

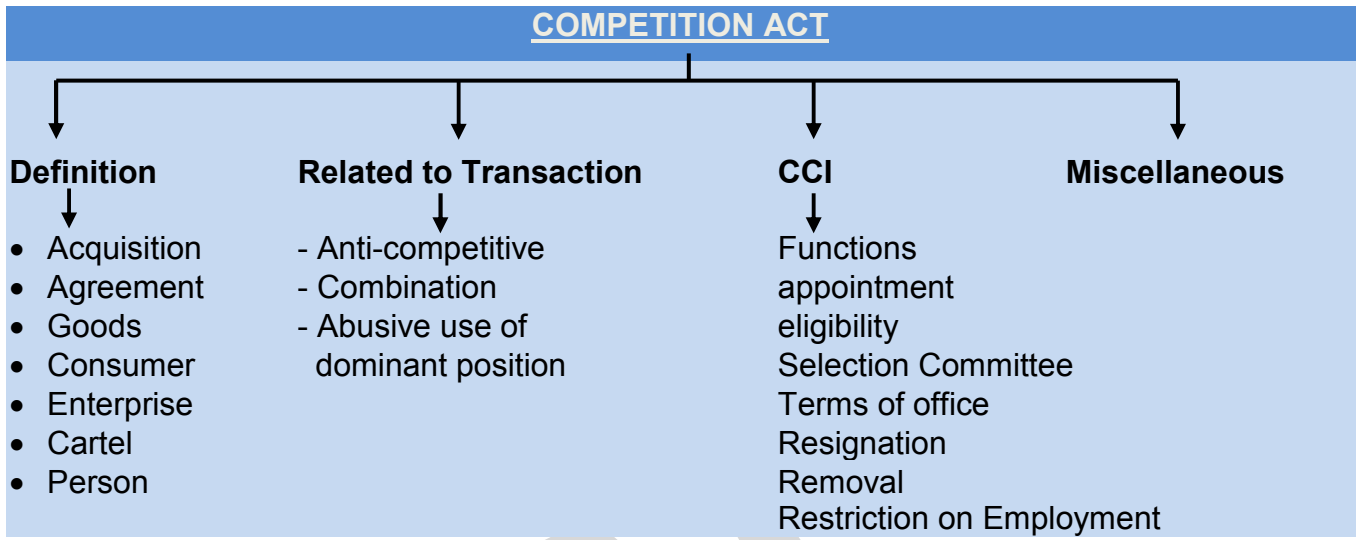
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CLASSES
CAFC → INTER CA → FINAL CA 7

FINAL CA
MAY '19
REVISION NOTES
Corporate, Allied (Old)
& Economics (New) Laws

Part - I

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THE COMPETITION ACT, 2002



DEFINITIONS

ANALYSIS OF DEFINITION

ACQUISITION (Section 2(a) :

Acquiring or Agreeing to Acquire directly or indirectly

- Shares, voting rights
- assets
- control over management

AGREEMENT (Section 2(b) :

Any arrangement or understanding whether in writing or not
Whether enforceable by law or not.

GOODS (Section 2(i) : (Sale of Goods Act. 1930)

Goods include :

- Produced, manufactured, processed or mined;
- Shares, Debentures after Allotment;
- Goods distributed or imported in India;

CONSUMER(Section 2(f) :

As discussed in Consumer Protection Act however, It includes
commercial as well as personal purpose.



(Goods and Service)



Consideration

paid | promised | partly paid | partly promised | deferred payment

ENTERPRISE (Section 2(h) :

It includes branch, agency, office etc.

It includes Government enterprise involved in manufacturing production trading or such other businesses activities.

Does Not Include

- Atomic
- Currency
- Defence
- Space

CARTEL(Section 2(c) :

It is a group created for

- obstructing Supply;
- restricting output;
- and thereby, manipulating priceo

PERSON (Section 2(l) :

- | | | | |
|--------------|-----------|------------------|-----------|
| - individual | - company | - AOP/BOI | } whether |
| - HUF | - firm | - body corporate | |
- in India are not
- corporation : CG/SG/Provisional Act
 - co-operative Society
 - artificial juridical person
 - Government Co.

SECTION 3 : ANTI COMPETITIVE AGREEMENT

Any agreement which is having appreciable adverse effect on competition will be termed as anti-competitive agreement.

Following agreement will be treated as anti-competitive agreement

1. Tie- up agreement

Condition to purchase one good for purpose of buying another good.

2. Exclusive Supply Agreement:

Putting condition on purchaser not to buy goods from another person.

3. Exclusive Distribution Agreement;

Putting condition Not to Sale Goods beyond particular local limit, municipal limit etc. i.e. putting condition on area of distribution.

4. Refusal to Deal :

Putting condition restraining to deal with any particular person.

5. Resale Price Maintenance :

Putting condition for maintaining minimum price for sale. In other words minimum price below which goods cannot be sold.

Some related concept

Bid Rigging :

Bidder enter into an understanding not to bid against each other in the bidding process.
(adversely affect or manipulate process of bidding)

"PREDATORY PRICE"

means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Horizontal agreements refer to agreements among competitors and vertical agreements refer to an actual or potential relationship of buying or selling to each other. Horizontal agreements relating to prices, quantities, bids and market sharing are particularly anti-competitive. Vertical agreements like tie in arrangements; exclusive supply/distribution agreements and refusal to deal are also generally anti-competitive. Section 3 of the Competition Act, 2002 regulates and prohibits all types of agreements, which have the effect to restrict competition, and prevent those, which have such likely effect.

