

**THE CONSTRUCTION, EARTHMOVING MATERIAL
HANDLING AND MINING MACHINERY BILL, 2016**

A

Bill

to regulate Construction, Earthmoving, Material Handling, and Mining Machinery ("CEMM Machinery) to promote the use and manufacture of such machinery in India, to promote education and training to develop a skilled workforce, to improve the operational safety and emissions aspects of such machinery to promote safety and health and protection of the environment by reducing air pollution and to provide a framework for continuous improvement and progressively higher standards of safety and emissions of such machinery

CHAPTER I

PRELIMINARY

Short title, extent
and commencement

1. (1) This Act may be called the Construction, Earthmoving, Material Handling and Mining Machinery Act, 2016
(2) It extends to the whole of India.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions

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

(1) "Accredited training establishment" means any organization which has been accredited with the Authority as qualified to impart training to trainees or conduct assessment of trainees in the operation of machinery;

(2) "authorised insurer" means an insurer for the time being carrying on general insurance business in India and granted a certificate of registration by the Insurance Regulatory and Development Authority of India established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 and any Government insurance fund authorised to do general insurance business under the General Insurance Business (Nationalization) Act, 1972;

(3) "Authority" means the Construction, Earthmoving, Material Handling and Mining Machinery Authority established under section 3;

(4) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of section 55 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a

certificate has been issued, all those certificates or that copy, as the case may be;

(5) "Claims Tribunal" means a Motor Accident Claims Tribunal established under the Motor Vehicles Act, 1988 (59 of 1988);

(6) "Dealer" means a person engaged in the business of supplying machinery either on his own or under contract or any other agreement with the manufacturer or working as an agent of the manufacturer and includes an importer who supplies any machinery to any user, manufacturer, consumer or any other person.

Explanation 1 -- A manufacturer who supplies machinery manufactured by itself to a dealer is deemed not to be a dealer

Explanation 2 -- For the removal of doubts, it is hereby declared that a manufacturer who supplies machinery manufactured by itself to any person other than a dealer shall be deemed to be a dealer

(7) "declaration of conformity" means a document issued by the manufacturer or the dealer or any other person who places on the market a machinery declaring that such machinery complies with the requirements of this Act and the rules and regulations thereunder and is in a form specified by the Authority;

(8) "employer", in relation to the operator of any machinery, means the person by whom such operator has been employed, whether for any remuneration or otherwise, for operating such machinery;

(9) "hazardous incident" means an incident that exposes any person to a serious risk to that person's health or safety emanating from an immediate or imminent exposure to --

(a) the collapse, overturning, failure or malfunction of or damage to any machinery; or

(b) electric shock; or

(c) the fall or release from a height, of any machinery or thing; or

(d) any other event as may be specified by regulations made by the Authority:

Provided that the Authority may, by regulation, specify incidents that are excluded from this provision.

(10) "intended use" in relation to machinery means the purpose for which such machinery is manufactured and includes inspection, operation, cleaning, maintenance, or repair of machinery;

(11) "machinery" means:

(a) an assembly, fitted with or intended to be fitted with a drive system other than directly applied human or animal effort, consisting of linked parts or components, at least one of which moves, and which are joined together for a specific application; or
(b) an assembly as referred to in clause (a), missing only the components to connect it on site or to sources of energy and motion;
or

(c) an assembly as referred to in clauses (a) or (b), ready to be installed and able to function as it stands only if mounted on a means of transport, or installed in a building or structure; or

(d) assemblies of machinery as referred to in clauses (a), (b) and (c), which in order to achieve the same end, are arranged and controlled so that they function as an integral whole; and

does not include any article of manufacture which is not mentioned in Schedule I.

(12) "manufacturer" means a person who is engaged in the design and/or manufacture of machinery;

(13) "Member" means a Member of the Authority but for the purposes of clause (a) of sub-section (1) and sub-sections (2) and (3) of section 4 and sections 5, 6, 7, 8, 9 does not include the *ex officio* members enumerated in clauses (b), (c), (d), (e) and (f) of sub-section (1) of section 4;

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

(15) "notified body" means any entity designated as such under section 18;

(16) "operator" means a person employed directly or by or through any person (including a contractor), with or without the knowledge of the principal employer, whether for remuneration or not, in the operation of any machinery or in any other kind of work incidental to, or connected with, the operation of the machinery;

(17) "operator licence" means the licence issued by the Authority under section 82 authorizing the person specified therein to operate, otherwise than as a trainee, machinery of -the specified class or description;

(18) "owner" means a person in whose name a machinery stands registered and where such person is a minor, the guardian of such minor, and in relation to a machinery which is the subject of a hire-purchase agreement, an agreement of hypothecation, the person in possession of the machinery under that agreement;

(19) "placing on market" means making available for the first time in India machinery with a view to distribute or use, whether for reward or free of charge, but shall not include machinery undergoing "field trials" as defined in the Explanation to section 23;

(20) "policy of insurance" includes certificate of insurance;

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

(22) "regulation" means the regulations made by the Authority under the Act and the rules made thereunder;

(23) "safety incident" means any incident, pertaining to the use of machinery , or resulting from the failure or malfunction of such machinery which may endanger the health of, or result in death or injury to any person or endanger property and includes:

- (a) the death of a person;
- (b) serious bodily injury of a person; and
- (c) hazardous incident;

- (24) "serious bodily injury" includes --
- (a) any injury which involves or in all probability will involve the --
 - (i) permanent loss of any part or section of the body; or
 - (ii) permanent loss of use of any part or section of the body; or
 - (iii) permanent loss of or injury to the sight or hearing; or
 - (b) a spinal injury; or
 - (c) separation of skin from an underlying tissue; or
 - (d) serious lacerations; or
 - (e) any injury within the meaning of section 320 of the Indian Penal Code; or
 - (f) any injury which involves or in all probability will involve the enforced absence of the injured person from work for a period of seventy-two hours or more; or
 - (g) any other injury specified by regulations made by the Authority:

Provided that the Authority may, by regulation, specify injuries that are excluded from this provision.

(25) "specified" means specified by regulations made by the Authority under the Act and rules made thereunder;

(26) "supply" includes supply and resupply of a machinery by way of sale, exchange, lease, hire or hire-purchase, distribution, installation, delivery or otherwise, whether as principal or agent but does not include

- (a) the return of possession of a machinery at the end of a lease or other agreement; or
- (b) the supply of a machinery by a person who does not control the supply and has no authority to make decisions about the supply.

Explanation I -- Supply of machinery occurs on the passing of its possession to a person to be supplied or his agent.

Explanation II -- A financier is taken not to supply a machinery for the purposes of the Act if --

- (a) the financier has, in the course of business as a financier, acquired ownership of, or another right, in the machinery on behalf of a customer of the financier; and
- (b) the action by the financier, that would be supply but for this provision, is taken by the financier for, or on behalf of, that customer.

Illustration

An auctioneer who auctions a thing without having possession of the thing is excluded from the meaning of supply.

(27) "technical information file" means the set of documents, specified by the Authority that demonstrate that the machinery complies with the requirements of this Act and rules and regulations made thereunder;

(28) "trainee" means a person receiving instructions in operating machinery in compliance with conditions as may be specified;

(29) "type approval certificate" means a document in a form as specified by the Authority and issued by a notified body certifying that a type of machinery complies with the Act and the rules and regulations made thereunder;

(30) "user" means any person who buys, leases or otherwise obtains any machinery for the purpose of putting such machinery to its intended use.

CHAPTER II

**CONSTRUCTION, EARTHMOVING,
MATERIAL HANDLING AND MINING
MACHINERY AUTHORITY**

Establishment of the
Authority **3.**

(1) The Central Government shall, within a period of six months from the date of commencement of this Act, by notification, establish the Construction, Earthmoving, Material Handling and Mining Machinery Authority to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Authority 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 and be sued.

(3) The head office of the Authority shall be in the National Capital Region referred to in clause (f) of section 2 of the National Capital Region Planning Board Act, 1985.

2 of 1985

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

Composition of the Authority and qualifications for appointment of the Chairperson and Members

4. (1) The Authority shall consist of—

(a) the Chairperson and not less than five but not exceeding seven Members, other than *ex officio* Members specified in this subsection, to be appointed by the Central Government from amongst the persons who fulfil the criteria specified in subsection (2);

(b) the Secretary to the Government of India in the Department of Heavy Industry or his nominee -- Member, *ex officio*;

(c) the Secretary to the Government of India in the Ministry of Road Transport and Highways or his nominee -- Member, *ex officio*;

(d) the Secretary to the Government of India in the Ministry of Environment, Forest and Climate Change or his nominee -- Member, *ex officio*;

(e) the Director-General of Mines Safety or his nominee -- Member, *ex officio*;

(f) the Director-General of the Bureau of Indian Standards or his nominee -- Member, *ex officio*;

(2) The Chairperson and every Member of the Authority shall be a person of ability, integrity and standing, having special knowledge of, or professional experience in, one or more fields of law or construction or mining or heavy

engineering, manufacture of construction, earthmoving, material handling and mining machinery, industry associations of the above fields, health and safety, which, in the opinion of the Central Government, is useful for the Authority to render its functions and fulfil its objectives under this Act:

Provided that one Member of the Authority shall be a person of ability, integrity and standing, having special knowledge of, or professional experience in, the special fields of economics or insurance, which, in the opinion of the Central Government, is useful for the Authority to render its functions and fulfil its objectives under this Act.

(3) The Chairperson and Members of the Authority shall not hold any other office.

Selection committee
for selection of
Chairperson and
Members, other than
ex officio Members

5.

(1) The Chairperson and the Members of the Authority shall be appointed by the Central Government from a panel of candidates recommended by a selection committee established under this Act.

