to conduct an independent inspection to confirm its view, with the appropriate regulator being present, if deemed necessary by the appropriate regulator. It also empowers the Corporation, after considering the comments of the appropriate regulator, to make a final determination of the imminent or critical risk to viability of the specified service provider.

Clause 38 seeks to provide for the submission of a restoration plan to the appropriate regulator, and a resolution plan to the Corporation by a specified service provider classified in the category of material or imminent risk to viability, with a copy of every such plan being sent to the Corporation and the appropriate regulator, as the case may be, within ninety days of classification under clause 36. It further provides that a systemically important financial institution shall submit a resolution plan within ninety days of its designation as such by the Central Government.

Clause 39 seeks to specify the information to be included in the restoration plan, which *inter alia*, include, the distinct identification of the assets and liabilities of a specified service provider; any contingent liabilities of the specified service provider; steps which the specified service provider shall take to qualify for classification in the category of at least moderate risk to viability and how such steps may result in such classification; and the period within which the entire restoration plan and each step of the plan will be executed. It further provides that a systemically important financial institution classified in the category of low or moderate risk to viability shall submit the information assuming that it is classified in the category of material or imminent risk to viability.

Clause 40 seeks to specify the information to be included in the resolution plan, *inter alia*, including, the distinct identification of the assets and liabilities; any contingent liabilities of the specified service provider; distinct identification of critical functions of the specified service provider; direct or indirect access to financial market infrastructure services; and strategy plans to exit the resolution process which may provide for the consideration of legal or regulatory requirements as may be required by the Corporation to sell or transfer the assets and liabilities of the specified service provider, or change its ownership. It further empowers the Corporation to require a specified service provider to provide any information as may be necessary for the purpose of resolution, including any information required for the transfer or sale of the assets of the specified service provider.

Clause 41 seeks to provide for every restoration plan and every resolution plan to be revised annually, and the Corporation and the appropriate regulator to be informed of such revised plan within seven days of the revision. It further provides that every material change in the restoration plan or the resolution plan shall be immediately informed to the appropriate regulator and the Corporation. It also provides that the appropriate regulator shall review the information provided in the restoration plan the Corporation shall review the resolution plan and if the appropriate regulator or the Corporation determines that the plan would not ensure restoration or resolution within a reasonable period, it shall inform the specified service provider of such deficiency, and the specified service provider shall re-submit the restoration plan or the resolution plan within such period as may be directed by the appropriate regulator or the Corporation, as the case may be. It also provides that the appropriate regulator or the Corporation may, if considered necessary in the interest of restoration or of resolution of the specified service provider, modify such deficient restoration plan or the resolution plan and such modified plan shall be binding on the specified service provider.

Clause 42 seeks to provide that the appropriate regulator may carry out additional inspections to monitor the risk to viability where a specified service provider is classified to be at material risk to viability. It further empowers the appropriate regulator to prevent,

by order, the specified service provider, from various actions, namely, accepting funds, payment of dividends to shareholders, acquiring any interest or establishing new locations of carrying out business. It also empowers the appropriate regulator to require the specified service provider to increase the capital, issue new securities, sell identified assets and take other required actions.

Clause 43 seeks to specify the various circumstances under which the appropriate regulator or the Corporation is empowered to classify a specified service provider to be at imminent risk to viability, including, non-submission of restoration plan or resolution plans, fraud in the business, etc. It further provides that upon such classification, the Corporation may prevent such specified service provider from undertaking various actions like accepting funds, declaration of payment of dividends, etc. It also empowers the Corporation to require the specified service provider to increase its capital, issue new securities and sell identified assets. It also provides that any classification of a central counterparty in the category of imminent risk to viability shall only be made by the appropriate regulator, which shall record its reasons for such classification and inform the Corporation within fifteen days of the classification. It also provides that in respect of a specified service provider classified in the category of imminent risk to viability or critical risk to viability, the appropriate regulator shall exercise its powers under the law regulating such specified service provider, notwithstanding anything to the contrary in such law, to the extent it is not inconsistent with the provisions of the Bill.

Clause 44 seeks to provide for certain additional powers of the appropriate regulator, with respect to central counterparties which are classified at material or imminent risk to viability, including taking measures such as to allocate uncovered losses caused by participant default, to address uncovered liquidity shortfalls, to replenish financial resources, to re-establish a matched book, set-off, close-out, netting and collateralisation, amongst others.

Clause 45 seeks to provide that a specified service provider may be classified to be at critical risk to viability by the appropriate regulator or by the Corporation, through an order and the provisions of Chapters X, XI and XII shall apply to the specified service provider on the date of such classification. It further provides that on such classification, the Corporation shall be deemed to be an administrator and prohibits, *inter alia*, continuance of legal actions and proceedings against the specified service provider, till such period as may be specified in the order, or until conclusion of resolution, or until the date of the order appointing the Corporation as the liquidator. It further provides that the Corporation shall make payment of deposit insurance in accordance with the provisions of clause 29. It also empowers the appropriate regulator to withdraw or modify authorisations or licenses of the specified service provider to carry out any financial service.

Clause 46 seeks to provide that a specified service provider shall not be classified in the category of material or imminent or critical risk to viability without issuance of a show cause notice and affording of an opportunity to be heard to the specified service provider.

Clause 47 seeks to provide that entry into resolution of a specified service provider shall not cause early termination of a specified contract so long as the substantive obligations of the contract continue to be performed subject to such safeguards, notwithstanding the provisions relating to netting and set-off under the Payments and Settlement Systems Act, 2007, the Reserve Bank of India Act, 1934 and the Securities (Contracts) Regulation Act, 1956. It further provides that if a termination right under a specified contract becomes exercisable, the Corporation shall have the power, subject to such safeguards, to temporarily stay the exercise of such rights of any party to a specified contract with the specified service provider or its subsidiary if the relevant termination

right is exercisable solely on entry into resolution or in connection with the exercise of any resolution power, except liquidation, in respect of such specified service provider or its subsidiary, under this Bill.

Clause 48 seeks to provide the various methods of resolving a specified service provider classified in the category of critical risk to viability through a scheme or a bail-in instrument. It empowers the appropriate regulator to classify an insurance company as a run-off entity and to allow the present insurance policies to run to their expiration dates and to sell or transfer the portfolios of an insurance company to another insurance company or a run-off entity. It further provides that no such scheme shall be made by the Corporation unless the proposed transferee entity has obtained the consent of the appropriate regulator in this regard. It also provides that a scheme made under this clause shall have regard to the treatment of all liabilities of the specified service provider in accordance with the priority they would have in liquidation; and the treatment of such persons affected adversely by the order of classification in the category of critical risk to viability, in accordance with the priority they would have on a liquidation, to bear losses on an equal footing with each other, except in such circumstances as the Corporation may, for the reasons to be recorded in writing, specify.

