

Bill No. 51 of 2012

THE NATIONAL HOUSING BANK (AMENDMENT) BILL, 2012

A

BILL

further to amend the National Housing Bank Act, 1987.

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

1. (1) This Act may be called the National Housing Bank (Amendment) Act, 2012.

Short title and
commence-
ment.

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

53 of 1987. **2.** In section 2 of the National Housing Bank Act, 1987 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

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

1 of 1956. 10 '(ba) “company” means a company as defined in section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of section 591 of that Act;’;

(b) in clause (d), for the words “which primarily transacts or”, the words “which transacts either in whole or in part and” shall be substituted.

15 **3.** In section 3 of the principal Act, in sub-section (3), for the words “Bombay or at such other place as the Reserve Bank”, the words “Mumbai or at such other place as the Central Government” shall be substituted.

Amendment
of section 3.

Amendment of section 4.	<p>4. In section 4 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—</p> <p>“Provided that the Central Government may, by notification, increase the authorised capital to such amount as may be specified in the notification, from time to time.”.</p>	5
Insertion of new sections 4A and 4B.	<p>5. After section 4 of the principal Act, the following sections shall be inserted, namely:—</p> <p>“4A. The issued capital of the National Housing Bank, which has been subscribed by the Reserve Bank as on the date immediately preceding the commencement of section 5 of the National Housing Bank (Amendment) Act, 2012, shall, on such commencement, stand transferred to, and vest in, the Central Government.</p> <p>4B. The Reserve Bank shall be given by the Central Government, in cash, for the transfer to, and vesting in, the Central Government of the issued capital of the National Housing Bank which has been subscribed by the Reserve Bank, an amount equal to the face value of the said subscribed capital.”.</p>	10
Transfer of capital to Central Government.		10
Payment of amount.		
Amendment of section 6.	<p>6. In section 6 of the principal Act,—</p> <p>(a) in sub-section (1), for clause (d), the following clause shall be substituted, namely:—</p> <p>“(d) one director to be nominated by the Reserve Bank;”;</p> <p>(b) for sub-section (2), the following sub-section shall be substituted, namely:—</p> <p>“(2) The Chairman, the Managing Director and other directors [excluding the directors referred to in clauses (ca) and (d)] shall be appointed by the Central Government:</p> <p>Provided that the Chairman and the Managing Director shall be appointed in consultation with the Reserve Bank.”.</p>	15
Amendment of section 7.	<p>7. In section 7 of the principal Act, in sub-section (5), in the proviso, for the words “or a director of the Reserve Bank”, the words “or an official of the Reserve Bank”, shall be substituted.</p>	25
Amendment of section 14.	<p>8. In section 14 of the principal Act,—</p> <p>(a) in clause (b), after the words “housing finance institutions,”, the words “non-banking financial companies,” shall be inserted;</p> <p>(b) after clause (b), the following <i>Explanation</i> shall be inserted, namely:—</p> <p><i>‘Explanation.—</i> For the purposes of this clause, the expression “housing activities” includes acquisition, construction, reconstruction, purchase, repair or renewal of a residential house and all off site and on site housing related activities or incidental thereto.’;</p> <p>(c) for clause (ea), the following clause shall be substituted, namely:—</p> <p>“(ea) buying, selling or otherwise dealing in any loans or advances relating to housing activities secured by mortgage or charge on immovable property;”;</p> <p>(d) in clause (f), after the word “companies”, the words “including mortgage guarantee companies, securitisation companies, reconstruction companies and credit information companies” shall be inserted;</p> <p>(e) clause (k) shall be omitted.</p>	30
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46 of 1973. 42 of 1999. **9.** In section 16 of the principal Act, in sub-section (1), for the words and figures “Foreign Exchange Regulation Act, 1973”, the words and figures “Foreign Exchange Management Act, 1999” shall be substituted. Amendment of section 16.