(2) The selection committee shall consist of:

(a) the Cabinet Secretary as the Chairperson;

(b) the Secretary, Heavy Industries, in the Ministry of Heavy Industries and Public Enterprises as a member;

(c) the Secretary, Ministry of Road Transport & Highways as a member;

(d) the Secretary, Ministry of Environment, Forest and Climate Change as a member;

(e) the Director General of Mine Safety as a member;

(f) the Director General of the Bureau of Indian Standards as a member; and

(g) three experts of repute with special knowledge of, or professional experience in either one or more subjects of economics, construction, mining, heavy engineering, health and safety, insurance and manufacture of construction, earthmoving, material handling and mining machinery.

(3) The term of the selection committee and the manner of selection of the panel of candidates shall be such as may be prescribed by the Central Government.

(4) The Central Government shall make a reference to the selection committee for filling up a vacancy in the Authority –

(a) within one month from the date of occurrence of a vacancy by reason of death, resignation or removal or the receipt of the notice of resignation under sub-section (1) of section 7 of the Chairperson or a Member of the Authority; and

(b) three months before the superannuation or completion of the term of office of the Chairperson or a Member of the Authority.

(5) For every vacancy referred to it, the selection committee shall, within two months from the date on which the reference under sub-section (4) is made to it, recommend to the Central Government two candidates for appointment to the vacancy.

(6) Any person who is a member of the selection committee shall not be entitled to be recommended under sub-section (5), whether during his term with the selection committee or anytime thereafter.

(7) Before making any recommendations under sub-section (5), the selection committee shall satisfy itself that the candidates so nominated are capable of functioning independently as the Chairperson or Member of the Authority, where such independence means the ability to maintain and exercise independent judgement in the discharge of duties.

(8) The Central Government shall appoint the Chairperson and the Minister for Heavy Industries and Public Enterprises shall appoint the Members of the Authority within one month of the recommendations of the selection committee being submitted under of sub-section (5)

Term of office,
salary, allowances
and other conditions
of service of

6. (1) Before appointing any person as a Chairperson or Member, the Central Government shall satisfy itself that such person has no financial or other

Chairperson and
Members

interest as is likely to affect prejudicially his functions as such Chairperson or Member.

(2) The Chairperson or a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment

Provided that no member shall be eligible for more than two terms:

Provided further that no Chairperson or other Member shall hold office, as such after he attains—

—

(a) in the case of the Chairperson, the age of sixty-five years;

(b) in the case of any other Member, the age of sixty-two years

(3) The salary, allowances, and other terms and conditions of service of Chairperson and other Members shall be such as may be prescribed by the Central Government.

(4) The terms and conditions of service of the Chairperson and the Members shall not be varied to their disadvantage after appointment.

Resignation of
Chairperson and
Members

7. (1) The Chairperson or a Member of the Authority may resign office at any time before the expiry of his term, by giving to the Central Government an advance notice in writing of not less than three months.

(2) The Chairperson or a Member of the Authority, after giving notice under sub-section (1), shall continue to hold office until the Central Government appoints a person to the office so vacated, or till the expiry of three months from the date of notice, whichever is earlier

Removal of
Chairperson and
Members

8. (1) The Central Government may, by order, remove from office the Chairperson or any Member of the Authority, who—

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

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

(c) has, become physically or mentally incapable of discharging his duties; or

(d) has acquired such financial or other interests as is likely to affect prejudicially his function as such Chairperson or Member; or

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

(f) has engaged, at any time during his term of office, in any other employment.

(2) No Chairperson or Member shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

Restrictions on employment

9. The Chairperson or a Member of the Authority shall not, for a period of two years from the date on which he ceases to hold office as such, accept any employment or have any direct or indirect interest in the activity relating to the Authority under this Act:

Provided that the provisions of this section shall not apply in cases where specific authorisation in this regard has been obtained in writing from the Central Government.

Explanation.— For the removal of doubts, it is hereby clarified that, the Chairperson or a Member acting as an agent, administrator, officer, director, retainer, member of the executive committee or shareholder or equity owner or beneficial owner before the expiry of two years on ceasing to hold office as such Chairperson or a Member shall be construed to have direct or indirect interest.

Officers and employees of the Authority

10. (1) The Authority may, with the prior approval of the Central Government, appoint such officers and other employees as it may consider necessary, for the efficient discharge of its functions under this Act.

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

Powers and
functions of the
Authority

- 11.** (1) The Authority shall be responsible for promoting improved emissions, safety, innovation and adoption of new technology and for regulating construction, earthmoving, material handling and mining machinery equipment.
- (2) For the purposes of sub-section (1), the Authority shall regulate and monitor, —
- (a) the standards of design, safety, emissions and maintenance of construction, earthmoving, material handling and mining machinery equipment;
 - (b) operator certification and training
 - (c) registration of construction, earth moving, material handling and mining machinery equipment
 - (d) the formulation of standards for environmental emissions and noise emissions of construction, earthmoving , material handling and mining machinery equipment
 - (e) public-private partnership projects and schemes;
 - (f) promotion of new technology, particularly relating to safety and environmental emissions in construction, earthmoving, material handling and mining machinery equipment
 - (g) safety of operators and other individuals;
 - (h) such other matter as may be considered necessary by it for the purposes of this Act.
- (3) The Authority shall, —
- (a) take all appropriate measures to ensure that machinery may be placed on the market and/or put into service only if it satisfies the requirements of this Act and the rules and regulations made thereunder
 - (b) provide technical advice and assistance to the Central Government on administration of safety of sites where construction, earthmoving, material

handling or mining machinery equipment are being operated;

(c) contribute to the development of international technical standards for construction, earthmoving, material handling and mining machinery equipment;

(d) promote co-ordination with the international governmental organisations and non-governmental organisations on the work of standards for construction, earthmoving, material handling and mining machinery equipment;

(e) promote consistency between international technical standards and domestic technical standards and ensure that the level of safety adopted in the country is not compromised;

(f) conduct research, by way of collecting data and undertake analysis and planning activities to improve safety and such other measures as may be necessary for the purposes of this Act;

(g) encourage competition, innovation, efficiency and economical use of resources;

(h) advise and make recommendations to the Government and report on the operation and effectiveness of this Act;

(i) collect, analyse and publish statistics relating to machinery and health and safety impacts of such machinery;

(j) promote and support education and training on matters relating to operation of machinery in a safe manner;

(k) engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with other government agencies; and

(l) such other functions as it may consider necessary or may be entrusted to it by the Central Government

Proceedings of the Authority

- (4) The Authority may specify or adopt guidelines and regulations for the safety, environmental emissions and noise emissions of construction, earthmoving, material handling and mining machinery equipment.
- 12.** (1) The Chairperson and the Members of the Authority shall, meet at least once a month, and at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings, including quorum for such meetings, as may be prescribed by the Central Government
- (2) The Chairperson or if for any reason he is unable to attend a meeting of the Authority, any Member designated by him shall preside over the meeting.
- (3) The Chairperson or any Member who has any direct or indirect interest in any matter coming up for consideration at a meeting of the Authority shall, as soon as it comes to his knowledge, disclose the nature of interest to the Authority.
- (4) A disclosure made by the Chairperson or a Member under sub-section (3) shall be recorded in the proceedings of the meeting, and the Chairperson or such member shall recuse from any deliberation or decision of the Authority with respect to that matter or any matter connected therewith:
- Provided that if the Chairperson has to recuse himself from a proceeding of the Authority, he shall designate a Member of the Authority to discharge the functions of the Chairperson for that matter.
- (5) All orders and decisions of the Authority shall be authenticated by the Member authorised by the Authority in this behalf.
- (6) No act or proceedings of the Authority shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Authority.

Powers and functions of the

- 13.** The Chairperson shall have powers of general superintendence and directions in the conduct of affairs of the Authority and he shall, in addition to,

Chairperson of the Authority

presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority as may be prescribed by the Central Government, or delegated to him by the Authority.

Technical working groups

14.

(1) The Authority shall for the efficient discharge of its functions, constitute as many Technical Working Groups as it may consider necessary, which shall consist of independent technical experts, having the ability to maintain and exercise independent judgment in the discharge of their duties.

(2) Each Technical Working Group constituted under sub-section (1) shall be headed by such Member of the Authority designated by the Chairperson, having regard to his special knowledge and experience in the relevant field.

(3) The Technical Working Group for undertaking deliberations on the matters entrusted to it shall invite the relevant industry and consumer representatives to participate in its deliberations.

(4) The number of members of each technical working group and the procedure for constituting thereof under sub-section (1) shall be such as may be specified by regulations by the Authority.

(5) The Technical Working Group constituted under sub-section (1) may be entrusted with any of the following matters, namely:-

(a) Safety standards for construction, earthmoving, material handling and mining machinery equipment;

(b) Environmental emissions standards for construction, earthmoving, material handling and mining machinery equipment;

(c) Noise emissions standards for construction, earthmoving, material handling and mining machinery equipment;

(d) Operator certification and training

(e) Data collection and analytics

(f) Design, construction and maintenance standards with respect to safety and

emissions for machinery specified in Schedule I;

(g) workplace safety;

(h) any other matter that may be entrusted to such technical working group as may be considered necessary by the Authority.

(6) The Authority may from time to time re-constitute the Technical Working Groups by increasing or decreasing the number of experts or by changing the subject matters entrusted to such Groups.

(7) The Authority shall provide the administrative, financial and research support for smooth functioning of the Technical Working Groups.

Power of the Authority to delegate

15. The Authority may, by a general or special order made in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in that order, such of its powers and functions under this Act, save the powers to make regulations, as it may deem necessary.

Power of the Authority to obtain information

16. The Authority may, in discharge of its functions, call for such information from such persons as it may deem necessary and such person shall be bound to furnish the information requested forthwith.

Maintenance of national unified information system

17. (1) The Authority shall develop and maintain a National Unified Information System for the purpose of collection and storage of the data and information specified in sub-section (3).