Clause 49 seeks to specify the matters which may be contained in scheme of resolution prepared under clause 48 including, *inter alia*, details about the constitution, name and registered office, assets, rights, interest, transfer of properties, assets and liabilities to the transferee specified service provider, a change in the board of directors, alteration of the memorandum and articles of association of the specified service provider and reduction of interest or rights of the members, depositors and other creditors against the specified service provider. It further provides that the contents of the scheme may be.

Clause 50 seeks to provide for the creation of a bridge service provider and to transfer the assets and liabilities of a specified service provider under resolution to such bridge service provider, with the aim of eventual resolution. It provides that the Corporation shall resolve the bridge service provider as expeditiously as possible, and in any event, within one year from the date of its incorporation. It further provides that the Corporation shall resolve the bridge service provider by transferring, by way of a scheme, the whole or any part of the assets, liabilities, businesses, properties or undertakings of the bridge service provider to another person capable of providing the services of a specified service provider, on such terms as may be agreed between the Corporation and such person; or by sale, by way of a scheme under section, of the shares of the bridge service provider constituting more than three-fourths of the equity capital of the bridge service provider; or by liquidation of the bridge service provider under the Bill.

Clause 51 seeks to provide the Corporation with the power of claw-back of performance incentive, requiring the return of certain performance based remuneration of senior management of a specified service provider under resolution, through an order in writing, after giving a reasonable opportunity of being heard to the person concerned. It provides that an officer of a specified service provider shall be subject to such order if the officer acted, or omitted to act in a manner that caused, or materially contributed to, the specified service provider to be classified in the category of critical risk to viability; and the act was done, or the omission was made, intentionally, recklessly or negligently. It further requires the Corporation to ensure the proportion of performance based incentive which is to be returned is commensurate with the act or omission.

It also provides that no payment made before three years from the date on which the specified service provider was classified in the category of critical risk to viability, shall be required to be returned to the specified service provider.

Clause 52 gives the Corporation the power to carry out bail-in, as a method of resolution, either through a bail-in instrument or a scheme made specifically for this

purpose. It empowers the Corporation to cancel a liability, and to modify or change the form of a liability, including the power to convert an instrument from one class to another, replace an instrument with another, create a new security, and for central counterparties specifically, direct a haircutting of collaterals and margins, and the issuance of equity to creditors. It also specifies which liabilities the bail-in instrument or scheme will not affect. It also provides that the appropriate regulator in consultation with the Corporation, shall require certain specified service providers to maintain liabilities that may be subject to bail-in and for the bail-in instrument to contain a specific provision clarifying that such liabilities may be subject to bail-in. It also requires the Corporation to forward the bail-in instrument to the Central Government together with a report stating the reasons for making such an instrument or scheme, along with its effects and a copy of the said report be laid before each House of Parliament by the Central Government.

Clause 53 seeks to provide that the Corporation may use a bail-in instrument, *inter alia*, to cancel or modify securities to which clause 52 applies, convert such securities from one form or class to another, or make a provision with respect to their rights, provide for their listing or transfer or make other provisions in their regard.

Clause 54 seeks to provide that where the Corporation has made a provision for transfer of securities in the bail-in instrument under clause 53, the Corporation may make one or more onward transfer bail-in instruments by providing for a transfer of securities issued by the specified service provider, before or after the issuance of the instrument and the form and manner of the bail-in instrument under clause 52 shall apply to the onward transfer bail-in instrument.

Clause 55 seeks to provide for safeguards while carrying out resolution, such as, ensuring the continuity of critical functions of the specified service provider; ensuring that no creditor of the specified service provider is left in a worse position as a result of application of any method of resolution, than such creditor would have been in the event of its liquidation; protecting the client funds, and client assets of the specified service provider, to no less an extent than they would be protected in liquidation; and such other safeguards as may be specified by regulations made by the Corporation. It further provides for certain additional safeguards for the use of bail-in as a method of resolution, such as, cancellation of the liabilities of any specified service provider to be done in accordance with the order of priority laid down in clause 80 where the instrument creating it contains a provision to the effect that the parties to the contract agree to the liability being eligible for a bail-in; equal treatment to be given to all rights and liabilities of the same class; and such other safeguards as may be specified by regulations made by the Corporation in consultation with the appropriate regulator. It also provides that the Corporation shall, while exercising its powers, take measures to ensure the protection of such collateral arrangements, set-off or netting arrangements.

Clause 56 seeks to specify the time limit for resolution. It provides that resolution specified service provider shall be completed expeditiously and not later than one year from the date on which such specified service provider is classified to be at critical risk to viability which may be extended by the Corporation, by an order, for a further period not exceeding one year for reasons to be recorded in writing. It further provides that one year time limit shall not be applicable in case of liquidation. It also provides that in case resolution is not completed within the specified time, the Corporation shall liquidate such specified service provider under Chapter XII. It also empowers the Corporation to specify different time periods for resolution of specified service provider, depending on the process of resolution, the size and complexity of the specified service provider.

Clause 57 seeks to provide that the supply of services relating to the continuance of the critical functions of the specified service provider or any other person as determined by the Corporation shall not be terminated, suspended or interrupted during the resolution of such specified service provider.

Clause 58 seeks to provide that the Corporation shall be the administrator from the date the specified service provider is classified in the category of critical risk to viability and all powers over the management of the relevant specified service provider, including exercise of all powers of its board of directors shall vest in the Corporation. It further provides that Corporation shall act and execute decisions on behalf of the relevant specified service provider, including authority to access books of account, electronic records, and the power to resolve the specified service provider, except by way of liquidation. It also specifies certain restrictions on the specified service provider which is under administration. It also lays down certain curbs on the specified service provider which is under administration and provides for certain additional measures that the Corporation may take, in consultation with the appropriate regulator, in the case of central counterparties, including measures to allocate uncovered losses, address uncovered liquidity shortfalls, replenish financial resources, re-establish a matched book, issuance of equity to creditors, and imposing a temporary stay on early termination rights. It also provides that the Corporation may, subject to the provisions of clauses 48 and section 49, place the specified service provider, except a central counterparty, in liquidation in accordance with the provisions of Chapter XII.

Clause 59 seeks to provide for the functions of the Corporation as an administrator, such as, taking control and custody of certain assets of the specified service provider; and performing such other functions as may be laid down in regulations by the Corporation.

