

The Forward Contracts (Regulation) Act, 1952
(74 OF 1952)

11/594

[26th December, 1952]

An Act to provide for the regulation of certain matters relating to forward contracts [and to promote the development of, and to regulate, the commodity derivatives market] and for matters connected therewith.

Be it enacted by Parliament as follows:-

LEGISLATIVE HISTORY ▼

- Forward Contracts (Regulation) Amendment Act, 1953 (46 of 1953)
- Forward Contracts (Regulation) Amendment Act, 1957 (32 of 1957)
- Forward Contracts (Regulation) Amendment Act, 1960 (62 of 1960)
- Forward Contracts (Regulation) Amendment Act, 1971 (53 of 1971)
- Delegated Legislation Provisions (Amendment) Act, 1985 (4 of 1986)
- Forward Contracts (Regulation) Amendment Ordinance, 2008

FACT SHEET ▼

This Act has been extended to -(i) Pondicherry (with modification), vide S.O. 3865, dated 29.12.1962; Gazette of India, Part II, Section 3(ii), p. 4206. (ii) Dadra and Nagar Haveli by Regn. 6 of 1963, Section 2 and Schedule I; and (iii) Goa, Daman and Diu (with modification) vide G.S.R. 962, dated 24.6.1967; Gazette of India, Part II, Section 3(i), p. 1073.

Chapters II to VI were brought into force in the whole of India, except the State of Jammu and Kashmir on the 27.8.1953.

CHAPTER I

Preliminary

1. Short title, extent and commencement. - (1) This Act may be called The Forward Contracts (Regulation) Act, 1952.

- (2) It extends to the whole of India [* * * *].
- (3) Chapter I shall come into force at once, and the remaining provisions shall come into force on such date² or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, for different States or areas, and for different goods or classes of goods.

Object & Reasons ▼

Statement of Objects and Reasons.-Forward trading, which normally plays a useful part in tempering price fluctuations, tends in certain situations to exaggerate such fluctuations to the detriment of the interests of producers as well as consumers. During the war and immediately thereafter, the Central Government issued orders under rule 8 of the Defence of India Rules, prohibiting forward trading in commodities, such as foodgrains, oil-seeds, oil-cakes, vegetable oils, raw cotton, spices, sugar and bullion. After the Defence of India Act lapsed, orders in respect of foodgrains, edible oil-seeds and oils, raw cotton and spices were kept in force under the Essential Supplies (Temporary Powers) Act, 1946, and similar orders about cotton-seed and sugar were also issued later under this Act. It was only in the case of raw cotton that a general exemption was granted with respect to forward trading conducted under the auspices of the East India Cotton Association, Bombay.

Among the States, Bombay is the only one which has adopted a comprehensive scheme for the regulation of forward trading under the Bombay Forward Contracts Control Act. That Act has been brought into force mainly to control forward trading in cotton; bullion and oil-seeds.

Under the Constitution, the subject of "stock exchanges and future markets" is included in the Union List. Consequently, the State Legislatures are no longer competent to enact any fresh legislation with regard to forward markets, and unless Central Legislation on this subject is enacted, the resulting lacuna may prevent desirable action being taken, when needed. When the Central Act comes into force, the existing State Acts will cease to operate to the extent to which they are inconsistent with the Central Act.

In February, 1950, a draft Bill on this subject was circulated to the State Governments, the Reserve Bank of India, Chambers of Commerce and various other interests concerned. In July, 1950, the draft Bill was referred to an Expert Committee under the Chairmanship of Shri A.D. Shroff,

and was revised in the light of the Committee's recommendations. The Government of India also accepted in principle the Committee's recommendations in regard to the practical operation of this measure, though their application to individual cases would have to be decided in the light of experience and the circumstances of each case.

A Bill was introduced in the Provisional Parliament on 19th December, 1950 and was referred by it to a Select Committee on 24th April, 1951. The Select Committee's Report, which was submitted in 20th August, 1951, could not be considered by the Provisional Parliament before it was prorogued and the Bill lapsed. This Bill as now introduced is largely in the form recommended by the Select Committee, but certain alterations have been made therein as a result of further consideration.

The Bill provides for the regulation of forward trading and the prohibition of options in goods. Transactions on stock exchanges have been excluded, since the problem of regulating Stock Exchanges have some special features of its own and can best be treated separately. It is proposed to prohibit options altogether, since they are considered to be an undesirable form of speculation.

The regulatory provisions of this Act will be extended by notification to different classes of goods and to different areas as and when necessary. The main principle underlying these provisions is that forward contracts should be allowed to be entered into only in accordance with the rules and bye-laws of a recognised association. The rules and bye-laws will be subject to the approval of the Central Government who will also have the powers to make such rules and bye-laws. Provision has been made for the appointment by the Central Government of one person as its own representative and not more than three persons to represent interests not directly represented through the membership of the association, as members of the governing body of a recognised association. The Central Government will also have the powers to order an inquiry into the affairs of a recognised association or those of any of its members and to direct the Forward Markets Commission to inspect the accounts and other documents of the association. In emergencies the Central Government may have to suspend the business of a recognised association, and in certain extreme cases to supersede the governing body of a recognised association for a period not exceeding six months, or even to withdraw

recognition. It has been provided that the provisions of this Act will apply to non-transferable specific delivery contracts only in certain areas to be notified by the Central Government.

In order to assist the Central Government in the administration of the Act, it is considered desirable that a Commission, to be called "The Forward Markets Commission" should be established. Provision has also been made for the establishment of an Advisory Committee to advise the Central Government on any matter concerning the operation of the Act.

Amendment Act 62 of 1960-Statement of Objects and Reasons.-Experience gained in the Administration of the Forward Contracts (Regulation) Act, 1952, during the last six years has revealed that the present provisions of the Act are not adequate to deal with excessive speculation and other malpractices now prevalent in some of the forward markets. Persons indulging in illegal forward trading cannot be prosecuted for want of adequate documentary evidence. Further, persons found guilty of violation of the provisions of the Act often get away with a light punishment. Trading outside official hours in associations recognised for forward trading cannot be stopped under the existing provisions of the Act. The object of the Bill is to remove these and other difficulties which have been experienced in the working of the Act and to enable the Central Government and Forward Markets Commission to exercise a stricter control over forward trading activities. Opportunity has been taken to extend the provisions of the Act to the State of Jammu and Kashmir.

Amendment Act 53 of 1971-Statement of Objects and Reasons.-The Forward Contracts (Regulation) Act, 1952 was enacted with a view to regulate matters relating to forward contracts, the prohibition of options in goods and matters connected therewith. Under this Act, Government have regulated or banned forward trading in several commodities in order to check undue speculations in the prices of those commodities. Lately, it has been observed that the speculative elements have taken resort to the ready market itself and conducted their business in forward contracts in banned and regulated commodities under the guise of ready delivery contracts. A ready delivery contract is intended to result in actual delivery of goods and payment of full price therefor within a period of eleven days. The method

employed by the parties is to enter into an apparently ready delivery contract for a week or ten days thus keeping themselves strictly within the law and then to square it up by entering into an opposite contract. The next day or a day thereafter a seemingly new contract for the same quantity and variety of goods and with the same party is entered into afresh and so squared up at the end of the next period of seven or ten days by an opposite contract and so on. Thus, a contract is carried on with the same party for the same quantity and quality of goods for so long as both parties desire. This method corresponds remarkably with the mechanics of future trading where a contract having been entered into, lay for three months is usually cleared every week or ten days or fortnight when the differences between the contract rate and prevailing rate are duly cleared.