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority shall have the power to call for information in possession, control or ownership of any person who shall submit such information forthwith.

(3) The National Unified Information System shall include and store the data and information relating to,—

(a) the issuance and renewal of operator certificates;

(b) the Technical Information File of a machinery;

- (c) the registration of specified machinery, and the renewals thereof;
 - (d) emission control certificates;
 - (e) notified bodies including description of machinery for which that notified body is designated;
 - (f) any other information as may be specified by regulations by the Authority.
- (4) The Authority shall specify by regulations the form and manner in which the information requested under sub-section (3) shall be submitted by the person specified under sub-section (2).

CHAPTER III

NOTIFIED BODIES

Designation and monitoring of notified bodies

- 18.** (1) The Authority may designate as a notified body an entity, including a person, firm or company to carry out conformity assessment of machinery.
- (2) A notified body designation —
- (a) shall be in writing;
 - (b) shall specify the conformity assessment procedures that the notified body may carry out;
 - (c) may relate to all machinery or to such machinery as may be specified in the designation;
 - (d) shall specify the period for which the designation shall remain in force; and
 - (e) may be made subject to such other conditions as are specified in the designation, including conditions which are to apply upon or following termination of the designation.
- (3) In making a notified body designation the Authority may have regard, in addition to the criteria specified under section 19, to any other matter which appears to the Authority to be relevant.
- (4) The Authority shall, from time to time, publish, in a manner to be specified, a list of notified bodies, identifying, in the case of each notified body, the description of machinery for which that notified body is designated.

(5) The Authority shall, from time to time, carry out an inspection of each notified body with a view to verifying that it—

- (a) meets the criteria specified under sub-section (1) of section 19;
- (b) complies with any condition under clause (e) of sub-section (2) of section 18 to which its designation is subject; and
- (c) complies with this Act and rules and regulations made thereunder.

Criteria to be taken into account for designation as notified body

19. A notified body designation shall not be made unless the Authority is satisfied that the entity in respect of whom it is to be made meets the following criteria --

- (a) the entity, its director and the staff responsible for carrying out the inspection and verification tests shall not be the designer, manufacturer or dealer of machinery which they inspect nor the authorized representative of any of these parties;
- (b) the entity, its director and the staff responsible for carrying out the verification tests shall not become involved, either directly or otherwise, in the design, manufacture, marketing or maintenance of machinery;
- (c) the entity and its staff shall carry out the inspection and verification tests with the highest degree of professional integrity and technical competence and shall exercise independent judgment in the discharge of their duties free from all pressures and inducements, including financial inducements;
- (d) the entity shall possess personnel with technical knowledge and sufficient and appropriate experience to perform conformity assessment;
- (e) the entity shall have access to the equipment necessary to perform conformity assessments;

Duration,
termination and
variation of
designations

- (f) the entity shall guarantee the impartiality of its personnel and their remuneration shall not depend on the number of tests carried out or on the results of such tests;
 - (g) the entity may enter into confidentiality agreements with other parties provided that such agreements shall not apply to information required to be supplied to the Authority or requested by the Authority;
 - (h) any other criterion as may be specified by the Authority.
- 20.** (1) A notified body designation will remain in force for the period specified in clause (d) of sub-section (2) of section 18 or until such time as it is terminated under sub-section (2)
- (2) The Authority may terminate a notified body designation --
- (a) if requested in writing by the notified body;
 - (b) if the Authority is satisfied that the notified body is in breach of any of the criteria under section 19; or
 - (c) if the Authority is satisfied that the notified body is in breach of any of the conditions under clause (e) of sub-section (2) of section 18.
- (3) The Authority may vary any aspect of a notified body designation if --
- (a) the notified body so requests;
 - (b) if the Authority is satisfied that it is necessary or expedient to do so
- (4) Where the Authority is satisfied that the notified body designation is to be terminated under sub-section (2) or varied under sub-section (3) it shall record its reasons in writing and provide the notified body with a reasonable opportunity of being heard.
- (5) Where the Authority terminates the notified body designation under sub-section (2), it may, by notice in writing --

- Powers and functions of notified bodies
21. (a) authorize another notified body to take over the functions of the notified body whose designation has been terminated; and
(b) give appropriate directions in respect of files or any other matter which the Authority considers expedient for the purposes of ensuring that another notified body carries out the functions of a notified body for the existing customers of the notified body whose designation has been terminated.
- (1) Subject to the terms of their notified body designations and sub-section (2), notified bodies are empowered --
(a) to conduct type approval where the notified body shall --
(i) examine the Technical Information File, check that the type was manufactured in accordance with it and establish which elements have been designed in accordance with relevant provisions of notified standards and those elements whose design is not based on the relevant provisions of such standards; and
(ii) carry out appropriate inspection, measurements and tests on the type to ascertain that elements whose design is not based on relevant provisions of notified standards satisfy safety and/or emissions standards;
(b) to conduct product checks at random of machinery which have been subjected to type approval.
- (2) Where the notified body is satisfied that the

type meets the requirements of this Act and the rules and regulations made thereunder, it shall issue a type approval certificate.

(3) A notified body shall not be obliged to carry out these functions where the application for assessment has not been submitted with the amount of the fee which the notified body requires to be submitted with the application.

(4) Where a notified body is satisfied that --

(a) the manufacturer has, after the issue of the type approval certificate, failed to satisfy the applicable requirements under the Act and the rules and regulations made thereunder; or

(b) that such certificates should not have been issued,

it shall proceed in accordance with sub-section (5)

(5) Where sub-section (4) applies, the notified body concerned shall—

(a) consider—

(i) what corrective action, if any, the manufacturer should take in the light of its findings; and

(ii) whether, and, if so, on what terms, the certificate should be suspended, withdrawn, or made subject to restrictions;

(b) send to the manufacturer a notice in writing, setting out the conclusions it has provisionally reached under clause (a), and the reasons for those conclusions, and invite the manufacturer to respond to them within such reasonable period of time as may be specified by the Authority;

(c) send a copy of the notice under clause (b) to the Authority

CHAPTER IV

DUTIES OF MANUFACTURERS, DEALERS and RELATED PERSONS

Necessity of
certificate

- 22.** No person, including a manufacturer or dealer shall place on the market machinery unless such machinery is covered by a type approval certificate.
Explanation -- In this section covered means that the machinery is of a type which has been conferred a type approval certificate by a notified body.

Exemption for
machinery
undergoing field
trials

- 23.** (1) Nothing in section 22 shall apply to machinery with respect to which field trials are being conducted.
(2) The requirements for such field trials, and the conditions and exceptions thereof and thereto, may be prescribed by the Authority.
(3) The requirements stated in subsection (2) shall include, but not be limited to the following:
(a) The period of a field trial shall not exceed 12 months; and
(b) The total number of units of a certain type undergoing field trials must not exceed 3 units at any given point of time unless otherwise specified; and
(c) No sale or profit shall be made by the manufacturer or dealer of the machinery undergoing field trials from such field trials.
Explanation: A "field trial" is the testing of machinery under actual conditions of service in the field by the manufacturer or a potential user to see if the machinery meets the relevant requirements.

Type approval
certificates

- 24.** (1) The manufacturer shall obtain a type approval certificate for the machinery.

(2) For the purpose of obtaining type-approval certificate, the manufacturer shall—

(a) ensure that the applicable essential safety requirements under the Act and the rules and regulation made thereunder are satisfied;

(b) ensure that the Technical Information File is compiled;

(c) submit the Technical Information File to a notified body of its choice;

(d) submit to the notified body any other documentation as may be specified by the Authority; and

(e) submit at the disposal of the notified body a sample of the type to be examined.

Explanation -- The requirement of submission of a sample of the type to be examined may be satisfied by allowing the notified body access to the premises of the manufacturer or dealer where the sample is kept.

(3) Where the manufacturer of the machinery has not obtained a type approval certificate under this Act, the dealer of such machinery shall obtain a type approval certificate in the manner specified in sub-section (1).

Retention of certificates and Technical Information File

25. (1) The manufacturer or dealer shall retain the Technical Information File and other documents required under section 24 and the certificate obtained under section 24 for a period to be specified by the Authority.

(2) The manufacturer or dealer shall submit the documents and certificates referred to in sub-section (1) to the Authority within a period to be specified by the Authority.

Suspension or cancellation of type approval certificate

26. On receipt of a notice under clause (c) of sub-section (5) of section 21 or on receiving information in any other manner, the Authority may cancel or suspend the type approval certificate by an order in writing and giving reasons therefor, if it is satisfied that there has been a breach of the conditions subject to which the said certificate has been granted:

Provided that the cancellation or suspension shall not invalidate any action taken before such cancellation or suspension:

Provided further that the Authority shall give the holder of the certificate of either kind an opportunity of being heard before such suspension or cancellation.

Declaration of conformity and unique identification marking

27. Before a machinery is placed on the market by a manufacturer, dealer or any other person such manufacturer, dealer or other person shall --
- (a) issue a declaration of conformity in a form and manner as specified by the Authority; and
 - (c) affix a unique identification marking to the machinery in a manner specified by the Authority such that such marking is visible, legible and indelible

Alteration and retrofitting

28. (1) The Authority shall by notification, specify the permissible and impermissible alterations, including the retrofitting of parts to machinery and the conditions subject to which alterations may be made.
- (2) No alteration, including retrofitting of parts, shall be permitted if such alteration may compromise the safety or emissions features of the machinery being altered.
- (3) A manufacturer or dealer of machinery shall on the direction issued by the Authority, alter or retrofit any equipment or cause such alteration or retrofitment in order to enhance the safety or emissions features of the machinery and in accordance with such standards and specification as may be specified.
- (4) The user of a machinery covered under this Act may alter or retrofit any equipment in order to enhance the safety or emissions features of the machinery in accordance with the standards and specifications specified by the Authority and in such case, any warranty given by the manufacturer or dealer in respect of such machinery shall not be treated as void:

Provided that such alteration or retrofitment is certified by a notified body as being in accordance

with standards and specifications.as may be specified.