Here, horizontal agreements are those agreements among competitors operating at the same level in the economic process i.e. enterprises engaged in the same activity.

Example: The agreements between producers or between wholesalers or between retailers, dealing in similar kind of products.

Vertical agreements are those agreements between Non-competing undertakings operating at different levels of manufacturing and distribution process.

Example: The agreements between manufacturers of components, manufacturers of products, between producers and whole-sellers or between producers, whole-sellers and retailers.

Horizontal agreements are agreements between two or more enterprises that are at the same stage of the production chain and in the same market. Horizontal agreements and membership of cartels lead to unreasonable restrictions of competition and may be presumed to have an appreciable adverse effect on competition.

Vertical agreements are agreements between enterprises that are at different stages or levels of the production chain and therefore in different markets. An example of this would be an agreement between a producer and a distributor. This includes, Tie in arrangements, Exclusive Supply Agreements, Exclusive Distribution Agreements, Refusal to Deal and Resale Price Maintenance (RPM).

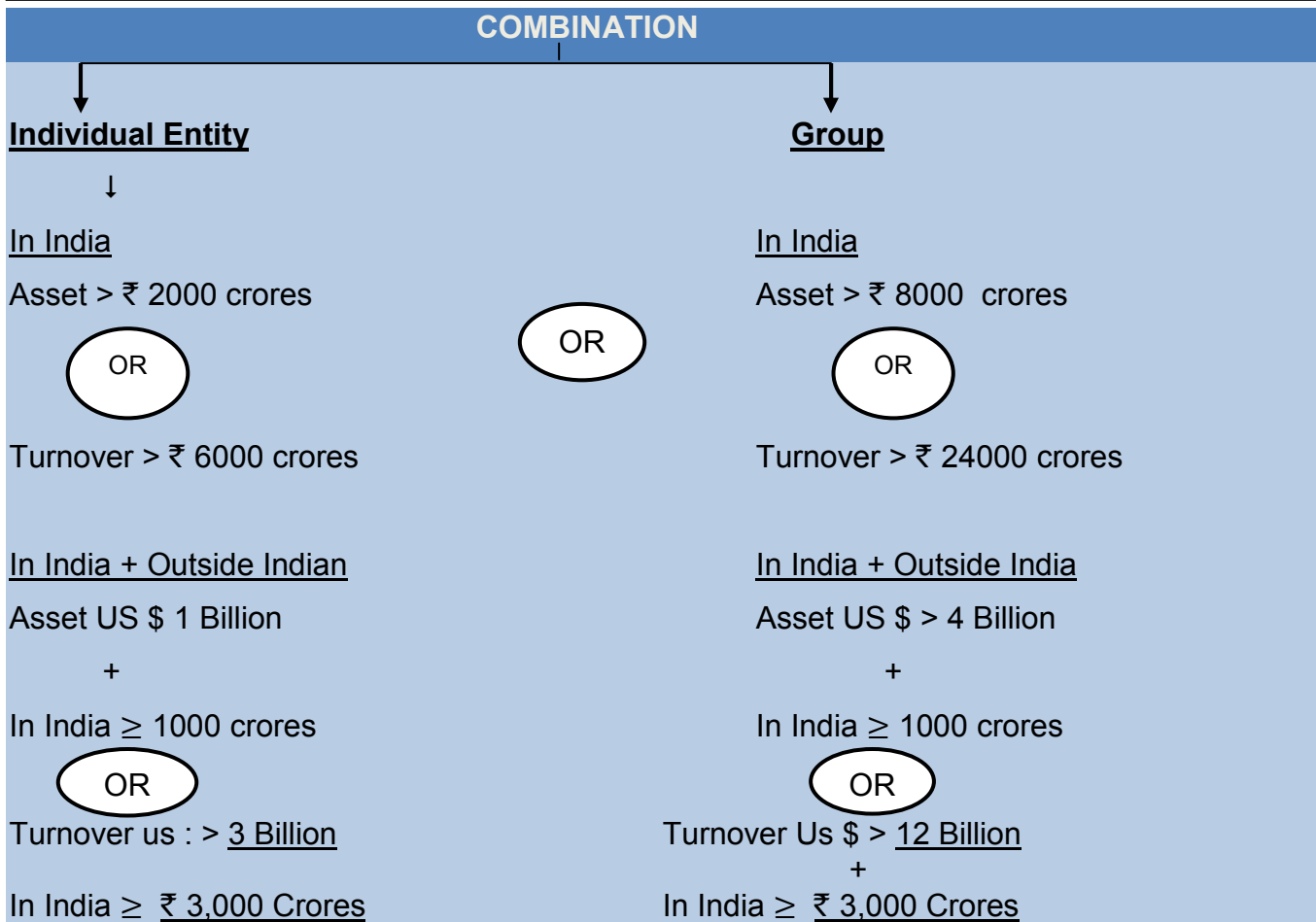
COMBINATION

Combination can be by way of 3 types:

- a) Acquisition
- b) Control by any person : one person having control over 1 entity takes control over other entity.
- c) Amalgamation / Merger