(2) The misuse of ready delivery contracts has been indulged in by the parties because of certain lacuna in the definitions of the expressions "forward contract" and "ready delivery contract" in section 2(c) and section 2(i) respectively of the Forward Contracts (Regulation) Act, 1952. Government have been advised to the effect that the fact that there was no actual delivery of goods within the stipulated period of eleven days but there was settlement, by payment of differences or set off does not convert a ready delivery contract into a forward contract. The Government was, therefore, unable to check the misuse of ready delivery contracts under the existing Act.

(3) In order to eradicate the misuse of ready delivery contracts, it was considered necessary to amend suitably the definitions of the expressions "forward contract" and "ready delivery contract" contained in the Act. Since immediate action had to be taken in this behalf, the Forward Contracts (Regulation) Amendment Ordinance, 1971 was promulgated by the President on 11th October, 1971.

(4) The present Bill is intended to replace the Ordinance.

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

[(a) "Appellate Tribunal" means the Securities Appellate Tribunal established under sub-section (1) of section 15-K of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(aa) "association" means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative;

- (ab) "Chairman" means the Chairman of the Commission referred to in clause (a) of sub-section (1) of section 3-A;]
- (b) "Commission" means the Forward Markets Commission established under section 3;
- [(ba) "commodity derivative" means--
- (i) a contract for delivery of goods, which is not a ready delivery contract; or
 - (ii) a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Commission by the Central Government, but does not include securities;
- (bb) "corporatisation" means the succession of a recognised association, being a body of individuals or a society registered under the Societies Registration Act, 1860 (21 of 1860), by another association, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in goods or commodity derivatives carried on by such individuals or society;
- (bc) "demutualization" means the segregation of ownership and management from the trading rights of the members of a recognised association in accordance with a scheme approved by the Commission;]
- (c) "forward contract" means a contract for the delivery of goods [* * * *] and which is not a ready delivery contract [and includes contract for commodity derivative];
- [(ca) "Fund" means the Forward Markets Commission General Fund constituted under sub-section (1) of section 4-E;]
- (d) "goods" means every kind of movable property other than actionable claims, money and securities;
- (e) "Government security" means a Government security as defined in the Public Debt Act, 1944 (18 of 1944);
- [(ea) "intermediary" means a member of the association, and includes a collateral manager, a clearing house, or such other person who is associated with the commodity derivatives market and is specified as such by the Central Government for the purposes of this Act;
- (eb) "member" means a whole-time or part-time member of the Commission and includes the Chairman;]
- (f) "non-transferable specific delivery contract" means a specific delivery contract, the rights or liabilities under which or under any delivery

order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable;

[(fa) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(fb) "option in commodity derivative" means an agreement, by whatever name called, for trading in a commodity derivative and includes a *teji*, a *mandi*, a *teji-mandi*, a *gali*, a put, a call or a put and call in commodity derivative;]

(g) "option in goods" means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future, and includes a *teji*, a *mandi*, a *teji-mandi*, a *galli*, a put, a call or a put and call in goods;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding [thirty days] after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise:

[Provided that where any such contract is performed either wholly, or in part,-

(1) by tendering of the documents of title to the goods covered by the contract by any party thereto (not being a commission agent or a bank) who has acquired ownership of the said documents by purchase, exchange or otherwise, to any other person (including a commission agent but not including a bank); or

(2) by the realisation of any sum of money, being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or

(3) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or the payment of the full price therefor is dispensed with, then, such contract shall not be deemed to be a ready delivery contract.

Explanation. - For the purpose of this clause,-

(i) "bank" includes any banking company as defined in the Banking Regulation Act, 1949 (10 of 1949), a co-operative bank as defined in the Reserve Bank of India Act, 1934 (2 of 1934), the State Bank of India and any of its subsidiaries and any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of

1970) [or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980)];

- [(ii) "commission agent" means a person who, in the ordinary course of business, makes contract for the sale or purchase of goods for others for a remuneration (whether known as commission or otherwise) which is determined in the contract itself or determinable from the terms of the contract, in either case, only with reference to the quantity of goods or to the price therefor as stipulated in the contract;]
- [(j) "recognised association" means an association to which recognition for the time being has been granted by [the Commission under section 6 in respect of forward contract or classes of forward contracts] [specified in such recognition;
- [(jj) "regulations" means the regulations made the Commission under this Act;]
- (k) "rules" with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association its memorandum and articles of association;
- [(ka) "scheme" means a scheme for corporatisation or demutualization of a recognised association which may provide for--
 - (A) the issue of shares for a lawful consideration and provision for trading rights in lieu of membership cards of members of a recognized association;
 - (B) the restrictions on voting rights;
 - (C) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised association, legal proceedings by, or against, the recognised association, whether in the name of the recognised association or any trustee or otherwise and any permission given to, or by, the recognised association;
 - (D) the transfer of employees of a recognised association to another recognised association;
 - (E) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised association;]
- (l) "securities" includes shares, scrips, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also Government securities;

- (m) "specific delivery contract" means a [forward contract which provides for, and is performed by,] the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned;
- (n) "transferable specific delivery contract" means a specific delivery contract which is not a non-transferable specific delivery contract, [and which is subject to such conditions relating to its transferability as the Central Government may, by notification in the Official Gazette, specify in this behalf.]

CHAPTER II

The Forward Markets Commission

3. Establishment and constitution of the Forward Markets Commission. - (1) The Central Government may, by notification in the Official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act.

[(2) The Commission 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 and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.]

[3-A. Management of Commission. - (1) The Commission shall consist of the following members, namely:--

- (a) a Chairman;
- (b) two members from amongst the officials of the Ministries or Departments of the Central Government dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture or Finance;
- (c) one member from amongst the officials of the Reserve Bank;
- (d) five other members of whom at least three shall be the whole-time members.

(2) The general superintendence, direction and management of the affairs of the Commission shall vest in a board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Commission.

(3) Save as otherwise determined, by regulations, the Chairman shall have powers of general superintendence and direction of the affairs of the Commission and may also exercise all powers and do all acts and things which may be exercised or done by the Commission.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank, respectively.

(5) The Chairman and other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commodity markets or who have special knowledge or experience of commerce or economics or law or finance or in administration or have practical experience in any matter which renders them suitable for appointment on the Commission:

Provided that every person appointed as Chairman and every other person appointed as member of the Commission and holding office as such immediately before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall, notwithstanding any order for their appointment made under sub-section (2) of section 3 as it stood before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall hold office till the Chairman or other member has been appointed in accordance with this section after such commencement and no person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

3-B. Term of office and conditions of service of Chairman and members of Commission. - (1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 3-A shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 3-A, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

3-C. Removal of member from office. - The Central Government shall remove a member from office if he--

(a) is, or at any time has been, adjudicated as insolvent;

(b) is of unsound mind and stands so declared by a competent Court;

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

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

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

3-D. Meetings of Commission. - The Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings including quorum at such meetings as may be provided by regulations.