- Recall of machinery **29.** (1) The Authority may, by order, direct a manufacturer or dealer to recall machinery of a particular type or its variants, if—
- (a) a defect in that particular type of machinery may cause a safety incident or is in violation of standards relating to emission;
 - (b) a defect in that particular type of machinery has been reported to the Authority, and such defect may cause a safety incident or is in violation of standards relating to emission.
- (2) A manufacturer or dealer whose machinery is recalled under sub-section (1),shall--
- (a) replace or repair the defective machinery with another machinery of similar or better specifications which complies with the standards specified under this Act;
 - (b) pay compensation; and
 - (c) pay such fines and other dues in accordance with sub-section (4)
- (3) Where a manufacturer or dealer notices a defect, as specified in sub-section (1), in the machinery manufactured or supplied by him, he shall inform the Authority of the defect and initiate recall proceedings and in such case, he shall not be liable to pay fine under clause (c) of sub-section (2).
- (4) The procedure for recall and fine and other dues shall be such as may be specified by the Authority.
- Duties of Manufacturers **30.** (1) The manufacturer must ensure, so far as is reasonably practicable, that the machinery is manufactured to be without risks to the health and safety of persons --
- (a) who put the machinery to its intended use; or
 - (b) who are at or on the vicinity of where the machinery is being put to its intended use or are exposed to such machinery.

(2) The manufacturer shall conduct or cause to be conducted any and all testing or examination procedures that may be necessary for the performance of the duty under sub-section (1).

(3) The manufacturer shall provide adequate information to each person to whom the manufacturer supplies machinery concerning --

(a) each intended use for which the machinery was manufactured;

(b) the results of any testing or examination procedures conducted under sub-section (2); and

(c) any conditions necessary to ensure that the machinery is without risks to the health and safety when put to its intended use.

(4) The manufacturer, on request, shall, so far as is reasonably practicable, give current relevant information on the matters referred to in sub-section (3) to any user of the machinery.

(5) The manufacturer shall notify the Authority of any defects in any model of machinery manufactured by itself in the manner to be specified by the Authority and shall suffer penalties as specified by the Authority for non-compliance with this sub-section.

(6) The manufacturer shall make all efforts that are reasonably practicable to maintain the integrity of the electronic data stored in the on-board diagnostics system, if present, of a machinery at all times.

Duties of Dealers

31.

(1) The dealer must ensure, so far as is reasonably practicable, that the machinery is manufactured to be without risks to the health and safety of persons --

(a) who put the machinery to its intended use; or

(b) who are at or on the vicinity of where the machinery is being put to its intended use or are exposed to such machinery.

(2) The dealer shall --

(a) conduct or cause to be conducted any and all testing or examination procedures

that may be necessary for the performance of the duty under sub-section (1).

(b) ensure that any and all testing or examination procedures have been conducted either by itself or by the manufacturer under sub-section (2) of section 30.

(3) The dealer shall provide adequate information to each person to whom the dealer supplies machinery concerning --

(a) each intended use for which the machinery was manufactured;

(b) the results of any testing or examination procedures conducted under sub-section (2); and

(c) any conditions necessary to ensure that the machinery is without risks to the health and safety when put to its intended use.

(4) The dealer, on request, shall, so far as is reasonably practicable, give current relevant information on the matters referred to in sub-section (3) to any user of the machinery.

(5) The dealer shall notify the Authority of any defects in any model of machinery placed on the market by itself in the manner to be specified by the Authority and shall suffer penalties as specified by the Authority for non-compliance with this sub-section.

(6) A dealer supplying the machinery shall not be subject to the duties under this section related to such machinery where --

(a) the manufacturer of such machinery has itself placed such machinery on the market; and

(b) the dealer is an authorised dealer of such manufacturer.

Liability of
manufacturers and
dealers

32. (1) Where any safety incident takes place on account of mechanical or electrical defect in the construction of any such machinery during manufacture, the manufacturer or the dealer who is responsible for placing on the market such machinery shall be liable to pay compensation.

(2) Notwithstanding anything contained in sub-section (1), where a safety incident results from the operation of a machinery beyond its operational life, no liability under sub-section (1) shall attach to the manufacturer or the dealer who is responsible for placing on the market such machinery:

Provided that the Authority may make regulations specifying the operational life of a machinery or the means of determination thereof.

User's duty to inspect and maintain records.

- 33.** The user of a machinery shall carry out inspection of such machinery and maintain record of such inspections in such form and manner as may be specified by the Authority by regulations.

CHAPTER V

REGISTRATION

Necessity for registration

- 34.** No owner shall put to its intended use any class of machinery notified by the Central Government unless the machinery is registered in accordance with this Chapter:

Registration, where to be made

- 35.** Every owner of machinery of a class notified by the Central Government shall ensure that the said machinery is registered with the Authority

Registration, how to be made

- 36.** (1) An application by or on behalf of the owner of such machinery for registration shall be in such form, accompanied by such documents, particulars, information and such fee and shall be made within such period as may be specified by regulations by the Authority:

(2) Where a machinery is jointly owned by more than one person, the application shall be made by one of them on behalf of all the owners, and such applicant shall be deemed to be the primary owner of the machinery for the purposes of this Act

(3) Where an application for registration of a machinery which is held under a hire-purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the

certificate of registration regarding the existence of the said agreement.

Refusal to register or
renew registration

37

The Authority shall refuse to register or renew the registration of machinery when the Authority has reason to believe that,—

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- (a) the machinery is a stolen; or
- (b) the machinery fails to comply with the requirements of this Act or the rules or regulations made thereunder; or
- (c) the applicant furnishes inaccurate particulars in the application for registration of the machinery or, as the case may be, for renewal of the certificate of registration thereof

Change of
information

38

(1) If the owner of a machinery changes the place of business from the address recorded in the certificate of registration of the machinery, he shall, within ninety days of any such change of address, communicate, either electronically or otherwise, in such form and accompanied by such documents as may be specified by the Authority by regulations, his new address, to the Authority.

Provided that where the machinery is held under a hire-purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) the registered owner shall, before applying to the appropriate authority, for change of information in the certificate of registration under subsection (1) make an application to the person with whom the registered owner has entered into the said agreement, (such person being hereafter in this section referred to as the financier) for the issue of a no objection certificate (hereafter in this section referred to as the certificate).

Provided further that within five days of the receipt of such application, the financier may issue, or refuse, for reasons which shall be recorded in writing communicate to the applicant, to issue, the certificate applied for, and where the financier fails to issue the certificate and also fails to communicate the reasons for refusal to issue the

certificate to the applicant within the said period of seven days, the certificate applied for shall be deemed to have been issued by the financier.

(2) On receipt of such communication, the Authority may, after making such verification as it may think fit, cause the new address to be entered in the certificate of registration

Suspension and
cancellation of
registration

39

(1) The Authority may suspend or cancel the certificate of registration of a piece of machinery if it has reasons to believe that such machinery has failed to comply with any requirements of this Act or of any rules and regulations made thereunder.

(2) Any person aggrieved by an order of the Authority under this Chapter may, file an appeal in such manner and within such time as may be specified by regulations

Transfer of
possession

40

Where the possession of any machinery is transferred to an owner from a manufacturer, dealer or a previous owner, the transferee shall, within thirty days of the transfer, and in such manner and with such accompanying documents as may be specified by the Authority by regulations, report the transfer to the Authority so that particulars of the transfer may be entered in the certificate of registration

CHAPTER VI

SAFETY AND CONTROL

Electronic system for
safety incidents and
offences

41

(1) The Authority shall within three years from the date of commencement of this Act, develop and implement an electronic system for tracking safety incidents and offences to enable the collection of data related to safety incidents and offences.

(2) The form and the manner in which the data on safety incidents and offences shall be collected under sub-section (1) shall be such as may be specified by the Authority by regulations.

No machinery to be
sold or transferred

42

(1) No person shall place on the market any machinery, if it does not appear from one or more

without required
declaration of
conformity

documents in force at that time that the machinery complies with all the requirements specified under this Act and rules and regulations made thereunder
(2) In this section, references to placing on the market include --

- (a) offer of sale or distribution; and
- (b) display such machinery with an intention to invite offers for sale or distribution, by way of advertisement or otherwise;

Safety and
conspicuity
requirements

43 The Authority shall make regulations specifying (by reference to shape, construction or any other quality) the safety and conspicuity requirements including, but not limited to, warning lamps, indicator lamps or fog lights, retro-reflective material and eye drowsiness detectors, required as affording protection to persons on or in or using or from machinery, from death or injury in the event of a safety incident.

Unauthorised
supply of safety and
conspicuity
equipment

44 (1) No person shall place on the market any safety or conspicuity equipment, as specified by the Authority in section 43 if the equipment is not of a type --

- (a) specified by the Authority; or
- (b) authorised under regulations made by the Authority and supplied or offered for supply subject to any conditions specified in the authorisation subject to sub-section (2) Provided that this provision shall not apply to a person who --
 - (a) supplies such gear for export from India; or
 - (b) had reasonable cause to believe that it would not be used in India or that it would not be fitted to a machinery used in India.