10. In section 16B of the principal Act,— Amendment of section 16B.

5 (a) in sub-section (1), after the words “such institution to the National Housing Bank”, the words “as per the repayment schedule fixed by the National Housing Bank” shall be inserted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

10 (3) Notwithstanding anything to the contrary contained in any other law for the time being in force, where a liquidator is appointed for winding up a borrowing institution, it shall be the duty of the liquidator to forthwith pass on to the National Housing Bank, the sums recovered by the borrowing institution or the liquidator, as the case may be, in repayment or realisation of the loans and advances refinanced either wholly or partly by the National Housing Bank to the extent the refinance is outstanding and the National Housing Bank shall be entitled to enforce the securities held by the borrowing institution in trust for the National Housing Bank as if every reference to the borrowing institution in any contract, security or other document obtained by the borrowing institution is a reference to the National Housing Bank and accordingly, the National Housing Bank shall be entitled to recover the balance sums due under such loans and advances from the constituents of the borrowing institution and any discharge given by the National Housing Bank to such constituent shall be a valid discharge and the liquidator shall, on demand made by the National Housing Bank, deliver to it all such contracts, securities and other documents, for due enforcement thereof by the National Housing Bank.

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Explanation.—For the purposes of this sub-section, the word “liquidator” shall include liquidator or a provisional liquidator or any person or authority entrusted with the duty of liquidating the borrowing institution.’

11. In Chapter V of the principal Act, in the heading, for the words “RECEIVING DEPOSITS”, the words “WHICH ARE COMPANIES” shall be substituted. Amendment of heading of Chapter V.

12. In section 29A of the principal Act,— Amendment of section 29A.

(a) in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

35 “(b) having the net owned fund of two hundred lakh rupees or such other higher amount as the Reserve Bank may, by notification, specify from time to time.”;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

40 “(2) Every housing finance institution which is a company shall make an application for registration to the Reserve Bank in such form as may be specified by the Reserve Bank:

45 Provided that an application made by a housing finance institution which is a company under this sub-section to the National Housing Bank and pending for consideration with the National Housing Bank as on the date of commencement of the National Housing Bank (Amendment) Act, 2012, shall be transferred by the National Housing Bank to the Reserve Bank and thereupon the application shall be deemed to have been made under the provisions of this sub-section and shall be dealt with accordingly:

Provided further that the provisions of this sub-section shall not apply to the housing finance institution which is a company having a valid registration

certificate granted under sub-section (5) on the date of commencement of the National Housing Bank (Amendment) Act, 2012 and such housing finance institution shall be deemed to have been granted a certificate of registration under the provision of this Act.”;

(c) sub-section (3) shall be omitted; 5

(d) in sub-sections (4) and (5), for the words “National Housing Bank”, wherever they occur, the words “Reserve Bank” shall be substituted;

(e) in sub-section (6),—

(i) for the words “National Housing Bank may cancel”, the words “Reserve Bank may cancel” shall be substituted; 10

(ii) in clause (iv), for the words “National Housing Bank” wherever they occur, the words “Reserve Bank or the National Housing Bank” shall be substituted;

(iii) in clause (v), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted; 15

(iv) in the proviso,—

(A) for the words “housing finance institution” at both the places where they occur, the words “housing finance institution which is a company” shall be substituted;

(B) for the words “National Housing Bank” at both the places, where they occur, the words “Reserve Bank” shall be substituted; 20

(f) in sub-section (7), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted;

(g) in the *Explanation*, in clause (I), in sub-clause (b), in item (I), for sub-item (iii), the following sub-item shall be substituted, namely:— 25

“(iii) all other non-banking financial companies; and”.

Amendment
of section
29B.

13. In section 29B of the principal Act,—

(a) for the words “housing finance institution”, wherever they occur, the words “housing finance institution which is a company” shall be substituted;

(b) in sub-section (1), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted; 30

(c) in sub-section (2), for the words “such higher percentage not exceeding twenty-five per cent., as the National Housing Bank may”, the words “such higher percentage not exceeding twenty-five per cent., as the Reserve Bank may” shall be substituted; 35

(d) in sub-section (3), the following proviso shall be inserted, namely:—

“Provided that in the case of submission of return to the National Housing Bank pursuant to the above provision a copy shall also be furnished to the Reserve Bank.”.

Amendment
of section
29C.

14. In section 29C of the principal Act,— 40

(a) in sub-section (2),—

(i) for the words “specified by the National Housing Bank”, the words “specified by the Reserve Bank” shall be substituted;

(ii) for the words “reported to the National Housing Bank”, the words “reported to the National Housing Bank and the Reserve Bank” shall be substituted;

(b) in sub-section (3), for the words “the National Housing Bank”, the words “the Reserve Bank” shall be substituted.