(2) The Chairman or, if for any reason he is unable to attend the meeting of the Commission, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of votes of the members of the Commission present and voting, and in the event of an equality of votes, the Chairman or in his absence the member presiding, shall have a second or casting vote.

3-E. Vacancies, etc., not to invalidate proceedings of Commissions. - No act or proceeding of the Commission shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Commission; or
(b) any defect in the appointment of a person acting as a member of the Commission; or

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

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

3-G. Bar on future employment of members. - The Chairman and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept any employment with any person dealing with the commodities derivatives or with any intermediary.

3-H. Officers and employees of Commission. - (1) The Commission may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and conditions of service of the officers and employees of the Commission appointed under sub-section (1) shall be such as may be determined by regulations:

Provided that every officer and other employee holding any office under the Commission, before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall continue to hold his office as such after such commencement for the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident

fund, retirement and other terminal benefits as he would have held such office if the said Ordinance had not come into force and shall continue to do so as an officer or other employee of the Commission until the regulations are made under this sub-section or the expiry of one year from the date of such commencement or till the date on which such officer or other employee opts not to be the officer or other employee of the Commission, whichever is earlier.]

4. Functions of the Commission. - The functions of the Commission shall be-

- [(a) to advise the Central Government in respect of matters arising out of the administration of this Act;
- (aa) to grant or withdraw recognition of any association;]
- [(b) to keep forward markets under observation and to take such action in relation to them as it may consider necessary, in exercise of the powers assigned to it by or under this Act;]
- (c) to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods;
- (d) to make recommendations generally with a view to improving the organisation and working of forward markets;
- (e) to undertake the inspection of the accounts and other documents of [any recognised association] or [any member of such association or any intermediary] whenever it considers it necessary; and
- [(f) to regulate the business of the associations;
- (g) to regulate the functioning of members of the associations, clearing houses, warehouses and intermediaries;
- (h) to levy fees for carrying out the purposes of this Act;
- (i) to conduct research for the purpose of development and regulation of commodity derivatives market;
- (j) to call from or furnishing to any such agencies, as may be specified by the Commission, such information as may be considered necessary by it for the efficient discharge of its functions;
- (k) to protect the interests of the market participants in commodity derivatives markets;
- (l) to promote and regulate self-regulatory organisations;

- (m) to prohibit fraudulent and unfair trade practices relating to commodity derivatives markets;
- (n) to promote investors' education and training of intermediaries;
- (o) to prohibit insider trading in commodity derivative;
- (p) to advise the Central Government as to the goods in respect of which forward contract or option in goods or option in commodity derivative may be notified;
- (q) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.]

[4-A. Powers of the Commission. - (1) The Commission shall in the performance of its functions, have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any documents;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any office;
 - (e) any matter which may be prescribed.
- (2) The Commission shall have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, any matter under the consideration of the Commission and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 of the Indian Penal Code (45 of 1860).
- (3) The Commission shall be deemed to be a Civil Court and when any offence described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in [the Code of Criminal Procedure, 1973 (2 of 1974)][, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under [section 346][of the said Code.

(4) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

Explanation. - For the purposes of enforcing the attendance of witnesses, the local limits of the Commission's jurisdiction shall be the limits of the territory of India.]

[4-B. Power to issue direction by Commission. - Save as otherwise provided in section 4, if after making or causing to be made an inquiry, the Commission is satisfied that it is necessary, in the interest of trade and orderly development of commodity derivatives market, it may issue directions to any intermediary or association.

4-C. Cease and desist proceedings. - If the Commission finds, after causing an inquiry to be made, that any person has violated, or is likely to violate any provisions of this Act or any rules or regulations made thereunder, the Commission may pass an order requiring such person to cease and desist from committing or causing such violations.]

[CHAPTER II-A]

Finance Accounts And Audit

4-D. Grants by Central Government. - The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

4-E. Fund. - (1) There shall be constituted a Fund to be called the Forward Markets Commission General Fund and there shall be credited thereto--

- (i) all grants and fees received by the Commission under this Act;
- (ii) all sums received by the Commission from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting--

- (i) the salaries, allowances and other remuneration of the members, officers and other employees of the Commission;
- (ii) the expenses of the Commission in the discharge of its functions under section 4;
- (iii) the expenses on objects and for purposes authorised by this Act:

Provided that the sums authorised to be paid and applied from and out of the Consolidated Fund of India and appropriated by law made by Parliament for the services and purposes of the Commission shall continue to be paid and applied for such services and purposes of the Commission till the Fund is constituted under this section.

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

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

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

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

CHAPTER III

Recognised Associations

5. Application for recognition of associations. - Any association concerned with the regulation and control of [forward contracts or option in goods or option in commodity derivative] which is desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the [Commission].

(2) Every application made under sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by a copy of the bye-laws for the regulation and control of [forward contracts or option in goods or option in commodity derivative] and also a copy of the rules relating in general to the constitution of the association, and in particular, to-

(a) the governing body of such association, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office-bearers of the association;

- (c) the admission into the association of various classes of members, the qualifications of members, and the exclusion, suspension, expulsion and readmission of members therefrom or thereinto;
- (d) the procedure for registration of partnerships as members of the association and the nomination and appointment of authorised representatives and clerks:

[Provided that the applications made to the Central Government, on or before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008 and pending with the Central Government on such date, shall be transferred to the Commission and thereafter the Commission shall dispose of such applications in accordance with the provisions of this Act.]

6. Grant of recognition to [association]. - (1) If the [Commission], after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, is satisfied that it would be in the interest of the trade and also in the public interest to grant recognition to the [association] which has made an application under section 5, it may grant recognition to the association in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition [the goods or classes of goods or commodity derivative or classes of commodity derivatives with respect to which forward contracts or options may be entered] into between members of such association or through or with any such member.

(2) Before granting recognition under sub-section (1), the [Commission] may, by order, direct,-

- (a) that there shall be no limitation on the number of members of the association or that there shall be such limitation on the number of members as may be specified;
 - (b) that the association shall provide for the appointment by the [Commission] of a person, whether a member of the association or not, as its representative on, and [such number of persons as the Commission may, having regard to the interest of trade in commodities and commodities derivatives, specify,] representing interests not directly represented through membership of the association as member or members of, the governing body of such association, and may require the association to incorporate in its rules any such direction and the conditions, if any, accompanying it.
- (3) No rules of a recognised association shall be amended except with the approval of the [Commission].
- (4) Every grant of recognition under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which

the principal office of the recognised association is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India:

[Provided that the recognition granted by the Central Government, before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, shall be deemed to have been granted by the Commission in accordance with the provisions of this Act.]