(2) In this section, references to placing on the market include --

- (a) offer of sale or distribution; and
- (b) display such machinery with an intention to invite offers for sale or distribution, by way of advertisement or otherwise;

- Restriction on carriage of persons **45** Not more than the specified number of persons as provided by the Authority may be carried in a machinery capable and authorised by the Authority to carry persons.
- Operational limits for machinery **46** The operator, employer or user of the machinery shall not cause the machinery to be operated in a manner exceeding such limits of safe operation including speed as specified by the manufacturer of the machinery or the Authority in the interests of compliance with safety and emissions standards. Provided that where other limits for operation of any machinery are specified by a statutory authority or agency designated in that regard by the Central Government, such other limits shall prevail over any limits specified by the Authority under this section.
- Operating machinery under the influence of alcohol and drugs **47.** (1) No person shall operate any machinery under the influence of alcohol or drugs
(2) The Authority shall specify the manner of conducting tests to determine impairment caused by the consumption of alcohol or drugs
(3) The Authority may, by order or notification, specify the substances which shall be considered as drugs for the purpose of this provision.
(4) The Authority may, by regulations or order or notification in this behalf, specify the levels of alcohol or drugs in the breath or blood, above which a person shall be deemed to be under the influence of alcohol or drugs.
- Tampering with machinery **48.** No person shall --
(a) get on or operate the machinery without consent of the user of the machinery;
(b) tamper with the mechanism of the machinery without lawful authority or reasonable cause; or
(c) tamper with any safety or conspicuity equipment
- Prohibition and restriction on operation of **49.** (1) No machinery shall operate in any place where it is not authorised to do so by the Authority subject to regulations made by the Authority

machinery in certain places

The Authority if satisfied that it is necessary in the interest of public safety or convenience, may by notification, prohibit or restrict, subject to such exceptions or conditions as may be specified in the notification, the operation of specified machinery either generally or in a specified area.

Overloading

50. (1) No person, including the operator, the user and the employer, shall operate or cause to be operated any machinery where --

(a) the dimensions of the machinery exceed dimensions of height, width and length as specified by the manufacturer or authorised by the Authority

(b) the laden weight of the machinery exceeds the weight specified by the manufacturer or authorised by the Authority

(c) the unladen weight of the machinery exceeds the unladen weight specified by the manufacturer or authorised by the Authority

(d) an object or cargo that protrudes outside the body of the machinery is carried in a manner that is likely to compromise the safety of or poses a danger to any person or property

Power to have machinery weighed

51. (1) Any person authorised on this behalf by the Authority shall, if that person has reason to believe that a machinery is being used in contravention of section 50 shall require the operator or employer or user to convey the machinery to a weighing device in such manner as may be specified by the Authority and if on such weighing the machinery is found to contravene in any respect the provisions of section 50 regarding weight, that person shall, by order in writing, direct the operator, employer or user to off-load the excess weight and not to remove the machinery from that place until the laden weight has been reduced or the machinery has otherwise been dealt with so that it complies with section 50 and on receipt of such notice, the operator shall comply with such directions.

(2) If the operator, employer or user, as the case may be, fails to follow the directions issued under sub-section (1) the authorised person shall cause the extra weight to be unloaded at the risk and cost of the employer or user and such cost shall be recoverable from the user or employer.

Inspection of machinery involved in a safety incident

52.

When any safety incident occurs in which a machinery is involved, any person authorised in this behalf by the Authority shall, on production if so required of his authority, inspect the machinery and premises where the machinery was being operated at the time of the safety incident and for that purpose may enter at any reasonable time such premises and any other premises where the machinery may be, and examine the machinery or remove the machinery for examination:

Provided that the place to which such machinery may be removed shall be intimated to the user or employer and the machinery shall be released to such user or employer after the completion of the inspection of such machinery

Power to make regulations for safety and control of machinery

53.

(1) The Authority may make regulations for the safe operation and control of machinery.

(2) In particular and without prejudice to the generality of the power conferred under sub-section (1), such regulations may provide for all or any of the following, namely --

(a) overloading of machinery and manner of weighing such machinery;

(b) dangerous operation including operating at excessive speed and inadequate clearance;

(c) restrictions on operating under the influence of alcohol or drugs;

(d) safety and conspicuity devices for the machinery and operators including protective headgear, safety harness, warning lamps, reflectorizing materials and such other measures;

(e) the duties of operators, employer, users in case of safety incidents;

- (f) measures for reducing risk of safety incidents;
- (g) restriction on carriage of persons;
- (h) the inspection of machinery involved in safety incidents and site of occurrence of such safety incidents;
- (i) unauthorised interference with machinery;
- (j) any other matter which is, or has to be, specified by the Authority.

CHAPTER VII

INSURANCE AND CLAIMS TRIBUNALS

Necessity for
insurance

- 54.** (1) No owner shall use, or allow any other person to use, any machinery, regulated under this Act, unless there is in force in relation to the use of such machinery by the owner or the user, as the case may be, a policy of insurance complying with the requirements of this Chapter

(2) The provisions of sub-section (1) shall not apply to any machinery used by the Central Government for purposes relating to the defence of the country and unconnected with any commercial objective, subject to an order made in writing in this regard by the Central Government.

(3) No order under sub-section (2) shall be made unless there has been established and maintained a fund in accordance with the rules made under this Act for meeting any liability to third parties arising out of the use of machinery specified in an order under sub-section (2).

Requirements of
policies and limits of
liability

55. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which --

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent prescribed under sub-section (2) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including the operator of the said machinery, or damage to any property of any person, not including any property of the insured caused by or arising out of the use of machinery or resulting from the failure or malfunction of such machinery:

(2) Notwithstanding anything contained under any other law for the time being in force, the Central Government shall prescribe the minimum coverage to be provided by the insurer in relation to an insurance policy under sub-section (1):

Provided that the payment to a person by an insurer, under such minimum coverage insurance policy shall be a sum of ten lakh rupees in case of death and five lakh rupees in case of serious bodily injury, or such other amount which may be prescribed by the Central Government from time to time.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed

particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the Authority and such other authority as the Central Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

Settlement by insurance company and procedure therefor.

56. (1) The insurer shall, upon receiving information of the safety incident that has resulted in death or injury to any person or damage to property, designate an officer to settle the claims relating to such safety incident.

(2) An officer designated by the insurer for processing the settlement of claim of compensation may make an offer to the claimant for settlement before the Claims Tribunal giving such details, within such time and after following such procedure as may be prescribed by the Central Government.

(3) If, the claimant to whom the offer is made under sub-section (2),—

(a) accepts such offer,-

(i) the Claims Tribunal shall make a record of such settlement, and such claim shall be deemed to be settled by consent; and

(ii) the payment shall be made by the insurance company within a maximum period of thirty days from the date of receipt of such record of settlement;

(b) rejects such offer, a date of hearing shall be fixed by the Claims Tribunal to adjudicate such claim on merits.

Duty of insurers to satisfy judgments and awards against persons injured in respect of third party risks

57. (1) If, after a certificate of insurance has been issued under sub-section (3) of section 55 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 55 (being a liability covered by the terms of the policy) or under the provisions of section 66 is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as its execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:--

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:--

(i) a condition excluding the use of the machinery--

(A) in excess of operational limits of the machinery, or

(B) for a purpose for which the machinery is not certified

(C) without a valid declaration of conformity; or

(ii) a condition excluding operation of the machinery by a named person or persons or by any person who does not hold a valid operator licence issued under Chapter VIII, or by any person who has been disqualified for holding or obtaining an operator's licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular; or

(c) that there is non-receipt of premium as required under section 64VB of the Insurance Act, 1938.

(3) Where a certificate of insurance has been issued under sub-section (3) of section 55 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 55, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue of this sub-section shall be recoverable by the insurer from that person.

(4) If the amount which an insurer becomes liable under this section to pay, in respect of a liability incurred by a person insured by a policy, exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess amount from that person.

(5) No insurer to whom the notice referred to in sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) otherwise than in the manner provided for in sub-section (2).

(6) If on the date of filing of any claim, the claimant is not aware of the insurance company with which the machinery had been insured, it shall be the duty of the owner or the user of the machinery, as the case may be, to furnish to the Claims Tribunal the information as to whether the machinery had been insured on the date of the safety incident, and if so, the name of the insurance company with which it is insured.

Explanation -- For the purposes of this section,-

(a) "liability covered by the terms of the policy" means the liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy; and

(b) "material fact" and "material particular" means, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions.

Rights of third parties against insurers on insolvency of the insured

58. (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter, a person is insured against liabilities which he may incur to third parties, then--

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2), the insurer shall be under the same liability to the third party as he would have been to the insured person, but--

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

Duty to give
information as to
insurance

59. (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 55 shall, on demand by or on behalf of the person making the claim, refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so

insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making an arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding-up order being made or a resolution for a voluntary winding-up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give, on the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provision of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 57, and for the purpose of enforcing such rights, if any, and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of

such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supporting that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

Settlement between
insurers and insured
persons

60. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 55 shall be valid unless such third party is a party to the settlement.

(2) The Claims Tribunal shall ensure that the settlement is bona fide and was not made under undue influence and the compensation is made in accordance with the payment schedule referred to in section 66 or is greater.

(3) Where a person who is insured under a policy issued for the purpose of this Chapter has become insolvent, or where, if such

insured person is a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding-up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid, shall be effective to defeat the rights transferred to the third party under this Chapter; but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

Saving in respect of sections 58, 59 and 60

- 61.** (1) For the purposes of sections 58, 59 and 60, a reference to “liabilities to third parties” in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.
- (2) The provisions of sections 58, 59 and 60 shall not apply where a company is wound-up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

Effect of death on certain causes of action

- 62.** (1) Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a

claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

(2) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in a safety incident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.

Effect of certificate
of insurance

63. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then--

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms

conforming in all respects with the
particulars stated in the said certificate.

Transfer of
certificate of
insurance.

- 64.** (1) Where a person, in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter, transfers to another person the ownership of the machinery in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the machinery is transferred with effect from the date of its transfer.