Clause 60 seeks to empower the Corporation to remove from office any Chairperson, director, chief executive officer or other officer or employee of the specified service provider which has been classified in the category of imminent risk to viability or critical risk to viability, as the case may, by giving reasons in writing, after affording a right of hearing to such persons. It also provides for a right of appeal against the order of removal to the Appellate Tribunal.

Clause 61 seeks to empower the Corporation to appoint additional directors, for specified service providers classified in the category of imminent or critical risk to viability. It provides that such directors shall hold office during the pleasure of the Corporation and they shall not incur any liability or obligation by reason only of being a director or for anything done or omitted to be done in good faith in the execution of the duties of the office or in relation thereto. It further provides that such directors shall not hold qualification shares in the specified service provider. It also provides that for the purpose of reckoning any proportion of the total number of directors of the specified service provider, any additional director appointed under this clause shall not be taken into account.

Clause 62 seeks to empower the Corporation to supersede the board of directors of a specified service provider classified in the category of imminent or critical risk to viability, for a period not exceeding two years, as may be specified in the order and to appoint an administrator for such an entity. It further provides that upon such supersession, the Chairperson, managing director, and other directors shall vacate their offices, and the powers, functions and duties of the board of directors shall be exercised by the administrator. It also empowers the Corporation to constitute a committee to assist the administrator in discharge of his duties. It also requires the administrator to vacate his office immediately after the board of directors of the specified service provider has been constituted.

Clause 63 seeks to provide that where the Corporation determines liquidation to be the most appropriate method for the resolution of a specified service provider, it shall make an application to the Tribunal for an order of liquidation in respect of such specified service provider and the Tribunal shall pass an order of liquidation appointing the Corporation as a liquidator for a specified service provider and the Corporation may designate any of its officers as the liquidator. It also provides that the order of liquidation

may prohibit the commencement or continuance of all legal actions and proceedings against such specified service provider, till the continuance of the period of liquidation. It also provides that on the appointment of the liquidator, all powers of the board of directors, key managerial personnel and the partners of the specified service provider, shall cease to have effect and shall vest in the liquidator. It also provides that any person aggrieved by the order of the Tribunal may, within thirty days from the receipt of the order, prefer an appeal to the Appellate Tribunal and any person aggrieved by an order of the Appellate Tribunal may, within forty-five days from the date of receipt of the order, prefer an appeal to the Supreme Court on a question of law arising out of such order. It also deems the order of liquidation to be a notice of discharge to the officers, employees and workmen of the specified service provider, except when the business of the specified service provider is continued during the liquidation process by the liquidator.

Clause 64 seeks to provide that on the appointment of the Corporation as the liquidator, the liability of an insured service provider to pay premium under clause 21 shall cease.

Clause 65 seeks to bar the jurisdiction of any court or tribunal other than the Tribunal in any proceeding for liquidation of a specified service provider and provides for the transfer of proceedings to the Tribunal. It further bars the institution of any suit or legal proceeding against the specified service provider before any other court or authority other than the Tribunal, when an order of liquidation has been passed, except with the prior approval of the Tribunal. It also provides that nothing in this clause shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

Clause 66 seeks to specify the various powers of the Corporation as a liquidator, which *inter alia*, include, the power to verify claims of the creditors, carry on the business of the covered service provider under liquidation, sell the properties and claims of such a covered service provider, institute or defend suits and other legal proceedings, apply to the Tribunal for necessary orders or directions, and to perform all other functions prescribed by the Central Government.

Clause 67 seeks to provide that the liquidator shall, for the purposes of liquidation, form an estate of the assets which shall be called the liquidation estate in relation to the specified service provider and the liquidator shall hold the liquidation estate as a fiduciary. It further specifies the assets which shall comprise the liquidation estate and the assets which shall not be included in the liquidation estate for the purposes of recovery in the liquidation. It also provides that the payments and recoveries with regard to central counterparties shall be made in accordance with the, rules, bye-laws or regulations of the central counter party and such liabilities shall be discharged before making any distributions under clause 80.

Clause 68 seeks to provide that the liquidator shall have the power to access any information system for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the specified service provider. It further provides that the liquidator shall provide the information to creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

Clause 69 seeks to provide for the liquidator to receive or collect the claims of all consumers and creditors within a period of ninety days from the date of the commencement of the liquidation process. It further provides that a depositor or operational creditor shall submit a claim to the liquidator to prove the claim and deems every depositor of a specified service provider which is a banking institution to have submitted its claim for the amount shown in the books of the specified service provider as standing to its credit and the liquidator shall presume such claims to have been proved, unless it has reason for doubting its correctness. It also provides that a creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to

the extent of the financial debt and the operational debt. It also provides that a creditor may withdraw or vary his claim within fourteen days of its submission.

Clause 70 seeks to provide for the verification of claims submitted under clause 69 and empowers the liquidator to require any creditor or the specified service provider or any other person to produce any other document or evidence which in the opinion of the liquidator is necessary for the purpose of verifying the whole or any part of the claim.

Clause 71 seeks to empower the Tribunal to make a call on, and order payment by any contributory, if such contributory has been placed on the list of contributories by the liquidator and has not appeared to dispute his liability.

Clause 72 seeks to provide for the manner of payment of deposit insurance by Corporation in case of liquidation. It provides that the deposit of each depositor shall be paid directly to the depositor, or through an agency and the expenses incurred by the liquidator in making such payments shall be treated as expenses incurred in the liquidation of the insured service provider.

Clause 73 seeks to lay down the procedure for the admission and rejection of claims. It provides that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection and where the liquidator has accepted the claims made by depositors, it shall proceed to pay out any amounts covered under deposit insurance in such manner as may be specified by regulations made by the Corporation.

Clause 74 seeks to make provision for an appeal before the Tribunal by a creditor or depositor aggrieved by the decision of the liquidator rejecting the claims under clause 73, within a specified time.

Clause 75 seeks to provide that the liquidator shall determine the value of claims admitted under clause 73 in such manner as may be specified by regulations made by the Corporation.

Clause 76 seeks to specify the documents of a specified service provider that can be admitted in evidence.