Acquisition → Separate identity

Amalgamation | Merger → No Separate identity

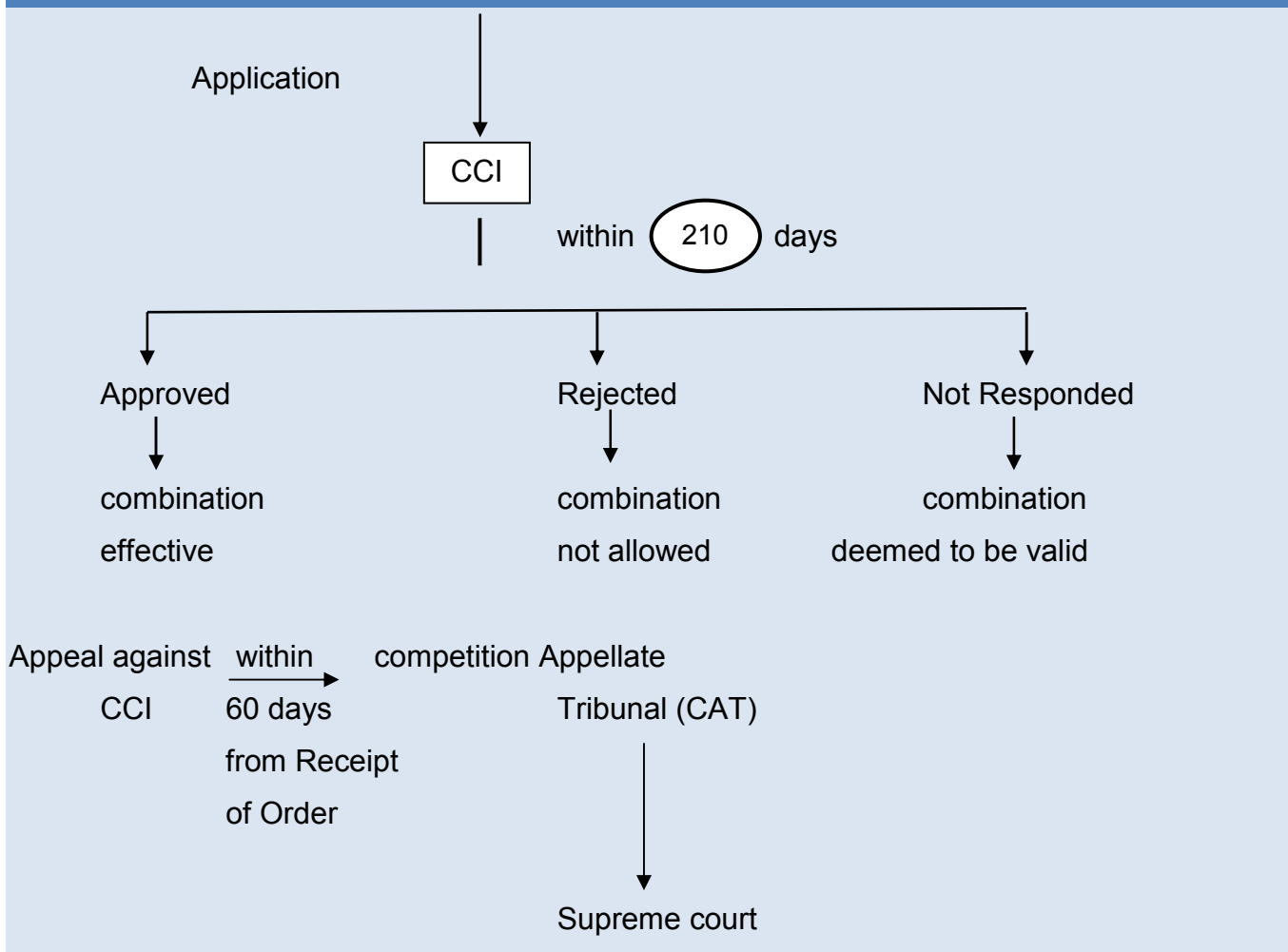


As per notification if a company being acquired does not exceed
 Assets ₹ 350 crores or
 Turnover ₹ 1000 Crores
 In that case it is exempt from Requirement of Section 5 (combination)

Group means holding of more than of voting power of company.
 However as per notification if they acquired less than 50% than they are exempt from Requirement of Section 5

Note :

PROPOSAL (FOR COMBINATION)



DOMINANT POSITION

Factors determining Dominant position will be determined by

CCI

- Market share :
- Size and resources :
- Size and importance of competition;
- Economic power including commercial advantages over competitors;
- vertical integration;
- dependence of consumers;
- Monopoly | dominant position due to Statue |

Entry barriers – regulatory – high capital cost of entry

- Financial – marketing entry
- Technical entry – economics of scale
- High cost of substitutes
- countervailing buying power.
- market structure and size of market.
- Social obligation and social costs;

CASES AND FACTOR WHICH WILL DETERMINE ABUSIVE USE

1. Imposes unfair or discriminatory
 - Purchase | sale of goods or services
 - Price | predatory price in purchase | sale of goods or services

2. Limits or Restricts
 - Production of goods
 - Provision of services
 - Technical + scientific development

3. practices → Denial market access any member

4. Was dominant position → Enter other Relevant in 1 relevant market Protect market

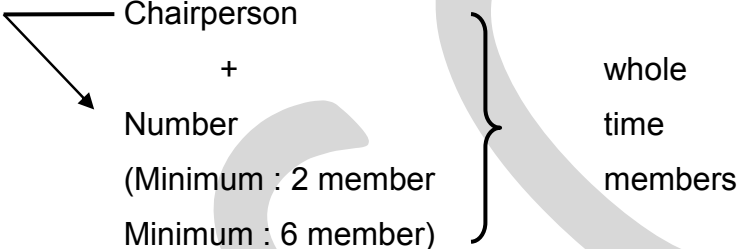
COMPETITION COMMISSION OF INDIA

It's a Body corporate established by Central Government.