5 **15.** For section 30 of the principal Act, the following section shall be substituted, namely:—

“30. The Reserve Bank may, if it considers necessary in the public interest so to do, by general or special order,—

10 (a) regulate or prohibit the issue by any housing finance institution which is a company of any prospectus or advertisement soliciting deposits of money from the public; and

(b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.”.

15 **16.** For section 30A of the principal Act, the following section shall be substituted, namely:—

20 “30A. (1) If the Reserve Bank is satisfied that, in the public interest or to regulate the housing finance system of the country to its advantage or to prevent the affairs of any housing finance institution which is a company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of such housing finance institutions, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the housing finance institution which is a company relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a housing finance institution which is a company or a group of such housing finance institutions or housing finance institutions which are companies generally, as the case may be, and such housing finance institutions shall be bound to follow the policy so determined and the direction so issued.

30 (2) Without prejudice to the generality of the powers vested under sub-section (1), the Reserve Bank may give directions to housing finance institutions which are companies generally or to a group of such housing finance institutions or to any housing finance institution which is a company in particular as to—

(a) the purpose for which advances or other fund-based or non-fund-based accommodation may not be made; and

35 (b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the housing finance institution and other relevant considerations, may be made by that housing finance institution to any person or a company or to a group of companies.”.

40 **17.** For section 31 of the principal Act, the following section shall be substituted, namely:—

45 “31. (1) The National Housing Bank may at any time direct that every housing finance institution which is a company accepting deposits shall furnish to the National Housing Bank in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by such housing finance institution, as may be specified by the National Housing Bank by general or special order.

Substitution of new section for section 30.

Reserve Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money.

Substitution of new section for section 30A.

Power of Reserve Bank to determine policy and issue directions.

Substitution of new section for section 31.

Power to collect information from housing finance institutions as to deposits and give directions.

(2) Every housing finance institution which is a company receiving deposits shall submit a copy of the statements, information or particular referred to in sub-section (1) also to the Reserve Bank.

(3) Without prejudice to the generality of the power vested in the National Housing Bank under sub-section (1), the statements, information or particulars to be furnished under sub-section (1), may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, such deposits are received. 5

(4) The Reserve Bank may, if it considers necessary in the public interest so to do, give directions to housing finance institutions which are companies accepting deposits either generally or to any group of such housing finance institutions accepting deposits, and in particular, in respect of any matters relating to, or connected with, the receipt of deposits, including credit rating of the housing finance institution which is a company accepting deposits, the rates of interest payable on such deposits, and the periods for which deposits may be received. 10 15

(5) If any housing finance institution which is a company accepting deposits fails to comply with any direction given under sub-section (4), the National Housing Bank may prohibit the acceptance of deposits by that housing finance institution.

(6) If any housing finance institution which is a company accepting deposit fails to comply with any direction given under sub-section (4), the Reserve Bank may also prohibit the acceptance of deposit by that housing finance institution. 20

(7) Every housing finance institution which is a company receiving deposits, shall, if so required by the National Housing Bank and within such time as the National Housing Bank may specify, cause to be sent at the cost of such housing finance institution, a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the housing finance institution which is a company holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by the National Housing Bank.”. 25

Substitution of new section for section 32.

18. For section 32 of the principal Act, the following section shall be substituted, namely:— 30

Duty of housing finance institutions to furnish statements, etc.

“32. Every housing finance institution which is a company shall furnish the statements, information or particulars called for, and to comply with any direction given to it, under the provisions of this Chapter.”.

Amendment of section 33.

19. In section 33 of the principal Act,—

(a) in sub-section (1),— 35

(i) for the words “housing finance institution” wherever they occur, the words “housing finance institution which is a company” shall be substituted;

(ii) after the words “the National Housing Bank” at both the places where they occur, the words “and the Reserve Bank ” shall be inserted;

(b) in sub-section (1A), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted; 40

(c) in sub-section (2), after the words “the National Housing Bank” at both the places where they occur, the words “and the Reserve Bank” shall be inserted;

(d) in sub-sections (3) and (4), after the words “the National Housing Bank”, wherever they occur, the words “or the Reserve Bank, as the case may be,” shall be inserted. 45