Clause 77 seeks to provide for public examination of directors and auditors of a specified service provider being liquidated by the Corporation. It provides that if the liquidator is of the opinion that any promoter or any person who has taken part in the conduct of business of the specified service provider or has been a director or an auditor of the specified service provider should be publicly examined, it may file an application before the Tribunal to hold a public sitting on a date to be appointed for that purpose and thereupon, the Tribunal may direct that such person, director or auditor shall attend there at and shall be publicly examined as to the promotion or formation or the conduct of the business of the specified service provider, or as to his conduct and dealings, provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be examined. It further provides that any creditor or contributory may take part in the examination either personally or through a person entitled to appear before the Tribunal. It also seeks to provide that if the person being examined is exculpated from any charges made or suggested against him, the Tribunal may allow him such costs in its discretion as it may deem fit; and where on such examination, the Tribunal is of the opinion, whether or not a fraud has been committed, that the person, who has been a director of a specified service provider, is not fit to be a director of a specified service provider, or that the person, who has been an auditor of a specified service provider or a partner of a firm acting as such auditor, is not fit to act as an auditor of a specified service provider or to be a partner of a firm acting as such auditor, the Tribunal may make an order that the person shall not, without the leave of the Tribunal, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any specified service provider or, as the case may be,

act as an auditor of, or be partner of a firm acting as auditors of any specified service provider, for such period not exceeding five years, as may be specified in the order.

Clause 78 seeks to empower the Tribunal in a liquidation proceeding to inquire into the conduct of the person, who is or has been a director, manager, or officer of the specified service if such person has misapplied, or retained, or become liable or accountable for, any money or property or has been guilty of any misfeasance or breach of trust in relation to the specified service provider, and order him to repay or restore the money or property or any part thereof, with interest at such rate, or to contribute such sum to the assets of the specified service provider by way of compensation in respect of such misapplication or retention of any money or property or any misfeasance or breach of trust, in relation to the specified service provider. It further provides that if the specified service provider under liquidation is a banking institution, the Tribunal may make an order for the repayment, restoration, and even attachment of the money and property.

Clause 79 seeks to provide for realisation of security interest of a secured creditor in a liquidation proceeding. It provides that the secured creditor may choose to relinquish its security interest to the liquidation estate and participate in the distribution of assets or realise its security interest outside the liquidation proceedings. It further provides that a secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as may be applicable to the security interest being realised to the secured creditor and apply the proceeds to recover the debts due to it. It also provide that if in the course of realising a secured asset, any secured creditor faces resistance from the specified service provider or any person connected therewith in taking possession of, selling or otherwise disposing of the security, the secured creditor may make an application to the Tribunal for an order to realise such security interest in accordance with the law for the time being in force and the Tribunal may pass such order as may be necessary to permit a secured creditor to realise security interest. It also provides that the amount of resolution costs payable by the secured creditor shall be deducted from the realised proceeds and where there is a surplus realised from the enforcement of a security interest, the secured creditor shall account for the same to the liquidator. It also provides that if the proceeds of the realisation of the secured assets are not sufficient to repay the debts owed to the secured creditor, the creditor may claim the same in accordance with the priority of payments under clause 80 for such unpaid portion.

Clause 80 seeks to provide for distribution of assets in liquidation. It provides that notwithstanding anything in any other law for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the order of priority specified in sub-clause (I). It further provides that any contractual arrangements between recipients with equal ranking, if disrupting the order of priority under sub-clause (I) shall be disregarded by the liquidator. It also provides that the fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients and the proceeds to the relevant recipient shall be distributed after such deduction.

Clause 81 seeks to provide for the dissolution of the specified service provider. It provides that once the affairs of the specified service provider have been wound up and its assets completely liquidated, the liquidator will make an application to the Tribunal for the dissolution of the specified service provider and the Tribunal shall order that the specified service provider shall be dissolved from the date of that order and the specified service provider shall be dissolved accordingly.

Clause 82 seeks to provide for the avoidance by the liquidator of a preferential transaction in certain transactions. It provides that a specified service provider shall be deemed to have given a preference, if there is a transfer of property or an interest thereof of the specified service provider for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed

by the specified service provider; and such transfer has the effect of putting such creditor or a surety or a guarantor in a more beneficial position than it would have been in the event of a distribution of assets being made in accordance with clause 80. It also prohibits avoidance of transaction at a relevant time and deems a preference to be given at a relevant time, if it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the liquidation commencement date; or a preference is given to a person other than a related party during the period of one year preceding the liquidation commencement date.

Clause 83 seeks to empower the Tribunal, to pass orders in relation to the avoidance of a preferential transaction, which have the effect of reversing the preferential transaction, and requiring the person to whom the preference is granted, to pay back any gains he may have made as a result of such preference. It further deems a person who has acquired an interest in property from another person other than the specified service provider, or who has received a benefit from the preference or such another person to whom the specified service provider gave the preference, to have acquired such interest or received the benefit otherwise than in good faith unless the contrary is shown, if he had sufficient information of the initiation or commencement of liquidation process of the specified service provider or is a related party. It also provides that a person shall be deemed to have sufficient information or opportunity to avail such information if an order of liquidation has been made under clause 63.

Clause 84 provides for the avoidance of undervalued transactions such as gifts, or transactions where the value of the consideration received by the specified service provider is significantly less than the value provided by such specified service provider. It provides that the liquidator shall make an application to the Tribunal to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

Clause 85 seeks to provide that in an application for avoiding a transaction which has been undervalued, the liquidator shall demonstrate that such transaction was made with any person within the period of one year preceding the liquidation commencement date; or such transaction was made with a related party within the period of two years preceding the liquidation commencement date. It empowers the Tribunal to require an independent expert to assess evidence relating to the value of the transactions.

Clause 86 seeks to permit the creditors, shareholders or partners of the specified service provider to make an application to the Tribunal for setting aside an undervalued transaction where the liquidator has not reported such transaction to the Tribunal. It provides that the Tribunal shall pass an order restoring the position as it existed before such transactions and reversing the effects thereof, if after examination of the application, it is satisfied that undervalued transactions had occurred and the liquidator after having sufficient information or opportunity to avail information of such transactions did not report such transactions to the Tribunal.

Clause 87 seeks to provide that the order of the Tribunal setting aside the undervalued transaction shall have the effect of reversing the undervalued transaction and requiring the person who benefits from such transaction to pay back any gains he may have made as a result of such transaction.

Clause 88 seeks to provide that where the Tribunal is satisfied that the specified service provider had deliberately entered into undervalued transaction for keeping assets of the specified service provider beyond the reach of any person who is entitled to make a claim against the specified service provider; or in order to adversely affect the interests of such person in relation to the claim, it shall make an order restoring the position as it existed before such transaction as if the transaction had not been entered into and for protecting the interests of persons who are victims of such transactions.

Clause 89 seeks to empower the liquidator to make an application to the Tribunal for avoidance of extortionate credit transaction where the specified service provider has been a party to an extortionate credit transaction involving a financial or operational debt during the period within two years preceding the liquidation commencement date, the if the terms of such transaction required exorbitant payments to be made by the specified service provider. It also seeks to clarify that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall not be considered as an extortionate credit transaction.