FUNCTIONS :

1. Protect interest of consumers.
2. To control practices against competition
3. Promote competition
4. Empire freedom of Trade

APPOINTMENT :

CCI consists of : 

Chairperson
+
Number
(Minimum : 2 member
Minimum : 6 member)

} whole
time
members

Such members shall be appointed by CG on Recommendation of Selection committee.

ELIGIBILITY

At least 15 years' experience in international trade, business, commerce, finance, law economics, accountancy, competition, Any other matter considered relevant by CG.

SELECTION COMMITTEE

Constitution :

- | | |
|-------------------------------------------------------|---------------|
| 1. Chief Justice of India or his Representative. (SC) | - chairperson |
| 2. Secretary of Ministry of Law. | - Member |
| 3. Secretary of Ministry of Corporate Affairs. | - Member |

TERM OF OFFICE FOR CCI's CHAIRMAN MEMBERS

Maximum 5 Years

Can be re-appointed for any number of times. However he should not attain age of 65 years or more.

RESIGNATION

1. 3 months from date of Receipt of Notice by CG.
2. Successor appointed
3. Relived by CG
4. Completion of his Tenure
whichever is Earlier

REMOVAL

In the following cases it can be removed from CCI:

1. Declared Insolvent
2. Paid employment
3. Moral Turpitude
4. Develop Financial Interest.
5. Abuse his position.
6. Physically or mentally incapacitated

In these cases members can be removed only after Investigation which is ordered by Supreme Court and SC is satisfied that the Removal is valid.

RESTRICTION ON EMPLOYMENT OF MEMBER/CHAIRMAN OF CCI

No Member of CCI can take-up employment in any company which was party of proceeding during his tenure, for the period of 2 years.

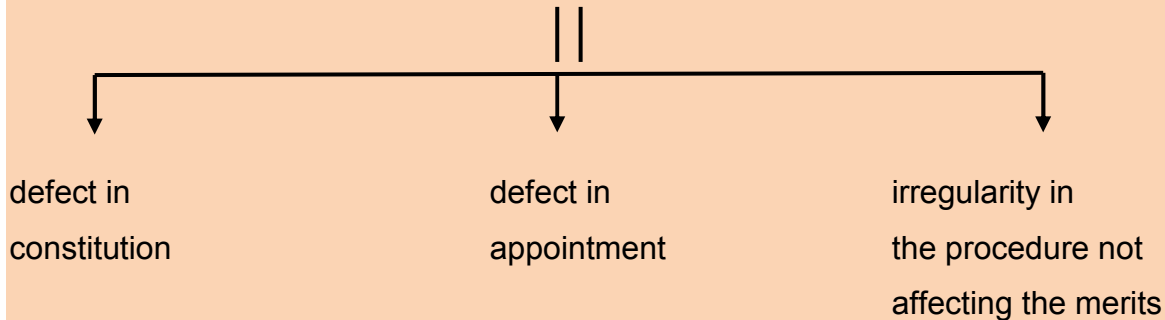
However in the following cases he can become employee even before 2 years.

Exceptions:

1. Central Government
2. State Government
3. Local Authority
4. Statutory Corporation
5. Corporation formed under central | State | Provisional Act.
6. Government company

DEFECT IN APPOINTMENT SHALL NOT INVALIDATE THE PROCEEDINGS

Any defect in appointment of any member shall not invalidate any proceedings in which such member was the part.

**MISCELLANEOUS****1. Penalty**

- Cease and Desist order will be passed if company proved to be Guilty.
- Penalty will be levied and CCI may order sale of asset or sale of shares
- Not more than 10% of avg. T/o of last 3 preceding financial year

2. Financial power of CCI is based with Chairperson**3. Director General of CCI shall be appointed by CG and for his assistance other officers shall be appointed by director general.****4. Power of Commission to regulate its own procedure.****5. Central Government can Supersede commission if commission is NOT complying with Act.****6. All members, employees of CCI is public servant and have protection for action taken in Good faith.****7. CCI have an overriding effect over other courts and civil court cannot entertain any case of CCI.****Section 49 : Competition Advocacy**

CCI can take any suggestion over any matters related to competition.