Explanation.— For the removal of doubts, it is hereby clarified that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

- (2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour, and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

Duty to furnish
particulars of
machinery, etc.
involved in a safety
incident and
information to be
given regarding the
safety incident

- 65.** (1) The owner or user of a machinery, as the case may be, shall give such information as he may be required by or on behalf of any person empowered in this behalf by the Authority for the purpose of determining whether the machinery was or was not being operated in contravention of section 54 and on any occasion when the user was required under this section to produce the

certificate of insurance.

(2) The National Authority or the person empowered under sub-section (1) shall, if so required by a person who alleges that he is entitled to claim compensation in respect of a safety incident arising out of the use of machinery or resulting from the failure or malfunction of such machinery, or if so required by an insurer against whom a claim has been made in respect of any machinery, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the Authority or the person empowered under sub-section (1), as the case may be, relating to particulars of the machinery, including the manufacturer and dealer of such machinery, and the name and address of the owner of the machinery at the time of the safety incident, the particulars of the person was injured by it and of the property, if any, damaged in such form and within such time as the Central Government may prescribe.

(3) The person empowered under sub-section (1) shall, during an investigation into a safety incident and in order to facilitate the settlement of any claims arising from such a safety incident, prepare a safety incident information report in such form and manner, within such time and containing such particulars and shall submit the same to the Claims Tribunal and such other agency as may be prescribed.

(4) In this section, the expression “produce the certificate of insurance” means produce for examination the relevant certificate of insurance or

such other evidence as may be prescribed that the machinery was not being operated in contravention of section 54.

Special provisions as to payment of compensation on structured formula basis. **66.**

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the manufacturer, dealer, owner or user of the machinery or the authorised insurer or insurers shall be liable to pay in the case of death or serious bodily injury due to any safety incident arising out of the use of machinery or resulting from the failure or malfunction of such machinery, a compensation, in accordance with such payment schedule as may be prescribed by the Central Government, to the legal heirs or the victim, as the case may be:

Provided that the minimum compensation shall be a sum of ten lakh rupees in case of death and five lakh rupees in case of serious bodily injury, or such other amount which may be prescribed by the Central Government from time to time.

(2) In any claim for compensation under subsection (1), the claimant shall not be required to plead or establish that the death or serious bodily injury in respect of which the claim has been made was due to any wrongful act or neglect or default of the manufacturer, dealer, owner or user of the machinery concerned or of any other person.

(3) Where the manufacturer is responsible for placing on the market machinery, the use of which or the failure or malfunction of which resulted in death or injury to any person or damage to

property, the dealer of such machinery shall not be liable to pay compensation under sub-section (1).

(4) Where, in respect of death or serious bodily injury due to a safety incident arising out of the use of machinery or resulting from the failure or malfunction of such machinery, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

Scheme for interim relief for claimants.

67. (1) The Central Government, may make schemes for the provision of interim relief to claimants praying for compensation under this Chapter.

(2) A scheme made under sub-section (1) shall also provide for procedure to recover funds disbursed under such scheme from the owner of the machinery, where the claim arises out of the use of such machinery or resulting from the failure or malfunction of such machinery or other sources as may be prescribed by the Central Government.

(3) A scheme made under sub-section (1) may provide that--

(a) any contravention of any provision thereof shall be punishable with imprisonment for such term which may extend to two years, or with fine which shall not be less than twenty five thousand rupees but may extend to five lakh rupees or with both; and

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval, in

writing, of Central Government, by such officer or authority to any other officer or authority;

Application for compensation

- 68.** (1) An application for compensation arising out of a safety incident resulting in death or injury of a person or damage to property may be made--
- (a) by the person who has sustained the injury; or
 - (b) by the owner of the property; or
 - (c) where death has resulted from the safety incident, by all or any of the legal representatives of the deceased; or
 - (d) by any agent duly authorised by such owner or person injured, or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made at the option of the claimant either to the Claims Tribunal having jurisdiction over the area in which the safety incident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides, or carries on business, or within the local limits of whose jurisdiction the defendant resides and such application shall be in such form and contain such particulars and filed in such manner as may be prescribed.

(3) The Claims Tribunal shall treat the safety incident information report forwarded to it under sub-section (3) of section 65 as an application for compensation under this Act.

(4) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in a safety

- incident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.
- Option regarding claims for compensation in certain cases. **69.** Notwithstanding anything contained in the Employees' Compensation Act, 1923, where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Employees' Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of this Act, claim such compensation under either of those Acts but not under both 8 of 1923
- Award of Claims Tribunal **70.** (1) On receipt of an application for compensation made under section 68, the Claims Tribunal shall, after giving notice of the application to the insurer or insurers concerned and after giving the parties (including the insurer or insurers) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or the parties held liable, including the owner, user, manufacturer or dealer of the machinery involved in the safety incident or by all or any of them, as the case may be:
Provided that where the manufacturer is responsible for placing on the market such machinery, the use of which or the failure or malfunction of which resulted in death or injury to any person or damage to property, the dealer of such machinery shall not be liable to pay compensation under this sub-section.
(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case, within a period of fifteen days from the date of the award.
(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date

- of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.
- Procedure and powers of Claims Tribunals. 71. (1) In holding any inquiry under section 70, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.
(2) The Claims Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a civil court for the purposes of this Act and Chapter XXVI of the Code of Criminal Procedure, 1973. 2 of 1974
(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.
(4) For the purpose of enforcement of its award, the Claims Tribunal shall also have all the powers of a Civil Court in the in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a decree for the payment of money passed by such court in a civil suit. 5 of 1908
- Impleading insurer in certain cases 72. Where in the course of any inquiry, the Claims Tribunal is satisfied that—
(a) there is collusion between the person making the claim and the person against whom the claim is made; or
(b) the person against whom the claim is made has failed to contest the claim,
it may, for reasons to be recorded in writing, direct that the insurer, who may be liable in respect of such claim, shall be impleaded as a party to the proceedings and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 57, the right to contest the claim on all or any of the

- grounds that are available to the person against whom the claim has been made.
- Award of interest where any claim is allowed. 73. Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.
- Award of compensatory costs in certain cases. 74. (1) Any Claims Tribunal adjudicating upon any claim for compensation under this Act may, in any case where it is satisfied for reasons to be recorded by it in writing that,-
(a) the policy of insurance is void on the ground that it was obtained by representation of fact which was false in any material particular; or
(b) any party or insurer has put forward a false or vexatious claim or defence,
such Tribunal may make an order for the payment by the party who is guilty of misrepresentation or by whom such claim or defence has been put forward special costs by way of compensation to the insurer or, as the case may be, to the party against whom such claim or defence has been put forward.
(2) No Claims Tribunal shall pass an order for special costs under sub-section (1) for any amount exceeding one lakh rupees.
(3) No person or insurer against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of such misrepresentation, claim or defence as is referred to in sub-section (1).
(4) Any amount awarded by way of compensation under this section in respect of any misrepresentation, claim or defence, shall be taken into account in any subsequent suit for damages for compensation, in respect of such misrepresentation, claim or defence.
- Appeals 75. (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal

may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it fifty per cent of the amount so awarded in the manner directed by the High Court: Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than one lakh rupees.

Recovery of money from insurer as arrear of land revenue. 76.

Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector, and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

Bar on jurisdiction of Civil Courts. 77.

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

CHAPTER VIII

OPERATOR CERTIFICATION AND TRAINING

Necessity for operator licence. 78.

(1) No person shall operate a machinery in any place unless he holds a valid operator licence issued by the Authority authorising him to operate such machinery.

(2) No user shall intentionally cause or allow any person who does not hold a valid operator licence to operate machinery.

(3) The provisions of sub-sections (1) and (2) shall not apply to a trainee.

(4) The provisions of sub-sections (1) and (2) shall not apply to a person conducting installation, maintenance, servicing, repair, alteration, disassembly or disposal activities or any other activity ancillary to such activities on machinery.

(5) An operator licence issued under this Act shall be valid and effective throughout the territory of India.

Person to have only one valid operator licence

79.

(1) No person shall, while holding a valid operator licence, hold any other operator licence.

(2) Where any person holds more than one operator licence in contravention of sub-section (1), all operator licences held by such person shall be deemed to be invalid and such persons shall be deemed to have been operating machinery without an operator licence.

(3) Where an operator licence is deemed to be invalid under sub-section (2), the fact of such invalidation shall be communicated to the Authority for appropriate action.

Forms of operator licence.

80.

(1) An operator licence shall be issued by the Authority in such form, subject to such conditions and in such manner as may be specified by the Authority by regulations.

(2) An operator licence shall disclose the machinery such licence holder is authorised to operate.

Eligibility for operating machinery

81.

(1) No person under the age of eighteen years shall operate a machinery in any place:

Provided that the Central Government may, prescribe different minimum age and experience requirements to operate different classes of machinery.

(2) An operator licence or authorisation on existing operator licence shall not be granted to a person unless he holds the required qualification from an accredited training establishment.

Grant of operator licence or authorisation on operator licence

- 82.** (1) A person who is not disqualified to hold or obtain an operator's licence may make an application to the Authority for grant of licence or authorisation on existing operator licence through the Unified Operator Licensing System from any location in the country.
- (2) Every application under sub-section (1) shall be in such form, accompanied by such fee and documents and submitted in such manner as may be specified by the Authority by regulations.

(3) No operator licence or authorisation on existing operator licence shall be granted to any person unless he holds the required qualification from an accredited training establishment.

Unified Operator Licensing System

- 83.** (1) The Authority shall develop and implement the roadmap for the Unified Operator Licensing System within one year from the date of commencement of this Act.
- (2) The Authority shall design a Unified Operator Licensing System to,--
- (a) enable the submission of applications for operator licences and authorisation, electronically or manually from anywhere in the country;

- (b) facilitate the collection of uniform standardised information including information authenticating the identity of the applicant for the operator's licence, whether through biometric or any other equivalent unique identification technology recognised by the Authority and to provide for different types of applications for different types of licences; and
- (c) facilitate the grant of licences in a transparent, time-bound and efficient manner.