Clause 90 seeks to empower the Tribunal to pass orders relating to extortionate credit transactions, including, to restore the position as it existed prior to such transaction or to set aside the whole or part of the debt created on account of the extortionate credit transaction, if it is satisfied that the terms of a credit transaction required exorbitant payments to be made by the specified service provider.

Clause 91 seeks to empower the Corporation, on being appointed as a liquidator or as an administrator, to require parties related to the specified service provider to continue to provide such services or honour such contracts as the Corporation may direct, for a period not exceeding two years from the date of such appointment, for effective resolution of the specified service provider.

Clause 92 seeks to provide that the appropriate regulator shall provide necessary assistance and co-operation to the Corporation in the discharge of its duties under Chapter XII. It also requires the District Magistrate, on a request in writing by the Corporation, to take possession of the property, books of accounts or other documents within his jurisdiction; and to forward them to the Corporation; or to sell such property and effects by public auction and forward the net proceeds of the sale to the Corporation. It further requires the District Magistrate to provide necessary assistance and co-operation to the Corporation in the discharge of its duties under the said Chapter.

Clause 93 seeks to permit a specified service provider classified in the category of low or moderate risk to viability to close its business and liquidate itself voluntarily under section 59 of the Insolvency and Bankruptcy Code, 2016, subject to such conditions as may be specified by regulations made by the appropriate regulator. It seeks to prohibit voluntary liquidation by a specified service provider classified in the category of material or higher risk to viability.

Clause 94 seeks to prohibit the Tribunal from entertaining any petition for winding up of a specified service provider, or a bridge service provider, under section 271 of the Companies Act, 2013, except on a report from the Corporation that such a specified service provider should be liquidated. It further provides that upon submission of the report by the Corporation, if the Tribunal is satisfied that the specified service provider has to be liquidated, it shall appoint the Corporation as the liquidator.

Clause 95 seeks to empower the Central Government to enter into an agreement with the Government of any country outside India for enforcing the provisions of the Bill. It further empowers the Corporation, with due approval of the Central Government, to enter into memorandum of understanding with other international organisations and authorities, to share information on a reciprocal basis. It also provides for maintenance of confidentiality by all the parties involved. It also requires the Tribunal, on an application to that effect by the Corporation, to issue a letter of request to be sent to foreign courts and authorities, for seeking evidence or action relating to assets situated in that country.

Clause 96 seeks to provide for the recognition and enforcement or refusal of recognition and enforcement of foreign resolution actions. It provides that that the Corporation may, subject to any agreement or memorandum of understanding entered into by the Central Government or the Corporation under clause 95, make an order of recognition or enforcement of a foreign resolution action, provided the foreign resolution action shall not be in derogation of the safeguards contained in clause 55 of the Bill in

relation to the Indian stakeholders affected by such resolution action; and that the creditors of the specified service provider in India shall have the first charge on the assets of the specified service provider in relation to which such recognition and enforcement order is being made. It further provides that the Corporation may refuse to recognise and enforce a foreign resolution action where the action could have an adverse impact on the financial stability of India, or may be inconsistent with the objectives of the Bill or be opposed to public policy or be inconsistent with the laws of India or where an independent resolution action by the Corporation in India is considered necessary to secure the objectives of the Bill.

Clause 97 of the Bill seeks to provide for the rights of the local creditors in certain cases. It empowers the appropriate regulator to initiate resolution against a branch office of a body corporate incorporated outside India, whose branch office in India is a specified service provider, in the event of a foreign resolution action, subject to any memorandum of understanding or agreement referred to in clause 95. It provides that such branch office may be classified in the category of critical risk to viability by the appropriate regulator, and resolved in accordance with the provisions of the Bill; and in such case, the creditors of the specified service provider in India shall have first charge on the assets of the specified service provider for the purpose of resolution or liquidation under the Bill.

Clause 98 seeks to specify punishment for wilful concealment, fraudulent removal, destruction, mutilation, falsification, concealment of knowledge, or the creation of a security interest in relation to a property of a specified service provider, by any officer of the specified service provider if such officer has committed any of those acts within the twelve months immediately preceding the date of the order of liquidation; or at any time after the date of the order of liquidation, committed any of the acts or has the knowledge of the doing by others of those acts; or at any time after the date of order of liquidation taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed. It provides that such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both. It also provides that nothing in this clause shall render a person liable to any such punishment if he proves that he had no intent to defraud or to conceal the state of affairs of the specified service provider.

Clause 99 seeks to specify punishment for transactions defrauding creditors of a specified service provider on or after the date of the order of liquidation, by an officer of the specified service provider or the specified service provide either by making or causing to be made any gift or transfer of, or charge on, or causing or conniving in the execution of a decree or order against, the property of the specified service provider; or by concealing or removing any part of the property of the specified service provider within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the specified service provider. It provides that such officer of the specified service provider or the person in control of such specified service provider shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both. It also provides that nothing in this clause shall render a person liable to any such punishment if the acts were committed more than five years before the date of the order of liquidation, or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the specified service provider.

Clause 100 seeks to specify punishment for any misconduct in the course of liquidation of a specified service provider or a bridge service provider, such as, non-disclosure to the Corporation, with respect to the details of the property of the specified service provider, or of books and accounts in the officer's custody; for the prevention of

the production of books and papers, and the failure to inform the Corporation of any debt falsely proven by any person during liquidation, by either an officer of the specified service provider, or the bridge service provider. It provides that such officer shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both. It further provides that nothing in this clause shall render a person liable to any punishment, if he proves that he had no intent to do so in relation to the state of affairs of the specified service provider.

Clause 101 seeks to specify punishment for the falsification of books of a specified service provider. It provides that on and after the date of the order of liquidation, where any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of accounts or document belonging to the specified service provider with an intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

Clause 102 seeks to specify punishment for wilful and material omissions from statements relating to the affairs of a specified service provider. It provides that where an officer of the specified service provider makes any material and wilful omission in any statement relating to the affairs of the specified service provider, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five

Clause 103 seeks to specify punishment for a contravention of prohibition under clause 45 and clause 63 of the Bill. It provides that any such officer who knowingly or wilfully committed or authorised or permitted such contravention, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to three lakh rupees, or with both. It further provides that any person who knowingly and wilfully authorised or permitted such contravention by a creditor, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

Clause 104 seeks to specify punishment for interference in investigation in contravention of clause 14, making such offence punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to twenty-five crore rupees, or with both, and if the contravention is a continuing one, with a further fine which may extend to ten lakh rupees for every day after the first during which the contravention continues, if such person fails without reasonable cause or refuses to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document or record or to furnish any information, or fails or refuses to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him in pursuance thereof.