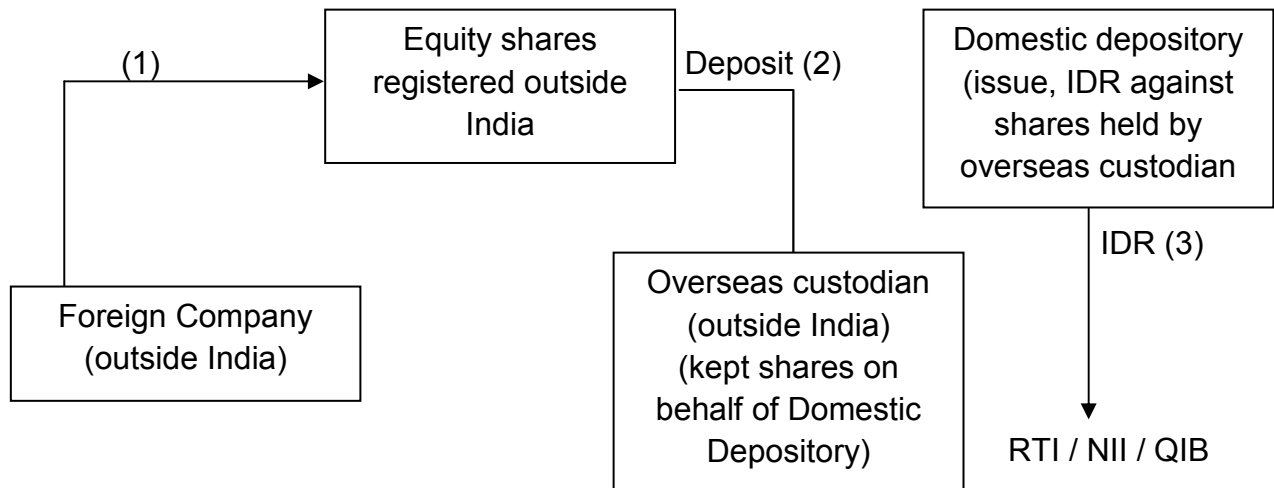
SEBI (ICDR), 2009**GREEN SHOE OPTION (GSO)**

In case of public issue due to short term investors and market sentiments there is an excess supply without demand due to which prices of the shares fall and hence in case of GSO artificial demand is created to control fall in price.

PROCESS OF GSO

1. Resolution in general meeting : Issuer should be authorized by resolution passed in GM approving to allot specified securities to stabilizing agent on expiry of stabilizing period.
2. Stabilizing agent : SA shall be appointed who will be responsible for price stabilization process
3. Issue 15% of excess securities in IPO / FPO (borrowed from promoter or shareholder 5% or more holding)
Shares can be borrowed from promoter or shareholder having at least 5% of its pre-issue capital
4. Stabilizing period : stabilizing period will be at least for maximum 30 days from listing
5. Stabilizing agent shall open – GSO Bank A/c and GSO Demat A/c
In GSO Bank A/c money collected by issuing extra 15% shares / securities will be held.
In GSO Demat A/c promoter has lended extra shares and to return their shares it will be purchased from market by SA and it will be kept in this account.
In case of any deficit fresh issue will be made by the company after expiry of 30 days.
6. Returning back securities to promoter after the stabilizing period within 2 days
7. GSO Demat A/c (after expiry period) : In GSO Demat A/c there cannot be surplus. The company has issued 15% excess shares during IPO / FPO now the SA (merchant banker) cannot buy more than 15% shares during stabilizing period. So there can never be surplus in this A/c.
8. GSO Bank A/c (after expiry period) there can never be deficit in GSO Bank A/c
9. After stabilization period stabilizing agent SA should file the statement with SEBI
10. Register : Register for stabilizing process should be maintained by company and it should be kept at registered office

Note : balance in GSO Bank A/c shall be transferred to IEPF

INDIAN DEPOSITORY RECEIPT**ADVANTAGES :**

1. It helps to integrate indian market to the world market
2. It gives an opportunity to an indian investor to buy shares of foreign company without complaining strict provision of FEMA

DISADVANTAGES :

1. Indian companies have to compete with foreign companies to raise funds in stock market
2. It leads to negative capital outflow

CONDITIONS FOR RAISING IDR

1. The issuer should be listed in its home country
2. The issuer company is not prohibited to issue securities by any regulatory body worldwide.
3. The issuer company has track record of complying securities market regulation in its home country
4. The issue size should be at least Rs.50 crores
5. The prospectus for buying IDR should be issued and it should contain entire procedure for buying IDR
6. Application size should be at least Rs.20,000
7. At least 50% IDR should be subscribed by QIB and RII is eligible for minimum 30% .

However, if it is not subscribed, then it will be 'spill-over' (spread) to the other categories (NII and QIB).

FAST TRACK ISSUE (FTI)

In case of fast track issue company can make FTI without satisfying regulations 6,7 and 8 (lot of forms required to be filed under these regulations which is not required under FTI).

In order to make FTI following conditions need to be satisfied

1. Issuer should be listed on recognized stock exchange for at least 3 years (i.e. FPO)
2. Average market capitalization of the issuer should be at least Rs.1000 crores in case of public issue And it should be at least Rs.250 crores in case of right issue
3. Annualized trading turnover of the issuer in preceding 6 calendar month should be at least 2% of weighted average trading turnover of its shares listed
4. Atleast 95% of investors grievance till preceding quarter should be redressed, by the issuer
5. Issuer should be in compliance with equity listing agreement for atleast 3 years

Note :

- a) If company has not satisfied criteria of board contribution, then it is permitted if it is satisfied at time of FTI
 - b) In case of equity listing agreement any monetary fine, will not disqualify from FTI
6. All promoters holding should be in Demat form
 7. Auditors qualification should not be more than 5% of total profit in the offer document
 8. Any show cause notice should not be issued to any promoter or director as well as there should be not be any proceeding pending against them
 9. Due diligence certificate should be taken before FTI from Auditor
 10. No matter should be settled through settlement commission
 11. Issue should not be suspended from listing in preceding 3 years
 12. No promoter or director should renounce their right issue