[7. Withdrawal of recognition. - (1) If the Commission is of opinion that any recognition granted to an association under the provisions of this Act should, in interest of the trade or in the public interest, be withdrawn, the Commission may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification, the recognition granted to the said association:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contract outstanding on that date.

(2) Where the recognised association has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 7-8 within the specified time therefor or the scheme has been rejected by the Commission under sub--section (5) of section 7-8, the recognition granted to such association under section 6, shall, notwithstanding anything contained contrary to any other provision of this Act, stand withdrawn and the Commission shall publish, by notification, such withdrawal of recognition:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may, after consultation with the association, make such provisions as it deems fit, in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 7-8.

7-A. Corporation and demutualisation of associations. - On and from the appointed date, all recognized associations (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 7-B:

Provided that different appointed dates may be appointed for different recognized associations:

Provided further that the Commission may, if it is satisfied that any recognized association was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, extend the appointed date specified in respect of that recognized association and such recognized association may continue as such before such appointed date.

Explanation. - For the purposes of this section, "appointed date" means the date which the Commission may, by notification, appoint.

7-B. Procedure for corporation and demutualisation. - (1) All recognized associations referred to in section 7-A shall, within such time as may be specified by the Commission, submit a scheme for corporatisation and demutualisation for its approval:

Provided that the Commission may, by notification, specify name of the recognised association, which had already been corporatised and demutualised, and such association shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Commission may, after making such inquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade in goods or commodity derivatives and also in the public interest, approve the scheme with or without modification.

(3) No scheme under sub-section (2) shall be approved by the Commission if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised association or payment of dividends to members have been proposed out of any reserves or assets of that association.

(4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by--

(a) the Commission in the Official Gazette;

(b) the recognised association in such two daily newspapers circulating in India, as may be specified by the Commission, and upon such publication, notwithstanding anything contained contrary to any other provision of this Act or in any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised association and on all persons having any contract, right, power, obligation or liability with against, over, to, or in connection with, the recognised association or its members.

(5) Where the Commission is satisfied that it would not be in the interest of the trade in goods or commodity derivatives and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Commission shall give a reasonable opportunity of being heard to all the persons concerned and the recognised association concerned before passing an order rejecting the scheme.

(6) The Commission may, while approving the scheme under sub-section (2), by an order in writing, restrict--

- (a) the voting rights of the shareholders who are also members of the recognised association;
- (b) the right of shareholders or a member of the recognised association to appoint the representatives on the governing board of the association;
- (c) the maximum number of representatives of the members of the recognised association to be appointed on the governing board of the association, which shall not exceed one-fourth of the total strength of the governing board.

(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force, have full effect.

(8) Every recognised association, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2) shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Commission, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights: Provided that the Commission may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.]

8. Power of [Central Government or Commission] to call for periodical returns or direct inquiries to be made. - [(1) Every recognised association and every member thereof shall furnish to the [Central Government or Commission] [such periodical returns relating to its affairs, or the affairs of its members, as the case may be, as may be prescribed.]

(2) Without prejudice to the provisions contained in sub-section (1), where the [Central Government or Commission] considers it expedient so to do, it may, by order in writing,-

- (a) call upon a recognised association [or a member thereof] to furnish in writing such information or explanation relating to its affairs or the affairs of any of its members [or his affairs, as the case may be,] as the Central Government may require; or
- (b) appoint one or more persons to make an inquiry in relation to the affairs of such association or the affairs of any of its members and submit a report of the result of such inquiry to the [Central Government or Commission] within such time as may be specified in the order or, in the alternative, direct the inquiry to be made, and the report to be submitted, by the governing body of such

association acting jointly with one or more representatives of the [Central Government or Commission]; and

- (c) [direct any agency or any of its officers] to inspect the accounts and other documents of any recognised association or of any of its members and submit its report thereon to the [Central Government or Commission].
- (3) Where an [inquiry or inspection] in relation to the affairs of a recognised association or the affairs of any of its members has been undertaken under sub-section (2)-
- (a) every director, manager, secretary or other officer of such association,
 - (b) every member of such association,
 - (c) if the member of the association is a firm, every partner, manager, secretary or other officer of the firm, and
 - (d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c), shall be bound to produce before the authority making the [inquiry or inspection], all such books, accounts, correspondence and other documents in his custody or power relating to, or having a bearing on the subject-matter of, such inquiry and also to furnish the authority, with any such statement or information relating thereto as may be required of him, within such time as may be specified.

[(4) Every recognised association and every member thereof shall maintain such books of account and other documents as the Commission may specify and the books of account and other documents so specified shall be preserved for such period not exceeding three years as the Commission may specify and shall be subject to inspection at all reasonable times by the Commission.]

9. Furnishing of annual reports to the Central Government by recognised associations. - [(1) Every recognised association shall furnish to the Commission three copies of its annual report.]

(2) Such annual report shall contain such particulars as may be prescribed.

[9-A. Power of recognised association to make rules respecting grouping of members, restricting voting rights, etc., in special cases. - (1) A recognised association may make rules or amend any rules made by it to provide for all or any of the following matters, namely,-

[(a) the admission of a firm or a Hindu undivided family as a member;]

[(b)][the grouping of the members of the association according to functional or local interests, the reservation of seats on its governing body for members belonging to each group and appointment of members to such reserved seats-

(i) by election exclusively by the members of the association from among persons chosen by the members belonging to the group concerned;

(ii) by election by all the members of the association;

(iii) by election by all the members belonging to the group concerned for the purpose;

[(c)][the restriction of voting rights in respect of any matter placed before the association at any meeting to those members only who, by reason of their functional or local interests, are actually interested in such matter;

[(d)][the regulation of voting rights in respect of any matter placed before the association at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the association;

[(e)][the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the association;

[(f) the retirement at every annual general meeting of all directors or such number or proportion of their total number as may be specified in the rules];

[(g)][such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in [clauses (a) to (f).]

[(2) No rules of a recognised association made or amended in relation to any matter referred to in [clauses (a) to (g)][of sub-section (1) shall have effect until they have been approved by the [Central Government or Commission][and published by [that Government or Commission][in the Official Gazette and, in approving the rules so made or amended, the [Central Government or Commission][may make such modifications therein as it thinks fit, and on such publication, the rules as approved by the [Central Government or Commission][shall be deemed to have been validly made, notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956).

(3) Where, before the commencement of the Forward Contracts (Regulation) Amendment Act, 1957, any rules have been made or amended in relation to any matter referred to in [clauses (b) to (e) and (g)][of sub-section (1), the rules so made or amended shall not be deemed to be invalid or ever to have been invalid merely by reason of the fact that the rules so made or amended

are repugnant to any of the provisions of the Companies Act, 1956 (1 of 1956).]

[10. Power of Commission to direct rules to be made or to make rules. - (1) Whenever the Commission considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.

(2) If any recognized association, against whom an order is issued by the Commission under sub-section (1), fails or neglects to comply with such order within the specified period, the Commission may make the rules or amend the rules made by the recognized association, as the case may be, either in the form specified in the order or with such modification thereof as the Commission may think fit.