20. For section 33A of the principal Act, the following section shall be substituted, namely:—
- “33A. (1) If any housing finance institution which is a company violates the provisions of any section or fails to comply with any direction or order given by the National Housing Bank or the Reserve Bank, under any of the provisions of this Chapter, the National Housing Bank or the Reserve Bank, as the case may be, may prohibit such housing finance institution from accepting any deposit.
- (2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the National Housing Bank on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the housing finance institution which is a company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the National Housing Bank for such period not exceeding six months from the date of the order.”.
21. In section 33B of the principal Act,—
- (a) in sub-section (1), in clause (c), after the words “the National Housing Bank”, the words “or the Reserve Bank” shall be inserted;
- (b) in sub-section (3), after the words “the Registrar of Companies”, the words “and the Reserve Bank” shall be inserted.
22. In section 34 of the principal Act,—
- (a) for the words “housing finance institution accepting deposits” wherever they occur, the words “housing finance institution which is a company” shall be substituted;
- (b) after sub-section (3), the following sub-sections shall be inserted, namely:—
- “(4) The National Housing Bank shall submit a copy of the report of inspection referred to in sub-section (1) to the Reserve Bank.
- (5) The powers exercisable by the National Housing Bank under this section may (without prejudice to the exercise of such powers by the National Housing Bank whenever it considers necessary so to do), be exercised by the Reserve Bank, and accordingly, sub-sections (1) to (3) shall apply as if every reference therein to the National Housing Bank included also a reference to the Reserve Bank.”.
23. In section 35 of the principal Act,—
- (a) for the words “on behalf of any housing finance institution”, the words “on behalf of any housing finance institution which is a company” shall be substituted;
- (b) in clause (b), for the words “National Housing Bank”, the words “Reserve Bank” shall be substituted.
24. In section 35A of the principal Act,—
- (a) for the words “housing finance institution”, wherever they occur, the words “housing finance institution which is a company” shall be substituted;
- (b) after the words “the National Housing Bank”, wherever they occur, the words “or the Reserve Bank, as the case may be,” shall be inserted.
25. For section 35B of the principal Act, the following section shall be substituted, namely:—

Substitution of section 33A.

Power to prohibit acceptance of deposit and alienation of assets.

Amendment of section 33B.

Amendment of section 34.

Amendment of section 35.

Amendment of section 35A.

Substitution of new section for section 35B.

Power of Reserve Bank to exempt any housing finance institution.

“35B. (1) The Reserve Bank on being satisfied that it is necessary so to do, may, declare by notification that any or all the provisions of this Chapter shall not apply to a housing finance institution which is a company or a group of such housing finance institutions either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose.

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

Amendment of section 36A.

26. In section 36A of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Where a housing finance institution which is a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under section 10E of the Companies Act, 1956, may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do, to safeguard the interests of the company, the depositors or in the public interest, direct, by order, such housing finance institution to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

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Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to such housing finance institution and the other persons interested in the matter.”.

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Amendment of section 36B.

27. In section 36B of the principal Act, for the words “housing finance institution”, wherever they occur, the words “housing finance institution which is a company” shall be substituted.

Omission of Chapter VA.

28. Chapter VA of the principal Act shall be omitted.

Amendment of section 37.

29. In section 37 of the principal Act, in sub-section (2), for the words “Reserve Bank”, the words “Central Government” shall be substituted.

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Amendment of section 38.

30. In section 38 of the principal Act, in sub-section (2), for the words “thirtieth day of June, each year”, the words “thirty-first day of March, each year” shall be substituted.

Substitution of new section for section 39.

31. For section 39 of the principal Act, the following section shall be substituted, namely:—

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Disposal of surplus.

“39. After making provision for bad and doubtful debts, depreciation of assets and all other matters for which provision is necessary or expedient or which is usually provided for by the bankers and for the funds referred to in section 37, the National Housing Bank shall transfer the balance of surplus, in case the Central Government holds the whole of the issued capital of the National Housing Bank, to the Central Government and in other cases, to the Central Government and any other person holding the issued capital proportionately as may be decided by the Board.”.

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Amendment of section 40.

32. In section 40 of the principal Act, in sub-section (1), for the words “who shall be appointed by the Reserve Bank, for such term and on such remuneration as the Reserve Bank may fix”, the words “who shall be appointed by the Central Government in consultation with the Reserve Bank, for such term and on such remuneration as the Central Government may fix” shall be substituted.

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Amendment of section 41.

33. In section 41 of the principal Act, for the words “the Reserve Bank” at both the places, where they occur, the words “the Reserve Bank and the Central Government” shall be substituted.

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Amendment of section 42.