INTERPRETATION OF STATUTES, DEEDS AND DOCUMENTS



→ Written will
of the legislation

Finding an
Intention

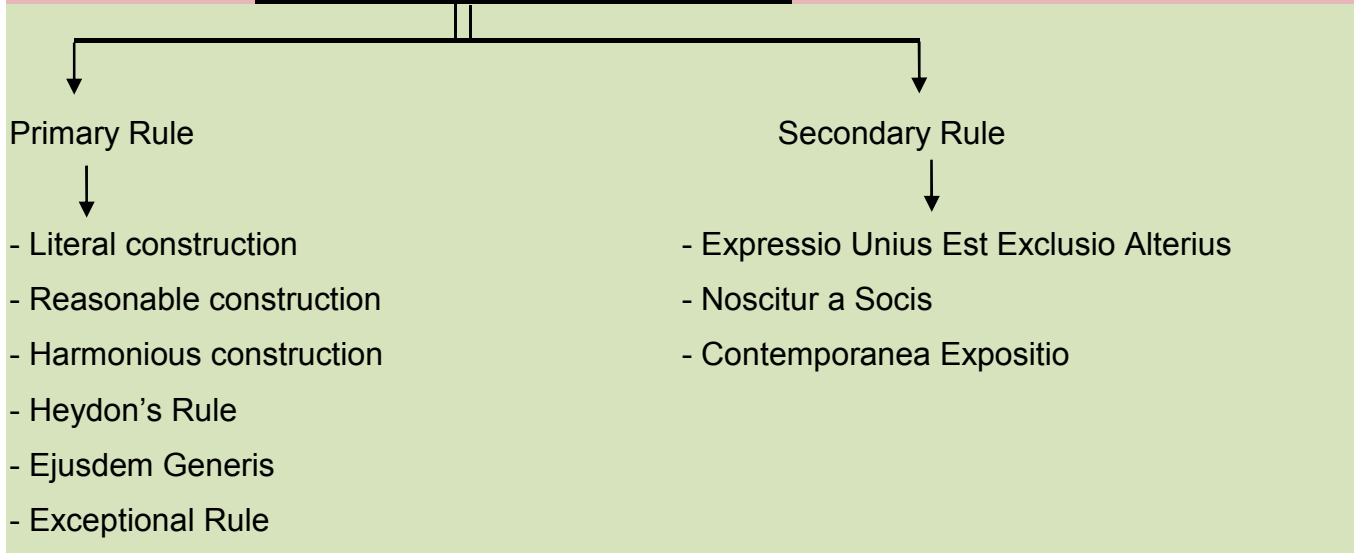
Rules Law,
Section (Force of Law)

Why Interpretation is Required ?

Law is formed immemorial (long-back) and due to change in circumstances interpretation is required.

Everything cannot be covered in the Act and hence interpretation is required.

RULE OF INTERPRETATION



PRIMARY RULE

LITERAL CONSTRUCTION

It is a primary rules of interpretation in which no word can be added or deleted or substituted.

Every word should be assigned some meaning and this is caused Literal Construction.

Reason → Since Law formed with great care and hence words are very important in their content.

It can be used when words are clear, language is plain and there is only one meaning;

REASONABLE CONSTRUCTION

When the Literal construction is creating Absurdity, then, Law should be applied in such a manner than object of the law can be achieved.

In that case, words can be added deleted or substituted to find Intention of Law.

e.g. : - ICAI V/s PWc.

HEYDON'S RULE / BENEFICIARY RULE / MISCHIEF RULE

When the Law is new in case of any Absurdity this law can be applied.

How Law can be Applied ?

- Find out what are the mischief's far which law has been framed.
- Identify remedies given in Law.
- Find out the shortcoming of Law.
- Apply the law in such a way that mischiefs are suppressed and remedies are advanced.

e.g. : Smith v/s Hughes

HARMONIOUS CONSTRUCTION

Sections are the part of Act following 1 Section is not the appropriate ground to contravene another Section, hence. It should be applied in such a way that all Section are complied with. However in case of "Notwithstanding" section it will override "Subject to" section.

e.g.:

1. Section 36 and 43B of Income tax Act
 2. Rule of AGM of 15 months from last AGM and 6 months from end of F.Y.
- **Impossible** → provision enacted later prevails.

To Harmonize – more general and specific provision.

EJUSDEM GENERIS – Same class or species

It means

Equal shall be treated Equally

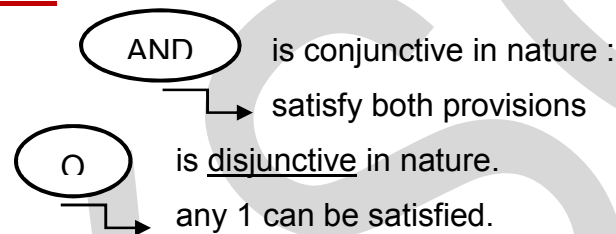
If definition is Inclusive in nature, then this Rule will be applied.

If any Example is covered in definition then, anything not covered in definition but satisfy the conditions already covered in definition, then it shall be included in definition.

- under negotiable instrument act, DD is not specifically included, however since it satisfies criteria of BOE it shall be included in definition.

Cat Dog etc, will include cow (domestic animal) but it not include Lion (wild animal)

EXCEPTIONAL RULE



However, in case of **Absurdity** it can be used otherwise.

MA is discretionary in nature.