(3) Where, in pursuance of sub-section (2), any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India, and shall, thereupon, have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956) or any other law for the time being in force, as if they had been made or amended by the recognized association concerned.

10-A. Clearing corporation. - (1) A recognized association may, with the prior approval of the Commission, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956 (1 of 1956), for the purposes of--

- (a) the periodical settlement of contracts and differences thereunder;
- (b) the delivery of, and payment for, goods;
- (c) any other matter incidental to, or connected with, such transfer.

(2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Commission for its approval.

(3) The Commission may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve transfer of the duties and functions of clearing house to a clearing corporation referred to in sub-section (1).

(4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 12-A, 12-B and 13 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognised association.]

11. Power of recognised association to make bye-laws. - (1) Any recognised association may, subject to the previous approval of the [Commission], make bye-laws for the regulation and control of [forward contracts or option in goods or option in commodity derivative].

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for-

- (a) the opening and closing of markets and the regulation of the hours of trade;
- (b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of, and payment for, [or forward contracts or option in goods or option in commodity derivative], the passing on of delivery orders and for the regulation and maintenance of such clearing house;
- (c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;
- (d) fixing, altering or postponing days for settlement;
- (e) determining and declaring market rates, including opening, closing, highest and lowest rates for [or forward contracts or option in goods or option in commodity derivative];
- (f) the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;
- (g) regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members or between a commission agent and his constituent, or between a broker and his constituent, or between a member of the recognised association and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents and brokers who are not parties to such contracts;
- (h) the admission and prohibition of specified classes or types of [or forward contracts or option in goods or option in commodity derivative] or of dealing in [or forward contracts or option in goods or option in commodity derivative] by a member of the recognised association;
- (i) the method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration;
- (j) the levy and recovery of fees, fines and penalties;
- (k) the regulation of the course of business between parties to contracts in any capacity;
- (l) the fixing of a scale of brokerage and other charges;

- (m) the making, comparing, settling and closing of bargains;
 - (n) the regulation of fluctuations in rates and prices;
 - (o) the emergencies in trade which may arise and exercise of powers in such emergencies including the power to fix maximum and minimum prices;
 - (p) the regulation of dealings by members for their own account;
 - (q) the limitations on the volume of trade done by any individual member;
 - (r) the obligation of members to supply such information or explanation and to produce such books relating to their business as the governing body may require.
- (3) The bye-laws made under this section may-
- (a) specify the bye-laws the contravention of any of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (2) of section 15;
 - [(aa) specify the bye-laws the contravention of any of which shall make a forward contract entered into otherwise than in accordance with bye-laws illegal under sub-section [(4)][of section 15;]
 - (b) provide that the contravention of any of the bye-laws shall-
 - (i) render the member concerned liable to fine; or
 - (ii) render the member concerned liable to expulsion or suspension from the recognised association or to any other penalty of a like nature not involving the payment of money.
- (4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the [Commission] shall be published in the Gazette of India [* * *]:

Provided that the [Commission] may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication, in any case.

[12. Power of Commission to make or amend bye-laws of recognised association. - (1) The Commission may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section 11 or amend any bye-laws made by such association under that section.

(2) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the

Gazette of India and shall thereupon have effect as if they had been made or amended by the recognised association.

(3) Notwithstanding anything contained in this section, where the governing body of a recognised association objects to any bye-laws made or amended under this section by the Commission on its own motion, it may, within six months of the publication thereof under sub-section (2), apply to the Commission for a revision thereof, and the Commission may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or amendment or revision of any bye-laws under this section shall in all cases be subject to such conditions in regard to the previous publications as may be prescribed:

Provided that the Commission may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

12-A. Application of amendment of bye-laws to existing forward contracts or option in goods or option in commodity derivative. - Any amendment of a bye-law made under section 11 other than an amendment made in pursuance of clause (a) or clause (aa) of sub-section (3) of that section or under section 12 shall also apply to all forward contracts or option in goods or option in commodity derivative entered into before the date of its approval by the Commission or before the date of its publication in the Gazette of India, as the case may be, and remaining to be performed on or after the said date.]

12-B. Power of Commission to suspend member of recognised association or to prohibit him from trading. - (1) If, in the interest of trade or in the public interest, the Commission considers it necessary to suspend a member from his membership of any recognised association or to prohibit such members from entering into any [forward contract or option in goods or option in commodity derivative] for the sale or purchase in his own name or through another member of a recognised association [* * *], then, notwithstanding anything contained in any law for the time being in force or in the rules or bye-laws of a recognised association, the Commission may, after giving an opportunity to the member concerned of being heard, by order suspend his membership of any association or prohibit him from entering into any such contract [or option in goods or option in commodity derivatives].

(2) An order made under sub-section (1) shall specify the period for which the suspension or prohibition is to have effect and such period may be extended from time to time but so as not to exceed three years in the aggregate.

(3) No order made under sub-section (1) in respect of any member of a recognised association shall affect the validity of any [forward contract or option in goods or option in commodity derivative] entered into or made by, with or through such member on or before the date of such order and remaining to be performed on or after the said date; but the Commission may make such provision as it deems fit in such order or in any subsequent order for the closing out of any such [forward contract or option in goods or option in commodity derivative].

[13. Power of Commission to supersede governing body of recognised association.

- (1) Without prejudice to any other powers vested in the Commission under this Act, where the Commission is of the opinion that the governing body of any recognised association should be superseded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may, after giving a reasonable opportunity to the governing body of the recognized association concerned to show cause why it should not be superseded, by notification, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed, may appoint one of such persons to be the chairman and another of such person to be the vice-chairman.

(2) On the publication of a notification under sub-section (1), the following consequences shall ensue, namely:--

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Commission may, from time to time, by like notification, vary such period.

(4) On the determination of the period of office of any person or persons appointed under this section, the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1), shall, notwithstanding anything contained in sub--section (1), continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1), shall vest or re-vest, as the case may be, in the governing body so reconstituted.]

14. Power to suspend business of recognised associations. - If in the interest of the trade or in the public interest the [Commission] considers it expedient so to do, it may, by notification in the Official Gazette, direct a recognised association to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and may, if, in the opinion of the [Commission], the interest of the trade or the public interest so requires, by like notification, extend the said period from time to time:

Provided that where the period of suspension is likely to exceed one month, no notification extending the suspension beyond such period shall be issued, unless the governing body of the recognised association has been given an opportunity of being heard in the matter.

[CHAPTER III-A]

Registration Of Members And Intermediaries

14-A. Registration of members and intermediaries. - (1) On and from the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, no person intending to act as a member or intermediary shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration granted by the Commission in accordance with the regulations made under this Ordinance.

(2) A person, who in his capacity as a member or intermediary intends to deal in forward contract or option in goods or option in commodity derivative shall make an application for a certificate or registration to the Commission in such form along with such fee and containing such particulars as may be provided by regulations:

Provided that a person who was acting as a member or intermediary, before the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, may continue to do so for a period of six months from the date of such commencement if he has made an application for registration

within the said period of six months, till the disposal of such application, whichever is later:

Provided further that the Commission may, by regulations, specify different fees for a class or classes of members or intermediaries on the basis of turnover of the business of such members or intermediaries.