34. Section 42 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

- 5 “(2) For the purpose of ensuring compliance with the provisions of sub-section (1), the National Housing Bank may require any authority or organisation or institution, engaged in housing activities or the financing thereto, to furnish to it such information or statements or particulars relating to housing as may be specified by the National Housing Bank.
- (3) Every authority or organisation or institution shall furnish the information or statements or particulars called for by the National Housing Bank and comply with any direction given to it by the National Housing Bank under this section.”.
- 10 **35.** In section 44 of the principal Act, in sub-section (1), after the words “National Housing Bank” at both the places, where they occur, the words “or the Reserve Bank, as the case may be,” shall be inserted. Amendment of section 44.
- 36.** In section 46 of the principal Act, after the words “the National Housing Bank” wherever they occur, the words “or the Reserve Bank” shall be inserted. Amendment of section 46.
- 15 **37.** In section 49 of the principal Act,— Amendment of section 49.
- (a) in sub-section (2B), after the words “the National Housing Bank”, the words “or the Reserve Bank” shall be inserted;
- (b) in sub-section (2C), for the words “any order made by the authorised officer”, the words “any order made by the Company Law Board” shall be substituted;
- 20 (c) in sub-section (3), in clause (aa), after the words “the National Housing Bank”, the words “or the Reserve Bank” shall be inserted.
- 38.** In section 51 of the principal Act,— Amendment of section 51.
- (a) in sub-section (1),—
- (i) for the words “the National Housing Bank, generally”, the words “the National Housing Bank or the Reserve Bank, generally” shall be substituted;
- 25 (ii) for the words “in this behalf by the National Housing Bank,”, the words “in this behalf by the National Housing Bank or the Reserve Bank, as the case may be,” shall be substituted;
- (b) in sub-section (2), for the words “of the National Housing Bank”, the words “of the National Housing Bank or the Reserve Bank, as the case may be,” shall be substituted.
- 30 **39.** In section 52 of the principal Act, in clause (b), for the words “housing finance institution” the words “housing finance institution which is a company” shall be substituted. Amendment of section 52.
- 40.** For section 52A of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 52A.
- 35 “52A. (1) Notwithstanding anything contained in section 49, if the contravention or default of the nature referred to in section 49 is committed by a housing finance institution which is a company, the National Housing Bank or the Reserve Bank, as the case may be, may impose on such company— Power to impose penalty.
- (a) a penalty not exceeding five thousand rupees; or
- 40 (b) where the contravention or default is under sub-section (2A) or clause (a) or clause (aa) of sub-section (3) of section 49, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such

contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the National Housing Bank or the Reserve Bank, as the case may be, shall serve a notice on the housing finance institution which is a company requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such housing finance institution. 5

(3) Any penalty imposed by the National Housing Bank or the Reserve Bank, as the case may be, under this section shall be payable within a period of thirty days from the date on which notice issued by the National Housing Bank or the Reserve Bank, as the case may be, demanding payment of the sum is served on the housing finance institution which is a company and, in the event of failure of such housing finance institution to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where the registered office or the head office of such housing finance institution is situated: 10 15

Provided that no such direction shall be made, except on an application made by an officer of the National Housing Bank or the Reserve Bank, as the case may be, authorised in this behalf, to the principal civil court.

(4) The court which makes a direction under sub-section (3), shall issue a certificate specifying the sum payable by the housing finance institution which is a company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit. 20

(5) No complaint shall be filed against any housing finance institution which is a company in any court of law pertaining to any contravention or default in respect of which any penalty has been imposed by the National Housing Bank or the Reserve Bank, as the case may be, under this section. 25

(6) Where any complaint has been filed against a housing finance institution which is a company in a court in respect of contravention or default of the nature referred to in section 49, no proceedings for imposition of penalty against such housing finance institution shall be taken under this section.”. 30

Omission of section 54A.

41. Section 54A of the principal Act shall be omitted.

Amendment of section 55.

42. In section 55 of the principal Act,—

(a) in sub-section (1), the words “the Reserve Bank and in consultation with” shall be omitted; 35

(b) in sub-section (2), clauses (f), (fa), (fb), (fc) and (fd) shall be omitted.

Amendment of Act 54 of 2002.

43. In section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in sub-section (1), in clause (m), after sub-clause (iii), the following sub-clause shall be inserted, namely:—

“(iiiia) any housing finance institution which is a company registered under section 29A of the National Housing Bank Act, 1987: 40

Provided that any housing finance institution specified, by notification, under sub-clause (iv) of this clause, shall be deemed to be included as a housing finance institution under this sub-clause;”.