Clause 105 seeks to specify other offences for which any employee, manager, or person in control of a specified service provider shall, in addition to the payment of any amount disgorged, be punishable with imprisonment for a minimum period of three years, extending up to five years, or with fine for a minimum amount of one lakh rupees, extending up to one crore rupees. It further provides that any person who assists a person in committing any such offence or knowingly accepts or deals in any asset of a specified service provider which is in resolution; or causes any asset of a specified service provider in resolution to be hidden from the Corporation, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years,

and with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees. It also specifies punishment for offences, including, wilfully making a false statement of a material particular, failure to produce books, accounts, documents, statements and information under the Bill.

Clause 106 seeks to provide that where an offence has been committed by a company, every person who was in charge of the company for the conduct of business, or with whose consent or connivance such default occurred, shall be liable for prosecution, and punishment accordingly. It further provides that an offence punishable under the Bill will be deemed to have been committed at the place where the registered office, or the principal place of business in India, of the company is situated.

Clause 107 seeks to provide that any person who deliberately contravenes any of the provisions of the Bill or the rules or regulations made thereunder, shall be liable to a penalty which shall not be less than the amount of unlawful gains accrued out of such contravention, but which may extend to three times the said amount of unlawful gains or twenty-five crore rupees, whichever is higher. It further provides that any person who by gross negligence or any person related to the specified service provider, who violates any order, regulation or rule under this Act, shall be liable to a penalty which may extend up to two times the amount of unlawful gains accrued out of such violation or extend up to five crore rupees, whichever is higher.

Clause 108 seeks to specify the penalties in relation to restoration and resolution plans, including, for non-submission, failure to intimate material changes, and non-revision of the plans by the relevant specified service providers and the systemically important financial institutions, as the case may be.

Clause 109 seeks to empower the Corporation and the appropriate regulator to appoint an adjudicating officer to impose penalty under clauses 107 and 108 of the Bill. It provides that the adjudicating officer shall hold inquiries, summon and enforce attendance of persons, and impose penalty, after giving the relevant specified service provider and the person an opportunity of being heard. It further empowers the Corporation or the appropriate regulator, as the case may be, to call for and examine the records of such proceedings. It also specifies certain factors for the adjudicating officer to consider for deciding the quantum of penalty to be levied, including amongst others, the nature and seriousness of the violation committed, the repetitive nature of the violation, and the consequences and impact of the violation.

Clause 110 seeks to specify the manner of recovery of penalty. It provides that if any person fails to comply with an order issued under Chapter XV requiring him to pay any amount by way of penalty, the Corporation may, by order in writing, recover the amount of penalty in accordance with the provisions of the Second Schedule to the Income-tax Act, 1961.

Clause 111 seeks to provide for an appeal to the Tribunal against an order of penalty under clause 109. It provides that such appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Corporation or the appropriate regulator is received by the aggrieved person.

Clause 112 seeks to provide for trial of offences by the Special Court established under section 435 of the Companies Act, 2013 and bars any court from taking cognizance of any offence under the Bill, except on the complaint in writing made by the Central Government, Corporation or any person authorised by the Central Government in this behalf. It further provides that the provisions of the Code of Criminal Procedure, 1973 will apply to the proceedings before a Special Court. It also provides that where the complainant under is the Central Government or Corporation or an officer authorised by the Central Government, the presence of such officer before the court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

Clause 113 seeks to confer on the special Court all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Clause 114 seeks to provide for making an application to the Tribunal for compensation by any person aggrieved by a resolution action of the Corporation. It requires the Tribunal, on receipt of such application, to appoint an independent valuer to assess whether the said person received a less favourable treatment in resolution, than what would have been received if the specified service provider had been liquidated.

Clause 115 seeks to provide that Corporation and the specified service provider shall provide records, documents, and information to the independent valuer, as may be required for the purposes of valuation.

Clause 116 seeks to provide that the independent valuer appointed under clause 114 shall submit a valuation report specifying the assessments undertaken, and determination of the compensation to be awarded, with the copies of the report being forwarded to all the parties involved, including the applicant, the Corporation and the Tribunal. It further provides that Tribunal may by an order in writing, direct the valuer to reconsider the valuation report or any aspect thereof and submit a revised report or replace the valuer, and pass such other orders as may be required.

Clause 117 seeks to provide that the independent valuer shall maintain confidentiality in respect of any information relating to the relevant specified service provider, its customers, and the Corporation, unless it is required by any law to divulge the information and the obligation to such maintain confidentiality shall continue after the independent valuer has ceased to perform his functions.

Clause 118 seeks to empower the Tribunal to direct the Corporation to pay such compensation to the applicant from the Corporation Resolution Fund, as the Tribunal deems fit.

Clause 119 seeks to provide for an appeal to the Appellate Tribunal, against any decision of the Tribunal for compensation under clause 118. It further provides that any decision taken under the Chapter XVI on compensation shall not affect any action taken under Chapters IX, X and XI of the Bill, except to the extent provided under the said chapter on compensation.

Clause 120 seeks to provide for the continuation of deposit insurance for existing eligible co-operation banks for two years from the date of commencement of the Bill, which may be extended by a further period not exceeding one year, or until the law governing such eligible co-operative bank meets with the requirements of the Bill, whichever is earlier. It further provides that if on the expiry of the said period, the law for the time being governing the co-operative bank fails to meet the requirements of the Bill, the co-operative bank shall cease to be an insured service provider.

Clause 121 seeks to specify the circumstances in which the winding up of co-operative banks can be sought under the Bill, which include, amongst others, non-compliance, or disentitlement, or prohibition with respect to receiving fresh deposits under certain provisions of the Banking Regulation Act, 1949 and inability to pay debts.

Clause 122 seeks to provide for repayment of amount paid under clause 30, or clause 72, or provision for which has been made under clause 32, to the Corporation. It provides that the liquidator shall repay to the Corporation out of the amount, if any, payable by him in respect of any deposit, such sum as to make up the amount paid or provided for by the Corporation in respect of that deposit. It further provides that where the Corporation has been appointed as the liquidator, repayment to the Corporation may be by way of an adjustment to the funds of the Corporation. It also provides that the insured service provider or, the transferee insured service provider, as the case may be,

shall repay to the Corporation out of the amount, if any, to be paid or credited in respect of any deposit after the date of the coming into force of the scheme referred to in clause 30, such sum as to make up the amount paid or provided for by the Corporation in respect of that deposit.