Exception

1. If power is coupled with duty, then, it will treated as mandatory.
→ (Essential commodity Act Perishable goods may be sold by custom officer)
2. If “may” is used in purely conventional courtesy, it will taken as mandatory in nature (e.g. Maharashtra Government may consult MPSC for the appointment of Government officer)

SHALL is mandatory specific penalty in nature.

However if it is used against Central Government then it may be taken as discretionary in nature.

(e.g. CG shall issue DIN within 1 month but there is No penalty)

SECONDARY RULE

EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS

- Express mention of one thing silently excludes others.
- If in Act, anything has been specifically specified then it will exclude other things.
e.g.: Land Building, Coal mines excludes other mines.

NOSCITUR A SOCIIS (CONSTRUCTION OF ASSOCIATED WORDS)

Construction of Associated words.

While interpreting word meaning can be assigned by its associated words.

- **Plant and Tree;**
Plant and Machinery
- **Toiletry and Perfumery:**
Cosmetics and Perfumery;

CONTEMPORNEA EXPOTIO

It implies Meaning assigned by contemporary authority

When the Act is old then in case of any Ambiguity meaning can be assigned from the authority who deal in such things.

e.g. : committee who were involved in dealing with such Act,
People dealing with such Act. etc.

Note : Secondary Rule can be used only if plain meaning is Not clear.

AIDS OF INTERPRETATION

A) INTERNAL AIDS

1. SHORT TITLE

It cannot be used for interpretation

- Company's Act. 2013.

2. LONG TITLE

It is given after short title.

It starts from "An Act....."

It can be used for purpose of interpretation.

If the Plain meaning is not clear it is generally used for interpretation.

3. PREAMBLE

It is scope of the act.

It is similar to long Title it helps to understand scope of Act.

It helps to understand interpretation.

4. HEADING AND CHAPTERS

It is group of Sections. It is created due to something common between Sections

- XI – Director : created consists of common section sections applicable to director.

MARGINAL NOTE

It is Foot Note. It consists of form No, Amendment, Date of Amendment, Rule No. etc.

ILLUSTRATION

It is calculation based example given in Act.

Generally it is used for purpose of interpretation however it cannot override plain meaning.

PROVISO

It starts with "Provided that...."

It creates an exception

Restricts the main section provide any clarification.

Provision Specify the condition given an Exemption

EXPLANATION

It is used to give any specific meaning to any particular section which may be different from General use.

e.g.: Section 185 Definition of undertaking.

SCHEDULE

It is having a legal binding It specific various form, rates etc which may be reference to various sections.

B) EXTERNAL AID

HISTORICAL SETTING: The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act. We have also to consider whether the statute in question was intended to alter the law or leave it where it stood before.

CONSOLIDATING STATUTES AND PREVIOUS LAW

e.g:- GST formed after consolidation of VAT Service Tax excise etc. So in case of confusion old Act can be Referred.

EARLIER AND LATER ACT AND ANALOGS ACT.

Consumer Protection Act
and competition Act
both deal with consumers

Similar Act
IT Act and wealth Tax so, if
there is any confusion about definition'
etc. in wealth tax then matter can be
referred to IT

EARLIER ACT REPEALED BY NEW ACT.

FERA - FERA

MRTP – competition Act

REFERENCE TO REPEALED PART OF ACT.

If any section has been repealed in any act then it can be referred for the purpose of reference

DICTIONARY

Any meaning assigned by the course can also be referred for the purpose of interpretation.

FOREIGN JUDGEMENT

It can be referred only if foreign law is on same line.

THE BANKING REGULATION ACT, 1949

➤ Banking Co. :- It is a company which is engaged in Business of Banking in India.



Accepting deposits from Public for the purpose of lending (+)

Sec 6(1):

- Borrowing
- Lending
- Draw / Render Bills of Exchange
- Traveller's cheque
- Deal in Foreign exchange
- Deposit vault
- Trustee
- Custodian
- Acquire any asset against loan (i.e. Mortgage).
- Maintain Building used for Business purpose.
- Any other function as approved.

➤ **Small scale Industry : -**

Investment in Plant & Machinery

Upto ₹ 5 lac

It can be increased upto ₹ 20 lac

➤ **Bank / Banking / Banker**

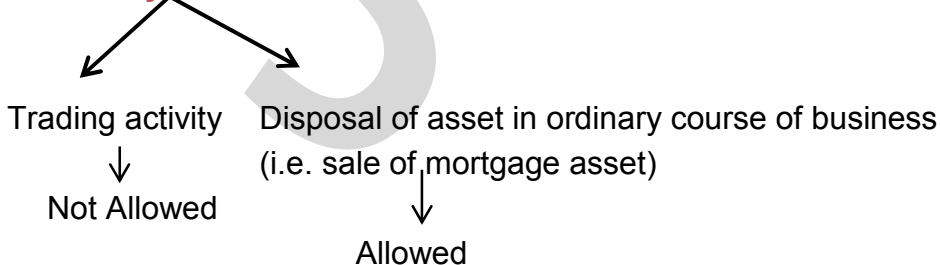


Above words mandatory to use

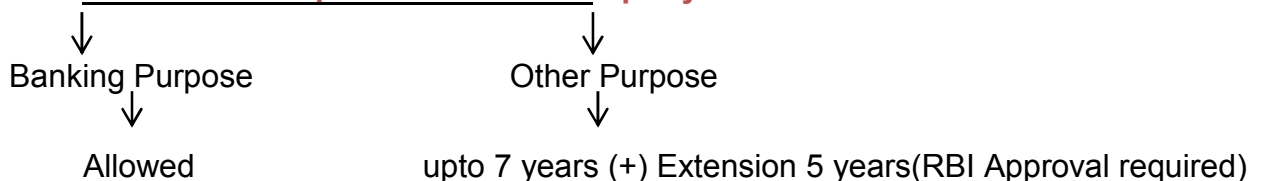
Mandatory: - not to use above words

Exception: sec 8 (may not use Bank / Banking / Banker)