STATEMENT OF OBJECTS AND REASONS

The National Housing Bank Act, 1987 (the NHB Act) was enacted to establish the National Housing Bank to operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions. The NHB Act was last amended in 2000 to enable the Central Government to increase the authorised capital of the Bank in consultation with the Reserve Bank of India up to two thousand crore rupees and issue the increased authorised capital to the Reserve Bank, the Central Government, scheduled banks, public financial institutions, housing finance institutions or such other institutions as may be approved by the Central Government in such manner that the institutions owned and controlled by the Central Government shall hold in aggregate at any time not less than fifty per cent. of the issued capital of the National Housing Bank.

2. The issued capital of the Bank as on date is four hundred fifty crore rupees and is fully subscribed by the Reserve Bank. In order to enable the Reserve Bank to focus on its regulatory and supervisory functions and to avoid conflict of ownership and regulatory role, it is proposed to transfer the shareholding of the Reserve Bank in the National Housing Bank to the Central Government. It is also proposed to provide for transfer of surplus by the National Housing Bank to the Central Government in place of the Reserve Bank consequent upon the transfer of ownership. Further, it is proposed to confer power upon the Central Government to increase the authorised capital of the National Housing Bank to such amount, as may be specified by notification, from time to time.

3. To ensure uniform control over non-banking financial companies including housing finance companies, the registration and regulation related powers over housing finance companies are proposed to be transferred to the Reserve Bank. The National Housing Bank will henceforth concentrate on supervision and financing of such institutions.

4. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the said Act), was enacted to provide for recovery of the dues of the scheduled banks, public financial institutions and other notified financial institutions. The Central Government has notified number of housing finance institutions which are companies registered under the NHB Act as financial institutions under the said Act. It is proposed to amend the said Act as to make a provision to cover all the housing finance institutions which are companies registered under the NHB Act for the purposes of the said Act to provide them level playing field.

5. In the light of the experience gained in the operations of the National Housing Bank, it is felt necessary to make certain amendment in the NHB Act for the smooth working of the National Housing Bank and to authorise it to undertake certain other business of financing non-banking financial companies for their housing activities, for securitisation of loans and advances and to promote mortgage guarantee companies, credit information companies, etc.

6. The National Housing Bank (Amendment) Bill, 2012 *inter alia*, provide for—

(a) insertion of new sections 4A and 4B in the NHB Act to enable the transfer of the issued capital subscribed by the Reserve Bank to the Central Government as mentioned in paragraph 2 above and payment by the Central Government to the Reserve Bank an amount equal to the face value of the said subscribed capital;

(b) amendment of section 6 of the NHB Act for the purpose of nomination of one director by the Reserve Bank instead of two directors and to dispense with the

requirement of consultation with the Reserve Bank in appointment of the directors other than the Chairman and the Managing Director;

(c) amendment of section 14 of the NHB Act, to insert the expression "non-banking financial companies" in clause (b) thereof so as to extend refinancing facilities to these companies; define the expression "housing activities" and in clause (f) insert the expressions "including mortgage guarantee companies, securitisation companies, reconstruction companies and credit information companies" so as to enable the National Housing Bank to do business in relation to such companies;

(d) conferring of powers relating to registration, maintenance of certain percentage of assets in liquid assets, creation of a reserve fund, regulate or prohibit issue of prospectus or advertisement, to determine policy and issue direction under sections 29A, 29B, 29C, 30 and 30A of the NHB Act upon the Reserve Bank in place of the National Housing Bank;

(e) conferring of powers, relating to, power and duties of auditors of housing finance companies, to prohibit acceptance of deposit and alienation of assets, inspection of housing finance companies and impose penalties under sections 33, 33A, 34 and 52A of the NHB Act, upon the Reserve Bank in addition to the National Housing Bank;

(f) confer powers upon the Company Law Board constituted under section 10E of the Companies Act, 1956 to direct housing finance institution to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order;

(g) omission of Chapter VA relating to reovery of dues of the approved institutions consequent upon the proposed amendments in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(h) to enable the Board of the National Housing Bank to cause the books and accounts of the National Housing Bank to be balanced and closed as on the thirty-first day of March of each year in place of thirtieth day of June of each year;

(i) insertion of new sub-clause (iiia) in clause (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 so as to extend the provisions of the said Act to any housing finance institution which is a company and is registered under the NHB Act.