Clause 123 seeks to provide that every member, officer or employee, or independent valuer or any other person whose services are utilised by the Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Third Schedule.

Clause 124 seeks to provide that the Corporation or the appropriate regulator shall not divulge any information relating to any specified service provider or its consumers, except as otherwise required by clause 128, or under any other law for the time being in force, except in circumstances in which it is necessary in accordance with that law or when so authorised by the Bill. It further provides that no court, tribunal or other authority shall compel the Corporation or the appropriate regulator to produce, or to give information on any inspection relating to a specified service provider or its consumers, by the Corporation, or the appropriate regulator, as the case may be, under the Bill.

Clause 125 seeks to indemnify every Member of the Corporation against all losses and expenses incurred by him in, in relation to, the discharge of his duties under the Bill except such as have been caused by his own wilful act or default. It further seeks to indemnify a Member from the actions of the other Members or any other officer or employee of the Corporation, or from any loss or expenses resulting to the Corporation from the insufficiency or deficiency of value or title to any property or security acquired or taken on behalf of the Corporation or from the wrongful act of any debtor or any person under obligation to the Corporation or anything done in good faith in the execution of the duties of his office or in relation thereto.

Clause 126 seeks to provide for protection of action taken under the Bill. It provides that no suit or other legal proceeding shall lie against the Corporation or the appropriate regulator, or any Member or officer of the Corporation or of the appropriate regulator for anything which is in good faith done or intended to be done in pursuance of the Bill or of any rule or regulations made there under.

Clause 127 seeks to provide that nothing in the Competition Act, 2002, shall apply to any action taken by the Corporation or the appropriate regulator under Chapters X, XI and XII of the Bill.

Clause 128 seeks to provide for the information sharing between the appropriate regulator and the Corporation and specifies the information to be shared between themselves, in relation to specified service providers classified in the categories of material, imminent, and critical risks to viability. It further provides that such information shall be shared on a reciprocal basis, for specified service providers classified to be at low and moderate risks to viability. It also requires the two authorities to *inter alia*, hold regular meetings and consult each other on a regular basis. It also requires the appropriate regulator to submit to the Corporation its findings on the inspections and the basis of classification of a specified service provider in any of the categories of risk to viability, in such manner as may be specified by regulations made by the Corporation.

Clause 129 seeks to provide that the Corporation shall prepare, in such form and at such time in the financial year as may be prescribed, the budget for the next financial year, showing the estimated receipts and expenditure of the Corporation.

Clause 130 seeks to provide that the Corporation shall prepare and submit to the Central Government, an annual report giving an account of its activities and of the activities which are likely to be undertaken by the Corporation during the next financial year and the Central Government shall cause such report to be laid before both Houses of Parliament

Clause 131 seeks to empower the Central Government to supersede the Corporation if it is of the opinion that on account of a grave emergency, the Corporation is unable to discharge the functions and duties; or the Corporation has persistently defaulted in complying with any direction issued by the Central Government under the Bill or in the discharge of the functions and duties imposed on it by or under the provisions of the Bill and as a result of such default, the financial position of the Corporation or the administration of the Corporation has deteriorated; or circumstances exist which render it necessary in the public interest to do so. It also provides that upon such supersession, all the powers, functions and duties which may, by or under the provisions of the Bill, be exercised or discharged by or on behalf of the Corporation shall, until the Corporation is reconstituted, be exercised and discharged by such person or persons as the Central Government may direct.

Clause 132 seeks to exempt central counterparties from application of certain provisions of the Bill. It empowers the Central Government, to direct by a notification that any of the provisions of the Bill (other than clause 142) or any notification or order issued or direction given there under (other than the provisions relating to the making of rules or regulations), specified in the notification shall not apply to a central counterparty or a class of central counterparties; or shall apply to a central counterparty or a class of central counterparties with such exceptions, modifications and adaptations, as may be specified in the notification and to lay such notification before each House of Parliament

Clause 133 seeks to bar the jurisdiction of courts and tribunals in respect of matters in respect of which the Corporation, the appropriate regulator, the Tribunal, or the Appellate Tribunal is empowered to act under the Bill. It further bars grant of injunctions or reversal by any court of tribunal in respect of actions taken under the Bill.

Clause 134 seeks to deem the Chairperson, Members, officers and other employees of the Corporation, whenever acting, or purporting to act in pursuance of any of the provisions of the Bill, to be public servants, as per section 21 of the Indian Penal Code, 1860.

Clause 135 seeks to provide that any amount collected by the Corporation or the appropriate regulator as a penalty shall be credited to the Consolidated Fund of India.

Clause 136 seeks to exempt the Corporation from being liable to pay income tax, service tax, and other taxes with respect to its, income, expenditure, profits or gains.

Clause 137 seeks to provide that the provisions of the Bill shall have effect, notwithstanding anything inconsistent therewith in any other law for the time being in force or any instrument having effect by virtue of any law for the time being in force other than this Bill. It further provides that the provisions of this Bill shall override the provisions of any other law for the time being in force in relation to resolution or liquidation of a specified service provider. It also provides that nothing in this Bill, other than clause 47, shall affect the application of the Payment and Settlement Systems Act, 2007 and the Securities Contract Regulation Act, 1956 or regulations made there under, in respect of the central counterparties.

Clause 138 seeks to provide that notwithstanding anything to the contrary in the Insolvency and Bankruptcy Code, 2016, the provisions relating to the information utilities under this Bill shall apply to the specified service providers in such manner as may be specified by regulations made by the Corporation.

Clause 139 seeks to provide that nothing in the Companies Act, 2013 relating to liquidation shall apply to the liquidation of the Corporation under this Bill. It further provides that the Corporation shall not be placed in liquidation, except by an order of the Central Government and that the manner of the liquidation shall be determined by the Central Government in consultation with the Insolvency and Bankruptcy Board of India

and the manner of liquidation shall be guided by the Insolvency and Bankruptcy Code, 2016. It also lays down the manner of the distribution of the outstanding assets of the Corporation.

Clause 140 seeks to empower the Central Government to make rules for carrying out the provisions of this Bill. It enumerates the various matters in respect of which such rules may be made by the Central Government.

Clause 141 seeks to empower the Corporation and the appropriate regulator to make regulations, for carrying out the provisions of this Bill. It enumerates the various matters in respect of which such regulations may be made by the Corporation and the appropriate regulator.

Clause 142 seeks to provide that every rule or regulation made under the Bill to be laid before each of the Houses of Parliament.

Clause 143 seeks to empower the Central Government to make such provisions as may be necessary for removing any difficulty for bringing the provisions of the Bill into force. It further provides that every such order shall be laid before each of the House of Parliament.