(3) No foreign participant or foreign intermediary associated with the commodity derivatives market, as the Commission may, by notification in this behalf, specify, shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration obtained from the Commission in accordance with the regulations made under this Ordinance:

Provided that a foreign participant or foreign intermediary dealing in forward contract or option in goods or option in commodity derivative immediately before the commencement of this Ordinance, for which no certificate of registration was required prior to such commencement, may continue to deal in forward contract or option in goods until such time as rules may be made by the Central Government for such dealings or in case no such rules have been made until permitted as such by the Commission by notification.

(4) On receipt of an application under sub-section (2), the Commission may, after making such inquiry as it considers necessary in this behalf, by order in writing, grant a certificate of registration on such terms and conditions as may be specified by regulations or refuse to grant such certificate:

Provided that, before refusing to grant such certificate, the person making the application shall be given an opportunity of being heard in the matter.

14-B. Suspension or cancellation of certificate of registration. - The Commission may, by order, suspend or cancel the certificate of registration in such manner as may be provided by regulations:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard in the matter.

CHAPTER IV

Forward Contracts And Options In Goods

[15. Forward contracts illegal or void in certain circumstances. - (1) Subject to the provisions contained in sections 17 and 18, every forward contract, entered into otherwise than between members of a recognised association or through or with any such member, shall be illegal.

(2) Any forward contract entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of section 11 shall be void--

(a) as respects the rights of any member of the recognised association who has entered into contract in contravention of any such bye-law and also,

(b) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(3) Nothing in sub-section (2) shall affect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract:

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section (3) of section 11.

(4) Any forward contract entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (aa) of sub-section (3) of section 11 shall be illegal.

(5) No member of a recognised association shall enter into any contract on his own account with any person other than a member of the recognised association, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the forward contract, as the case may be, on his account:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract:

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws, the outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, forward contract or option in goods or option in commodity derivative, as the case may be, on his own account.

16. Consequences of contravention of section 15.-Notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract,--

(a) every forward contract entered into on or before the date of commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Commission may fix in this behalf and different rates may be fixed for different classes of such contracts;

(b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a) and the

seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

17. Power to prohibit forward contract or options in goods or option in commodity derivative. - (1) The Central Government may, by notification, declare that no person shall, save with the permission of the Central Government, deal in any forward contract or option in goods or option in commodity derivative specified in the notification, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts or options in goods or options in commodity derivative in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

(3) Where a notification has been issued under sub-section (1), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts and options in goods for the sale or purchase of any goods specified in the notification (entered into on or before the date of the notification) and remaining to be performed after the said date.]

18. Special provisions respecting certain kinds of forward contracts. - (1) Nothing contained in Chapter III or Chapter IV shall apply to [specific delivery contracts (both transferable and non-transferable)] for the sale or purchase of any goods:

Provided that no person shall organise or assist in organising or be a member of any association in any area to which the provisions of section 15 have been made applicable (other than a recognised association) which provides facilities for the performance of any [specific delivery contracts (both transferable and non-transferable)] by any party thereto without having to make or to receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.

[* * *]

(3) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control [specific delivery contracts (both transferable and non-transferable)] in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of [specific delivery contracts (both transferable and non-transferable)] in such area and in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

[19. Option in goods or option in commodity derivative illegal in certain circumstances. - (1) Any option in goods or option in commodity derivative which has been entered into on or after the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, otherwise

than between members of a recognised association or through or with any such member shall be illegal.

(2) The provisions of sub-sections (2), (3), (4) and (5) of section 15 shall apply to options in goods or option in commodity derivative as they apply in relation to a forward contract.]

CHAPTER V

Penalties And Procedure

[20. Penalties. - Any person who-

(a)(i) in any return, statement or other document required by or under this Act, makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement; or

(ii) without reasonable excuse (the burden of proving which shall be on him) fails to furnish any return, statement or other document or any information or to answer any question or to comply with any requisition made under this Act or any rules made thereunder; or

(iii) enters into any [forward contract or option in goods or option in commodity derivative] [during the period of suspension of business of a recognised association in pursuance of a notification under section 14; or

[* * *]

[(c) publishes or circulates information relating to the rate at which any [forward contract or option in goods or option in commodity derivative][has been entered into in contravention of any of the bye-laws of a recognised association; or

(d) organises, or assists in organising, or is a member of, any association in contravention of the provisions contained in the proviso to sub-section (1) of section 18; or

[(da) fails to make or accept delivery of goods covered by nontransferable specific delivery contracts or by transferable specific contracts where rights and obligations have not been transferred, as the case may be; or]

[(e) enters into any forward contract or option in goods or option in commodity derivative in contravention of any of the provisions contained in sub--section (1) or sub-section (4) or sub-section (5) of section 15 or section 17 or section 19,]

[shall, on conviction be punishable-

(i) for a first offence, with imprisonment which may extend to one year, or with a fine of not less than [twenty-five thousand rupees but which may extend to twenty-five lakh rupees][, or with both;

(ii) for a second or subsequent offence [under clause (d) or under clause (da)], or under clause (e) [other than an offence in respect of a contravention of the provisions of sub-section (4) of section 15, with imprisonment which may extend to one year and also with fine: provided that in the absence of special or adequate reasons to the contrary to be mentioned in the judgment of the Court, the imprisonment shall not be less than one month and the fine shall not be less than [twenty-five thousand rupees].]

21. Penalty for owning or keeping place used for entering into forward contracts in goods. - Any person who-

(a) owns or keeps a place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any [forward contract or option in goods or option in commodity derivative] in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or

(b) without the permission of the Central Government, organises, or assists in organising, or becomes a member of, any association, other than a recognised association, for the purpose of assisting in, entering into or making or performing, whether wholly or in part, any [forward contract or option in goods or option in commodity derivative] in contravention of any of the provisions of this Act, or

(c) manages, controls or assists in keeping any place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any [forward contract or option in goods or option in commodity derivative] in contravention of any of the provisions of this Act or at which such [forward contract or option in goods or option in commodity derivative] are recorded or adjusted, or rights or liabilities arising out of such [forward contract or option in goods or option in commodity derivative] are adjusted, regulated or enforced in any manner whatsoever, or

(d) not being a member of a recognised association, wilfully represents to, or induces, any person to believe that he is a member of a recognised association or that [forward contract or option in goods or option in commodity derivative] can be entered into or made or performed, whether wholly or in part, under this Act, through him, or

(e) not being a member of a recognised association or his agent authorised as such under the rules or by-laws of such association,

canvasses, advertises or touts in any manner, either for himself or on behalf of any other person, for any business connected with [forward contract or option in goods or option in commodity derivative] in contravention of any of the provisions of this Act, or

(f) joins, gathers, or assists in gathering at any place, other than the place of business specified in the bye-laws of a recognised association, any person or persons for making bids or offers or for entering into or making or performing, whether wholly or in part, any [forward contract or option in goods or option in commodity derivative] in contravention of any of the provisions of this Act, or

(g) makes, publishes or circulates any statement or information which is false and which he either knows or believes to be false, affecting or tending to affect the course of business in forward contracts [in respect of goods or option in goods or option in commodity derivative], [or]

[(h) manipulates or attempts to manipulate prices in respect of forward contracts or option in goods or option in commodity derivative,]

[shall, on conviction, be punishable-

(i) for a first offence, with imprisonment which may extend to two years, or with fine of not less than [twenty-five thousand rupees] but which may extend to twenty-five lakh rupees][, or with both;

(ii) for a second or subsequent offence, with imprisonment which may extend to two years and also with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the imprisonment shall not be less than one month and the fine shall not be less than [twenty-five thousand rupees but which may extend to twenty-five lakh rupees].]