Accredited Training
Establishment

84.

(1) An establishment seeking to impart training to trainees or conduct assessment of trainees in the operation of machinery shall register itself with the Authority.

(2) An establishment seeking to register itself under this section shall have such amenities, including automated testing and training facilities, as may be specified by the Authority by regulations.

(3) An establishment seeking to register itself under this section shall have on its rolls such minimum number of staff holding such minimal qualifications as may be specified by the Authority by regulations.

(4) An application for registration under subsection (1) shall be made in such form, accompanied by such fee, information and documents and submitted in such manner as may be specified by the Authority by regulations.

- Unique Operator licence Identifier. **85.** A person authorised to operate machinery under this Act shall be issued an operator licence with a unique operator licence identifier, in such manner as may be specified by the Authority by regulations and such unique operator licence identifier shall not change with the change in category of machinery that such person is licenced to operate.
- Change of information. **86.** The holder of an operator's licence shall inform the Authority of any change in information pertaining to the operator's licence within such period and in such form and manner as may be specified by the Authority by regulations.
- Validity of licence. **87.** A operator licence issued or renewed under this Act shall be valid for a period of XX years.
- Renewal of licences **88.** (1) An application to renew an operator licence, may be made through the Unified Operator Licensing System in such form and manner and accompanied by such fee and documents as may be specified by the Authority by regulations.
(2) The renewal of operator licence shall be made from the date of expiry of the operator licence if, the application is made under sub-section (1) before the expiry of licence.
(3) If the application is made more than one year after the operator licence has ceased to be effective, the Authority may refuse to renew the operator licence unless the applicant undergoes and passes to its satisfaction reassessment of the competency of the applicant to operate machinery.
- Refusal to issue licence. **89.** (1) Where, from the application or its accompanying documents, it appears that the applicant is suffering from any disease or disability or is consuming a prescribed drug which is likely to cause the operation of machinery by such applicant

to be a source of danger to the people nearby, the Authority shall refuse to grant the licence applied for unless such applicant undergoes the specified medical test and is declared fit to operate machinery after such test.

(2) Where the Authority is satisfied, after giving the applicant an opportunity of being heard, that the applicant is a person whose licence to operate any machinery has been revoked at any time earlier, it may for reasons to be recorded in writing, make an order refusing to issue an operator's licence to such person for a specified period.

(3) Where the Authority is satisfied, after giving the applicant an opportunity to be heard, that the licence to operate cannot be issued to the applicant, it shall within thirty days, pass an order in writing giving reasons therein for such refusal and communicate the same to such person.

Revocation of licence or authorisation on grounds of disease or disability.

90. Where the Authority has reasons to believe that the holder of an operator licence is suffering from any disease or disability which renders him unfit to operate any class of machinery, it may, if the disease or disability is confirmed upon a medical test, revoke the operator licence or authorisation therein to operate such class of machinery.

Appeal.

91. Any person aggrieved by an order made by the Authority refusing to grant or renew a licence or revoking a licence or authorisation therein may, within forty-five days from the date of receipt of the order, file an appeal in such manner and form and within such time as may be specified by regulations by the Authority.

Powers of Authority regarding operator licence.

92. (1) Where a person,—
(a) is using or has used any type of machinery in the commission of a cognizable offence; or
(b) has failed to take reasonable care to operate the machinery safely and competently; or
(c) has obtained any operator licence or an authorisation to operate a particular type

or categories of machinery by fraud or misrepresentation including by way of furnishing information that was false or misleading in a material particular or by failure to give any material information that should have been given; or

(d) has been granted an operator licence or an authorisation therein on the basis of documents obtained on the basis of the giving of false or misleading information by any person or was obtained improperly through a breach of condition of accreditation by the accredited training establishment who conducted the assessment of competency; or

(e) has committed any such act which is likely to cause nuisance or danger to the public, as may be specified by the Authority by regulations; or

(f) has failed to submit to, or has not passed, the tests relating to operating machinery under the influence of alcohol or drugs, as required by regulations made by the Authority;

the Authority, may after giving the holder of the operator's licence an opportunity of being heard, and satisfying itself that such person falls under any of categories specified in clauses (a) to (f), make an order after recording the reasons therefore,-

(a) direct that person to undergo reassessment for competency from another accredited training establishment; or

(b) disqualifying that person for a period specified in sub-section (2) from holding or obtaining any operator's licence to operate all or any types or categories of machinery specified in the licence; or

(c) revoke any such licence or authorisation therein.

(2) An order of disqualification under sub-section (1) may extend for a period of one year and in the case of second or subsequent offence, such disqualification may extend to a period of five years:

Provided that if the person disqualified under a first offence is found to be operating machinery during the period of disqualification, such person shall be disqualified for a further period of five years:

Provided further that if such person is found to be operating any machinery during such further or subsequent period of disqualification, he shall be permanently banned.

(3) Where an order under sub-section (1) is made, the holder of an operator licence shall forthwith surrender his operator licence to the Authority making such order and the Authority shall,—

(a) if the operator licence is an operator licence issued under this Act, keep it until the period of disqualification has expired or disqualification has been removed; or

(b) in the case of revocation of any licence or authorisation therein, endorse the revocation upon it.

(4) Where the operator licence authorises the person to operate more than one type or category of machinery and the order made under sub-section (1) disqualifies the holder from operating any specified category of machinery, the Authority shall endorse the specific disqualification upon the operator's licence and return the same to the holder.

(5) Any person aggrieved by an order made by the Authority under sub-section (1) may, file an appeal

- in such form and manner and within such period as may be specified by the Authority.
- Power of court to disqualify. **93.** (1) Where a person is convicted of an offence under this Act or under any rules or regulations made thereunder or of an offence in the commission of which a machinery was used, the court by which such person is convicted may, subject to the provisions of this Act or rules or regulations made thereunder, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified for such period as the court may specify, from holding any operator licence to operate all machinery, or any particular type or category of machinery, as are specified in such licence.
- (2) Where a person is convicted of a cognizable offence, the court convicting any person of any such offence shall order the disqualification under sub-section (1) which may, depending on the seriousness of the offence, extend to a period not exceeding one year.
- (3) A court ordering the disqualification of a person under sub-section (1) may direct that such person shall, whether that person has previously assessed as competent to operate machinery or not, remain disqualified until he has, subsequent to the making of the order of disqualification, been reassessed to the satisfaction of the Authority.
- (4) The court to which an appeal would ordinarily lie from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made under that sub-section notwithstanding that no appeal would lie against the conviction as a result of which such order of disqualification was made.
- Effect of disqualification order. **94.** (1) A person in respect of whom any disqualification order is made under this Act or rules or regulations made thereunder shall be debarred to the extent and for the period specified in such order from holding or obtaining an operator licence, and the licence, if any, held by such person

at the date of the order shall cease to be effective to such extent and during such period.

(2) The operation of a disqualification order made under sub-section (1) shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate court so directs.

(3) Any person in respect of whom any disqualification order has been made may, at any time after the expiry of six months from the date of the order, apply to the court or Authority by which the order was made, to remove the disqualification; and the court or Authority, as the case may be, may, having regard to all the circumstances, either cancel or vary the disqualification order:

Provided that where the court or Authority refuses to cancel or vary any disqualification order under this section, a second application thereunder shall not be entertained before the expiry of a period of three months from the date of such refusal.

CHAPTER IX

FINANCE ACCOUNT AND AUDIT

- Grants and loans by the central government to Authority
95. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority, grants and loans of such sums of money as that Government may think fit for efficient discharge by the Authority of its functions under this Act.
- Accounts and audit
96. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
- (2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.
- (3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.
- (4) The accounts of the Authority as certified by Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.
- Budget
97. The Authority shall prepare, in such form and at such time in each financial year as may be prescribed by rules made by the Central Government, the budget for the next financial year,

- showing the estimated expenditure of the Authority and forward the same to the Central Government.
- Reports **98.** (1) The Authority shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a summary of its activities during the previous financial year, and copies of the report shall be forwarded to the Central Government.
- (2) A copy of the report received under sub-section (1) shall be laid by the Central Government as soon as may be after it is received, before each House of Parliament.

CHAPTER X

OFFENCES, PENALTIES AND PROCEDURE

- General provision for punishment of offences **99.** Whoever contravenes any provision of this Act or of any rule, regulation, order or notification made thereunder, shall, if no penalty is provided for the offence, be punishable for the offence in accordance with Schedule II
- General provision for punishment of offences under chapter IV **100.** Any manufacturer who contravenes the provisions of Chapter IV shall be punishable in accordance with Schedule II
- Punishment for refusal to recall machinery **101.** Any manufacturer who contravenes the provisions of section 29 shall be punishable in accordance with Schedule II
- Punishment for sale or transfer of possession of machinery in condition contravening this act **102.** Any person who contravenes the provisions of section 22 or section 30 or section 31 by selling or transferring the possession of machinery in a condition that contravenes the provisions of this Act shall be punishable in accordance with Schedule II
- Punishment for alteration of machinery to condition contravening this act **103.** Any person who in contravention of section 28 alters machinery or causes machinery to be altered to a condition contravening this Act shall be punishable in accordance with Schedule II
- Punishment for operating machinery **104.** Whoever operates a machinery without the lawful authority or without the consent of the owner shall be punishable in accordance with Schedule II.

without lawful authority or without consent of owner		
Punishment for causing unauthorised person to operate machinery	105.	Any person who causes another person not authorized under this Act to operate machinery shall be punishable in accordance with Schedule II.
Punishment for offences relating to operator licences	106.	(1) Whoever having a valid operator licence, attempt to operate a machinery of a class not authorised under said licence shall be punishable in accordance with Schedule II. (2) Whoever being disqualified to hold or obtain an operator licence, operates machinery or applies for or obtains an operator licence shall be punishable in accordance with Schedule II.
Punishment for using machinery without registration	107.	Whoever operates or causes the operation of a machinery which is not registered under the provisions of this Act or in a manner which contravenes Chapter VI of this Act shall be punishable in accordance with Schedule II.
Punishment for unauthorised interference or tampering with machinery	108.	Whoever tampers with machinery in contravention of section 50 shall be punishable in accordance with Schedule II.
Punishment for operating machinery at conditions exceeding operational limits	109.	(1) Whoever operates machinery in conditions exceeding the operational limits of the machinery in contravention of section 48 shall be punishable in accordance with Schedule II. (2) Whoever causes the operation of machinery in conditions exceeding the operational limits of the machinery in contravention of section 48 shall be punishable in accordance with Schedule II.
Punishment for operating machinery while under the influence of alcohol or drugs	110.	Whoever, in contravention of section 49, operates or attempts to operate machinery under the influence of alcohol or drugs shall be punishable in accordance with Schedule II.