Clause 144 seeks to provide that the Corporation shall, in discharge of its functions and duties under this Bill, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time after giving to the Corporation an opportunity to express its views before any such direction is given.

Clause 145 seeks to repeal the Deposit Insurance and Credit Guarantee Corporation Act, 1961, and to save certain actions done or taken or purported to have been done or taken under the repealed Act. The effect of repeal of the said Act, *inter alia*, include, the dissolution of the Deposit Insurance and Credit Guarantee Corporation and of the Board or any committees constituted under that Act, and requires every member of such Board or committee to cease to hold office as such; and that the employees of the Reserve Bank of India holding any office under the Deposit Insurance and Credit Guarantee Corporation under the repealed Act, shall, for a period of one year, hold an office under the Corporation and on the completion of one year, and before the completion of two years, have the option to continue in the Corporation or return to the Reserve Bank of India and the transfer of the assets, liabilities, properties, undertakings, rights and claims of the Deposit Insurance and Credit Guarantee Corporation under the repealed Act, to the Corporation.

Clause 146 seeks to make amendments to certain enactments specified in the Fourth Schedule in the manner specified in that Schedule.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of the Bill provides for establishment of a Corporation by the name of the Resolution Corporation.

2. Clause 21 of the Bill provides for the constitution of certain funds for the purposes of the Bill, namely, (a) a fund for deposit insurance provided by the Corporation to the insured service providers, called the Corporation Insurance Fund; (b) a fund for meeting the expenses of carrying out resolution of specified service providers, called the Corporation Resolution Fund; and (c) a fund for all other functions of the Corporation called the Corporation General Fund. It further provides that the Corporation shall utilise the amounts in each fund only for the purpose for which the fund was constituted.

3. Clause 23 provides for payment of grants and loans to the Corporation, after due appropriation made by Parliament by law in this behalf, on such terms, as the Central Government may think fit, for being utilised for the purposes of this Bill.

4. It is estimated that there would be an expenditure of approximately one hundred and forty crore rupees in the first year of establishment of the Corporation as initial establishment expenses, including salaries and allowances and other remuneration of Chairperson and Members (other than *ex officio* Members) of the Corporation and of its officers and other employees. This would include non-recurring capital expenditure of one hundred crore rupees and a further recurring expenditure of about forty crore rupees. Eventually, it is expected that major recurring expenses of the Corporation would be funded out of the fees and charges as may be received by the Corporation.

5. The Bill, if enacted and brought into operation, would not involve any other expenditure of a recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 140 of the Bill empowers the Central Government to make rules with respect to the matters specified under sub-clause (2) which, *inter alia*, relate to the salaries and allowances and other terms and conditions of service of, the Chairperson and Members (other than *ex officio* Members); the form and manner of the annual statement of accounts and the intervals at which such accounts shall be audited; the criteria for designation of a financial service provider as a systemically important financial institution; the appointment of adjudicating officer and the manner of making inquiry for adjudication of penalty; the form and manner of filing of appeal and the fee to be accompanied; the criteria for appointment of valuer; and the form for preparation of the annual report by the Corporation.

2. Clause 141 of the Bill empowers the Corporation to make regulations with respect to the matters specified under sub-clause (2) which *inter alia*, relate to the time and place of meeting of the Corporation and the procedure to be followed for the transaction of business at such meetings (including quorum at such meetings); the salary and allowances payable to and other terms and conditions of service of officers and employees of the Corporation; the manner of constituting committees and the number of members thereof; the manner of investing moneys by the Corporation; the amount of fee, the manner and time of payments; the amount and the manner of payment of premium; the manner and the period for submission of reports by systemically important financial institutions; the manner of payment of unpaid amount to a *bona fide* depositor; the time period for investigation, inquiry or inspection for the purpose of classification of a specified service provider in a category of risk to viability and the objective criteria for classification of specified service providers; the information relating to business which may be relevant for classification of material, imminent or critical risk to viability; the form and manner of resolution plan and the relevant information required by the Corporation; the form and manner of bail-in instrument or scheme and the liabilities or class of liabilities; the additional measures by the administrator in respect of Central Counterparties; the manner of receiving or collecting the claims of all consumers and creditors; the manner of determination of value of claims; the manner of realising security interest; the period and manner of distribution of liquidation assets and the amounts due to insurance policy holders; the conditions for voluntary liquidation; the manner of publication of recognition and enforcement order; the manner of adjustment of funds in case of repayment of amount to Corporation; the form and manner of sharing and exchange of supervisory information of certain categories of specified service providers; and the manner of application of the provisions relating to information utilities in the Insolvency and Bankruptcy Code, 2016 to the specified service providers.

3. Clause 142 of the Bill requires that the rules and regulations made under the proposed legislation be laid before each House of Parliament.

4. The matters in respect of which rules or regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

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BILL

to provide for the resolution of certain categories of financial service providers in distress; the deposit insurance to consumers of certain categories of financial services; designation of systemically important financial institutions; and establishment of a Resolution Corporation for protection of consumers of specified service providers and of public funds for ensuring the stability and resilience of the financial system and for matters connected therewith or incidental thereto.

(Shri Arun Jaitley, Minister of Finance, Corporate Affairs and Defence)

LOK SABHA

CORRIGENDA

to

THE FINANCIAL RESOLUTION AND DEPOSIT INSURANCE BILL, 2017
[To be/As introduced in Lok Sabha]

1. Page (i), in the Arrangement of Clauses, against clause 15,-
for "Powers pending"
read "Powers of pending"
2. Page 2, line 14,-
for "section 56"
read "section 5"
3. Page 2, in marginal citation against line 18,-
insert "23 of 1955."
4. Page 2, line 33,-
for "section 56"
read "section 5"
5. Page 3, line 11,-
for "scheme; or"
read "scheme;"
6. Page 3, line 14,-
for "regulator;"
read "regulator; or"
7. Page 10, in the marginal heading against Clause 15,-
for "Powers pending"
read "Powers of pending"
8. Page 18, in marginal citation against line 44,-
insert "10 of 1949."

9. Page 47, line 40,-

for "books of accounts"

read " books of account "

10. Page 23, line 33,-

for "any bonuses"

read "any bonus"

11. Page 54, line 18,-

for "this sections"

read "this section"

12. Page 57, line 13,-

for "Securities Countracts"

read "Securities Contracts"

13. Page 83, line 37,-

for "for the word"

read "for the words"

14. Page 91, in the marginal heading against line 32,-

for "Powers of the"

read "Powers of"

NEW DELHI;

August 10, 2017

Shravana 19, 1939 (Saka)