[21-A. Penalty for failure to furnish information, refilm, etc. - If any person, who is required under this Act or any rules or regulations made thereunder,--

(a) to furnish any document, return or report to the Commission, fails to furnish the same, he shall be liable to a penalty of twenty thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file or furnish the same within the time specified therefor in the regulations, he shall be liable to pay a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of ten thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(d) or who was in charge of, and was responsible to, an association for the conduct of the business of the association, obstructs any officer of the Commission or any other person authorised by it to conduct inspection or to discharge any other function assigned by the Commission, such person as well as the association shall be liable to pay a fine of rupees one lakh for every occasion of such obstruction.

21-B. Penalty for failure by any person to enter into an agreement with clients. - If any person, who is registered as a member or an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of twenty thousand rupees for each such failure during which such failure continues or five lakh rupees, whichever is less.

21-C. Penalty for failure to redress clients grievances. - If any person, who is registered as a member or an intermediary, after having been called upon by the Commission in writing to redress the grievances of clients, fails to redress such grievances within the time specified by the Commission, he shall be liable to a penalty not exceeding two thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less.

21-D. Penalty for insider trading. - If any insider who,--

- (i) either on his own behalf or on behalf of any other person, deals in forward contract or option in goods or option in commodity derivative on any association on the basis of any unpublished price sensitive information; or
- (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for any other person to deal in any forward contract or option in goods or option in commodity derivative on the basis of unpublished price sensitive information, shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of insider trading, whichever is higher.

21-E. Penalty for fraudulent and unfair trade practices. - If any person indulges in fraudulent and unfair trade practices relating to forward contract or option in goods or option in commodity derivative, he shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of such practices, whichever is higher.

21-F. Penalty for default in case of an intermediary. - If any person, who is registered as an intermediary under this Act or any regulations made thereunder,--

- (a) fails to issue contract notes in the form and manner specified by the association of which such intermediary is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that intermediary;
- (b) fails to deliver any goods or fails to make payment of the amount due to the client or in the manner or within the period specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues;
- (c) charges an amount of brokerage which is in excess of the brokerage specified by the association, he shall be liable to a penalty of five thousand rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

21-G. Penalty for failure to comply with directions of Commission. - Any person, who fails to comply with the directions issued by the Commission under section 4-B, shall be liable to pay a penalty not exceeding two lakh rupees for each day during which such failure continues which may extend to five lakh rupees.

21-H. Consequences of failure to pay penalty. - (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention any of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, to with fine, or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine or with both.

21-I. Power to adjudicate. - (1) For the purposes of adjudging under sections 21-A to 21-G, the Commission shall appoint any of its officers not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of

the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

21-J. Factors to be taken into account by adjudicating officer. - While adjudging the quantum of penalty under section 21-I, the adjudicating officer shall have due regard to the following factors, namely:--

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to a client or group of clients as a result of the default;
- (c) the repetitive nature of the default.

21-K. Crediting sums realised by way of penalties to Consolidated Fund of India. - All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

21-L. Power of Court to order forfeiture of property. - Any court trying an offence punishable under this Act, may, if it thinks fit and in addition to any sentence which it may impose for such offence, direct that any money, goods or other property in respect of which the offence has been committed, shall be forfeited to the Central Government.]

Explanation. - For the purposes of this section, property in respect of which an offence has been committed, shall include deposits in a bank where the said property is converted into such deposits.

22. Offences by companies. - (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:

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

- (2) Notwithstanding anything contained 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 gross negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section,-

- (a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

[22-A. Power to search and seize books of accounts or other documents.

- (1) Any Presidency Magistrate or a Magistrate of the first class may, by warrant, authorise any police officer not below the rank of Sub-Inspector to enter upon and search any place where books of account or other documents relating to forward contracts or options in goods [or option in commodity derivative][entered into in contravention of the provisions of this Act, may be or may be reasonably suspected to be, and such police officer may seize any such book or document, if in his opinion, it relates to any such forward contract or option in goods [or option in commodity derivative].

[(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to search or seizure made under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(3) The Commission may, notwithstanding anything contained in this Act, file cases in respect of offences committed under this Act, directly to the courts having jurisdiction in respect of such offences.]

[22-B. Presumptions to be drawn in certain cases.

- (1) Where any books of account or other documents are seized from any place and there are entries therein, making reference to quantity, quotations, rates, months of delivery, receipt or payment of differences or sale or purchase of goods or option in goods [or option in commodity derivative][, such books of account or other documents shall be admitted in evidence without witnesses having to appear to prove the same; and such entries shall be *prima facie* evidence of the matters, transactions and accounts purported to be therein recorded.

(2) In any trial for an offence punishable under section 21, it shall be presumed, until the contrary is proved, that the place in which the books of account or other documents referred to in sub-section (1) were seized, was used, and that the persons found therein were present, for the purpose of committing the said offence.]

[22-C. Investigation. - (1) Where the Commission has reasonable grounds to believe that-

(a) the transactions in forward contracts or option in goods or option in commodity derivative are being dealt with in a manner detrimental to the commodity market or person associated with the commodity market; or

(b) any intermediary or any person associated with the commodities market has violated any of the provisions of this Act or the rules or regulations made or directions issued by the Commission thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or person

associated with the commodities market and to report thereon to the Commission.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 14-A, every person associated with the commodities market to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with commodities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with commodities market by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any books, registers, other documents and record if they are needed again:

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

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with commodities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) If any person fails without reasonable cause or refuses--

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7), he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one lakh rupees, or with both, and also with a further fine which may extend to twenty thousand rupees for every day after the first during which the failure or refusal continues.

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

(8) Where in the course of investigation, the Investigation Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with commodities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority--

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record, as it considers necessary for the purposes of the investigation.

(10) The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as in considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the Managing Director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the

provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches or seizures made under that Code.]

23. Certain offences to be cognizable. - Notwithstanding anything contained in the [Code of Criminal Procedure, 1898 (5 of 1898)], [the following offences shall be deemed to be cognizable within the meaning of that Code, namely:-

(a) an offence falling under sub-clause (ii) of clause (a) of section 20 in so far as it relates to the failure to comply with any requisition made under sub-section (3) of section 8;

(b) an offence falling under clause (d) of section 20;

(c) an offence falling under clause (e) of section 20 other than a contravention of the provisions of sub-section (3-A) or sub-section (4) of section 15;

(d) an offence falling under section 21;]

[(e) an offence falling under section 21-H.]