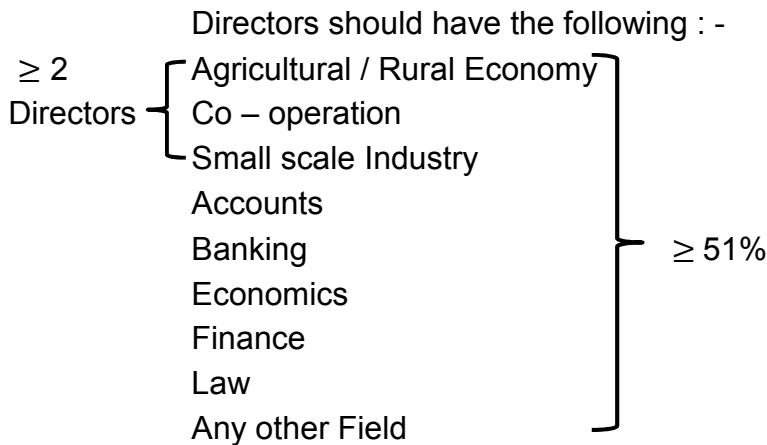
➤ **Activity of Bank :**



➤ **Can Bank Hold / Acquire Immovable Property?**

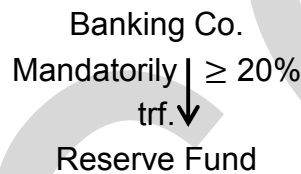


➤ **Board of Directors :-**



Note: In case BOD is not as per requirement then BOD should be reconstituted & directors may be removed on lot basis.

➤ **Reserve Fund :**



Exception : RBI can exempt from Requirement if following conditions are satisfied :-

1. Paid up share capital (+) Free Reserves : It should be sufficient enough to meet its Deposit Liability.
2. Reserve Fund + Securities Perm ≥ Paid up
 Paid up share capital
 Share Cap share capital

➤ **Advancing Money :**

RBI may determine policy in general or special order any policy for the purpose of :-

- a. Public interest
- b. Int. of the deposit holder
- c. Int. of banking co.

Certain directions can be given by RBI on advance made by Banking Co. :-

- (i) Purpose of loan
- (ii) Margin of advance
- (iii) Max amt.
- (iv) Max guarantee
- (v) Rate of interest

➤ **Higher Rate of Return :-**

No case can be filled in any court of law on the ground of higher rate of interest charged by the bank due to any act or provision applicable in any state.

➤ **Books of Accounts & Financial Statement : (Banking Co.)**

Form : As per Banking Regulation Act } In case of contravention Banking Regulation
 (+) } Act will override
 Companies Act, 2013 }

Signed by : Manager / Principal officer

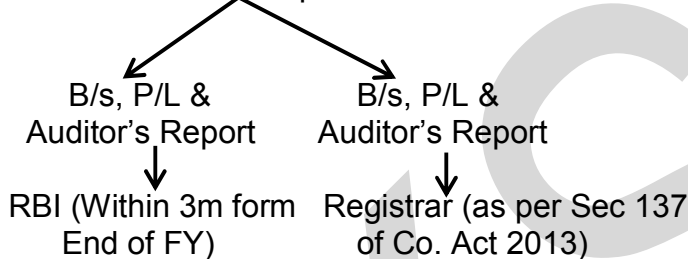
(+)

≥ 3 Directors / All Directors (in case Co. has < 3 Directors)

Audit: Any person who is competent & qualified under any act can be appointed as Auditor of Banking co. with prior approval of RBI.

Special Audit : RBI may order special audit of various transactions in any banking co. to the auditor of the Banking Co. or any other person who is competent under any law. Expense of such special audit shall be borne by the Banking Co.

➤ Submission of Report :



Note : Extension of 3 by RBI is permitted

- Section 35 : RBI has the power to inspect BOA & such other documents.
- Section 35A : RBI has the power to give any directions to Banking Co.
- Section 36B : Prior approval of RBI is required for appointment, reappointment, remuneration or termination of MD, etc. of Banking Co.
- Sec 36 : RBI can regulate any of its transaction related to giving assistance.
- Sec 36AA : RBI can remove MD, etc. of Banking co. However, within 30 days appeal can be filed to central Govt.
- Section 36AB : RBI can appoint additional director for the period of 3 + 3 years.
- Section 36 AE : CG can acquire the undertaking of any Banking Co. from the date as may be specified if the Banking Co. is working in a manner detrimental to the depositor.
- Section 36 AF : any such acquisition of Banking Co. will be settled by payment of compensation to shareholder of such co. as may be decide by central Govt.
- Section 36AG : If shareholder is not satisfied with compensation then appeal can be filed to tribunal after requesting to CG & such appeal can be filed only if appeal is supported by 1/4th in value as well as in number of the shareholders.
- Cash Reserve : CRR → atleast 4% of Demand & Time liability
Banking Co. should maintain CRR for every alternate Friday.