- Punishment for offences relating to a safety incident
111. Whoever fails to comply with the provisions of this Act or rules or regulations made thereunder pertaining to safety incidents including causing a safety incident, reporting of safety incidents, duty of operator or employer or owner on occurrence of safety incident shall be punishable in accordance with Schedule II.
- Punishment for offences relating to safety and conspicuity equipment
112. Whoever contravenes section 43 or section 44 or rules or regulations made thereunder shall be punishable in accordance with Schedule II.
- Offences by companies
113. (1) Where an offence under this Act or the rules or regulations made thereunder 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 contravention and shall be liable to be proceeded against and punished accordingly:
Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has 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 was committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of 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;
- (b) “director” in relation to a firm, means a partner in the firm.

Punishment for
abetment of
certain offences

114. Whoever abets any offence under this Act or the rules or regulations made thereunder shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act or the rules for the punishment of such abetment, be punished with the punishment provided for the offence.

Power to impound
document

115. (1) Any person authorised in this behalf by the Authority may, if he has reason to believe that any identification mark or document including operator licence, produced to him by the operator of the person in charge of the machinery is a false document within the meaning of section 464 of the Indian Penal Code, seize the mark or document and call upon the operator or the person in charge of the machinery to account for their possession of or the presence of such mark or document.

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(2) Any person authorized in this behalf by the Authority may, if he has reason to believe that the operator or person in charge of machinery who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any operator licence or other such document held by such operator or person in charge of the machinery and forward it to the court taking cognizance of the offence and the said court shall on the first appearance of such operator or person in charge before it, return the such document in exchange for the temporary acknowledgement given under sub-section (3).

(3) Any person seizing a document under sub-section (2) shall give to the person surrendering the document a temporary acknowledgement thereof and such acknowledgment shall have the same force of law as the document seized under sub-section (2) until the said document is returned or until such date as may be specified by the authorised person in the acknowledgement, whichever is earlier:

Provided that if any Magistrate, or other person authorized by the Authority in this behalf is, on an application made to him, satisfied that the document seized under sub-section (2) cannot be,

- or has not been, returned to the holder of such document before the date specified in the acknowledgement for any reason for which the holder is not responsible, the Magistrate or authorized person, as the case may be, may extend the period of validity of such acknowledgment to such date as may be specified therein.
- Disobedience of orders, obstruction and refusal of information **116.** (1) Whoever wilfully disobeys any order lawfully issued by any person or authority empowered under this Act to issue such order, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, shall be punishable in accordance with Schedule II
- (2) Whoever, being required by or under this Act to supply any information, wilfully withholds such information or gives information which such person knows to be false or which he does not believe to be true, shall be punishable in accordance with Schedule II.
- Compounding of certain offences **117.** Any offence committed after the commencement of this Act, which is punishable with fine only may, before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the Central Government may, by notification, provide in this behalf:
- Provided that --
- (a) the amount is not less than the minimum amount of fine as may have been provided under this Act or the rules made thereunder;
- (b) any third or subsequent offence shall not be compoundable;
- Summary disposal of cases **118.** (1) The court taking cognizance of any offence, other than an offence which the Central Government may prescribe in this behalf under this Act,—
- (a) may, if the offence is an offence punishable with imprisonment; and
- (b) shall, in any other case, state upon the summons to be served on the accused person that he --

- (i) may appear by pleader or in person; or
- (ii) may, by a specified date prior to the hearing of the charge, plead guilty to the charge and remit to the Court, by money order, such sum (not exceeding the maximum fine that may be imposed for the offence) as the Court may specify.

(2) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (1) no further proceedings in respect of the offence shall be taken against him.

Provisions with respect to rules and regulations

119. (1) In making a rule under this Act, the Central Government may provide that a breach of such rule shall be punishable with fine not exceeding XX rupees or with imprisonment not exceeding XX months or both.

(2) In making a regulation under this Act, the Authority may provide that a breach of such regulation shall be punishable with fine not exceeding XX rupees or with imprisonment not exceeding XX months or both.

CHAPTER XI

MISCELLANEOUS

Power to exempt application of certain provisions in emergency cases

120. Having regard to any exigencies or emergent situation, the Central Government may, by notification, exempt application of any provisions of this Act, or of any rules or regulations made thereunder, for the period of such exigencies or emergent situation.

Protection of action taken in good faith

121. No suit, prosecution or other proceedings shall lie against the Central Government, the Authority under this Act or any officer or employee thereof, for anything done or in good faith purporting to be done under this Act or the rules or regulations made thereunder.

Power of Central Government to supersede Authority.

122. (1) If at any time the Central Government is of opinion—

- (a) that the Authority has persistently made default in the performance of the functions imposed on it by or under this Act; or

(b) that circumstances exist which render it necessary in the public interest so to do, it may, by notification, supersede the Authority for such period, not exceeding one year, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (a), the Central Government shall give a reasonable opportunity to the Authority to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Authority.

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

(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 this Act, be exercised, performed or discharged by the Authority, shall, until the Authority is reconstituted under sub-section (3), be exercised, performed or discharged by such person or persons as the Central Government may direct;

(c) all property owned or controlled by the Authority, shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or

(b) reconstitute the Authority by fresh appointment and in such case, any person who vacated his office under clause (a) of sub-section (2) shall not be deemed disqualified for appointment:

Provided that the Central Government may at any time before the expiration of the period of supersession, whether originally specified under sub-section (1) or as

Directions by the Central Government

123. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it, from time to time:

extended under this sub-section, take action under clause (b) of this sub-section.

Provided that the Authority, shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

Power of central government to make rules

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

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

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

- (a) the manner of selection of Chairperson and other members of the Authority under section 5;
- (b) the salary, allowances and other terms and conditions of service of the Chairperson and the members of the Authority under section 6;
- (c) the times and places for the meeting of the Authority and the rules of procedure to be observed in its meeting including quorum at such meetings under section 12;
- (d) the powers and functions of the Authority under section 11;
- (e) the form for preparing annual statement of accounts under section 86;
- (f) the form and time for preparation of the budget for the next financial year under section 87;

(g) the form and time for preparation of the annual reports under section 88;

Power of authority to make regulations **125.**

(1) The Authority may, by notification in the Official Gazette, and with the previous approval of the Central Government, make regulations, not inconsistent 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 salaries and allowances payable to and other terms and conditions of service of the officers and employees of the Authority and the number of such officers and employees under section 10;

(b) the number of technical members and the procedure for constituting the technical working groups under section 14;

(c) the type approval requirements with respect to the design, construction, equipment and marking of a machinery of any type or category, and the parts thereof, and the exemptions there from;

(d) the assessment tests to be conducted and the manner for conducting such tests;

(e) the form in which the declaration of conformity is to be issued by the manufacturer of a machinery under section 27;

(f) the manner in which operator of a machinery shall carry out inspection of such machinery and the form in which he shall maintain record of such inspections under section 33;

(g) the form in which an application for operator licence shall be made, the fee and documents it shall accompany and the manner in which it shall be submitted under section 72.

Laying of rules,
regulations, etc.

- 126.** (1) The power to make rules and regulations under this Act shall be subject to the condition of the said rules and regulations being made after previous publication:

Provided that the Central Government may, in the interest of the public, by order in writing, dispense with the condition of previous publication in any case.

(2) Every rule, regulation and notification made or issued under this Act shall be published in the Official Gazette, and shall, unless some later date is appointed, come into force on the date of such publication.

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

Power to levy fees

- 127.** Any rule or regulation which the Central Government or the Authority, as the case may be, is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, issue and amendment of documents, including operator licences, declaration of conformity, type approval

certificate, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule or regulation made thereunder as may be considered necessary:

- Provided that the Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class of persons from the payment of any such fee either in part or in full.
- Use of technology **128.** The Central Government and the authority discharging any obligations under this Act, shall utilise appropriate technology solutions for the purpose of enabling compliance, implementation, monitoring and regulation of the objectives under this Act.
- Provision of services in a time-bound manner **129.** The Central Government may, from to time, notify the services provided under this Act, the designated officers and the designated service providers providing such services, the stipulated time limits for the provision of such services and the remedial actions in case of failure to provide such services in the stipulated time limits including such action as may be taken suo motu by the Central Government, or the Authority
- Act not in derogation of any other law **130.** 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 and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such other law to the extent of the inconsistency.
- Power to remove difficulties **131.** (1) If any difficulty arises in, giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

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

Power to amend
schedules

132. The Central Government shall have the power to amend the Schedules under this Act from time to time through notification.

Review of
working of the
Authority

133. The Central Government shall review the working of the Authority at least once every five years and the report of the review shall be laid by the Central Government as soon as may be after it is received, before each House of Parliament.

Schedule I -- Machinery subject to the provisions of this Act

The following types of machinery are subject to the provisions of this Act --

Schedule II -- Penalties for offences committed under this Act