24. Jurisdiction to try offences under this Act. - No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall take cognizance of or try any offence punishable under this Act.

[24-A. Civil Court not to have jurisdiction. - No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.]

[CHAPTER V-A]

Jurisdiction And Authority Of Appellate Tribunal

24-B. Appeal to Appellate Tribunal. - (1) Save as provided in sub-section (2), any person aggrieved on or after the commencement of the Forward Contracts (Regulation) Amendment Ordinance, 2008, or by an order of the Commission made, or the rules or regulations made thereunder or by an order made by an adjudicating officer under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter.

(2) The Central Government shall specify, by notification, the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

(3) No appeal shall lie to the Appellate Tribunal from an order made by the Commission or an adjudicating officer with the consent of the parties.

(4) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Chairman

of the Commission is received by the aggrieved person and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within that period.

(5) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(6) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned authority whose order has been appealed against.

(7) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

24-C. Right to legal representation. - The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Explanation. - For the purposes of this section,--

- (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

24-D. Limitation. - The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to an appeal made to the Appellate Tribunal.

24-E. Appeal to Supreme Court. - Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from tiling the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

CHAPTER VI

Miscellaneous

25. Advisory Committee. - For the purpose of advising the Central Government in relation to any matter concerning the operation of this Act, the Central Government may establish an Advisory Committee consisting of such number of persons as may be prescribed.

26. Power to delegate. - The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in such circumstances and subject to such conditions, if any, as may be specified, be exercised by such officer or authority, including any State Government or officers or authorities thereof as may be specified in the direction.

[26-A. Power of Central Government to issue directions. - (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this subsection.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

26-B. Power of Central Government to supersede Commission. - (1) If at any time the Central Government is of the opinion--

- (a) that on account of grave emergency, the Commission is unable to discharge the functions and perform the duties imposed on it by or under the provisions of this Act; or
- (b) that the Commission has persistently made wilful default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and perform the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has deteriorated; or
- (c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification, supersede the Commission for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,--

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Commission shall, until the Commission is reconstituted, vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Commission by fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for such appointment:

Provided that the Central Government may, at any time before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

26-C. Returns and reports. - The Commission shall furnish to the Central Government at such time and in such form and "manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the commodities market, as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Commission shall, within ninety days, after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

26-D. Delegation. - The Commission may, by general or special order in writing, delegate to any member or officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 28) as it may deem necessary.

26-E. Bar of jurisdiction. - No order passed by the Commission or the adjudicating officer under this Act shall be appealable except as provided in section 24-8 and no Civil Court shall have jurisdiction in respect of any

matter which the Commission or the adjudicating officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Commission or the adjudicating officer by, or under, this Act.

26-F. Members, officers and employees of Commission to be public servants. - All members, officers and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).]

27. Power to exempt. - The Central Government may, by notification in the Official Gazette, exempt, subject to such conditions and in such circumstances and in such areas as may be specified in the notification, any contract or class of contracts from the operation of all or any of the provisions of this Act.

[27-A. Protection of action taken in good faith. - (1) No suit or other legal proceeding shall lie in any Court against the Central Government or any member, officer or servant of the Commission for anything which is in good faith done or intended to be done under this Act, or any rule or bye-law made thereunder.

(2) No suit or other legal proceeding shall lie in any Court against the governing body or any member, officer-bearer or servant of any recognised association or against any person appointed under subsection (1) of section 13 for anything which is in good faith done or intended to be done with the approval, or at the instance, of the Commission and in pursuance of this Act, or of any rule or bye-law made thereunder.]

[27-B. Exemption from tax on wealth and income. - Notwithstanding anything contained in the Wealth Tax Act, 1957 (27 of 1957), the Income-tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Commission shall not be liable to pay wealth tax, income tax or any other tax in respect of their wealth, income, profits or gains derived.]

28. Power to make rules. - (1) The Central Government may, by notification in the Official Gazette, make [rules] for the purpose of carrying into effect, the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the terms and conditions of service of members of the Commission;
- (b) the manner in which applications for recognition may be made under section 5 and the levy of fees in respect thereof;

(c) the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognition shall be granted;

[* * *]

(d) the particulars to be contained in the annual reports of recognised associations;

(e) the manner in which the bye-laws to be made, amended or revised under this Act shall, before being so made, amended or revised, be published for criticism;

(f) the constitution of the Advisory Committee established under section 25, the terms of office of and the manner of filling vacancies among members of the Committee; the interval within which meetings of the advisory committee may be held and the procedure to be followed at such meetings; and the matters which may be referred by the Central Government to the Advisory Committee for advice;

[(g) the duties and powers which may be performed or exercised by the Commission under clause (q) of section 4;

(h) the form and manner in which the annual statement of accounts shall be maintained under sub-section (1) of section 4-F;

(i) the rules for dealing by foreign participant or foreign intermediary under the proviso to sub-section (3) of section 14-A;

(j) the manner in which an inquiry shall be held under sub-section (1) of section 21-I;

(k) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (4) of section 24-B and the fees payable in respect of such appeal;

(l) the form and the manner in which returns and report to be made to the Central Government under section 26-C;

(m) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.]

[(3) Every rule 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 both Houses agree that the rule should not be made, the rule 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.]

[28-A. Power to make regulations. - (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

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

- (a) the time and places of meetings of the Commission and the procedure to be followed at such meetings under section 3-D including quorum necessary for the transaction of business;
- (b) the terms and other conditions of service of officers and employees of the Commission under sub-section (2) of section 3-H;
- (c) the manner in which the fresh issue of equity shares shall be made to the public under sub-section (8) of section 7-B;
- (d) the conditions of certificate of registration to act as a member or intermediary to deal with forward contract or option in goods or option in commodity derivative under sub-section (1) of section 14-A;
- (e) the fee for a class or classes of member or intermediary under the second proviso to sub-section (2) of section 14-A;
- (f) the terms and conditions subject to which registration may be granted under sub-section (4) of section 14-A;
- (g) the manner in which the certificate of registration may be suspended or cancelled under section 14-B;
- (h) any other matter relating to trading, clearing, settlement, and delivery of goods, forward contract, option in goods or option in commodity derivative.

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

28-B. Application of other laws not barred. - The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.]

[29. Repeals and savings. - If immediately before the date on which this Act or any provision contained therein is made applicable to any goods or classes of goods in any State, there is in force in that State any law

corresponding to this Act or, as the case may be, to any provision contained therein which is applicable to those goods or classes of goods, that law shall stand repealed on the said date:

Provided that the repeal shall not affect-

- (a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed:

Provided further that, subject to the proceeding proviso, anything done or any action taken (including any appointment made, notification or order issued, rule, regulation, form or bye-law framed, or recognition granted) under any such law shall be deemed to have been done or taken under the corresponding provision of this Act, and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.]