7. The notes on clauses explain in detail the various provisions of the Bill.

8. The Bill seeks to achieve the aforesaid objects.

NEW DELHI;
The 9th April, 2012.

PRANAB MUKHERJEE

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA**

**[Copy of D.O. No. 24/11/2011-IF-II dated 13 April, 2012 from
Shri Pranab Mukherjee, Minister of Finance to the Secretary-General, Lok Sabha]**

The President, having been informed of the subject matter of the National Housing Bank (Amendment) Bill, 2012, has recommended the introduction of the Bill in Lok Sabha under clause (1) of article 117 of the Constitution of India.

Notes on Clauses

Clause 1. — This clause provides for the short title and commencement of the Bill.

Clause 2. — This clause seeks to define the expression "Company" occurring in the Bill. This clause also seeks to amend the definition of the expression "housing finance institution" occurring in the National Housing Bank Act, 1987 (the Act) to cover such housing finance institutions which partly transacts the business of housing finance and has one of its principal objects the transacting of business of providing finance for housing.

Clause 3. — This clause seeks to amend section 3 of the Act relating to establishment and incorporation of the National Housing Bank. It is proposed to amend sub-section (3) of section 3 so as to reflect the change of name of Bombay to Mumbai and also provide that the head office of the Bank shall be at such other place as the Central Government, by notification, may specify.

Clause 4. — This clause seeks to amend section 4 of the Act relating to capital of the National Housing Bank. Under the existing provision the Central Government in consultation with the Reserve Bank is authorised to increase the authorised capital of the National Housing Bank up to two thousand crores rupees. It is proposed to substitute proviso to sub-section (1) of section 4 of the Act to provide that the Central Government may, by notification, increase the authorised capital to such amount as may be specified in the notification, from time to time.

Clause 5. — This clause seeks to insert new section 4A relating to transfer of capital to Central Government and a new section 4B relating to payment of amount to the Reserve Bank.

The proposed new section 4A provides transfer and vesting of the issued capital of the National Housing Bank of the face value of four hundred fifty crore rupees in the Central Government from the commencement of the proposed legislation.

The proposed new section 4B provides for payment in cash by the Central Government to Reserve Bank of an amount equal to the face value of the subscribed capital of the National Housing Bank consequent upon the transfer and vesting of such capital in the Central Government in terms of provision of new section 4A.

Clause 6. — This clause seeks to amend section 6 of the Act relating to composition of the Board of Directors.

The existing provisions contained in clause (d) of sub-section (1) of section 6 of the Act, provides for two directors from out of the directors of the Reserve Bank nominated on the Board of the National Housing Bank. It is proposed that there shall be one director to be nominated by the Reserve Bank on the Board of the National Housing Bank and such director need to be a director of the Reserve Bank.

In terms of the existing provision contained in sub-section (2) of section 6 of the Act, the Chairman and the Managing Director and the other directors (excluding the elected director and nominated director) are required to be appointed by the Central Government in consultation with the Reserve Bank. It is proposed to amend sub-section (2) of section 6 to provide that the director other than the nominated and elected director shall be appointed by the Central Government and the Chairman and the Managing Director shall be appointed by the Central Government in consultation with the Reserve Bank.

Clause 7.—This clause seeks to amend section 7 of the Act relating to terms and conditions of appointment of Chairman and Managing Director and other directors. The existing provision contained in sub-section (5) of the Act provides that the directors shall be

paid prescribed fee for attending the meeting of the Board or its Committees. There is no such fee payable to a director who is an official of the Government or a director of the Reserve Bank. It is proposed that no such fees shall be payable to the official of the Reserve Bank.

Clause 8.—This clause seeks to amend section 14 of the Act relating to the business of the National Housing Bank.

Clause (b) of this section is proposed to be amended to insert "non-banking financial companies" to enable the National Housing Bank to give refinance to such companies against their loans for housing activities. It is also proposed to insert an *Explanation* in clause (b) to define the expression "housing activities" to include acquisition, construction, reconstruction, purchase, repair or renewal of a residential house and all off site and on site housing related activities or incidental thereto.

Clause (ea) of section 14 enables the National Housing Bank to buy or sell mortgages of housing finance institutions or banks. It is proposed to amend the clause to buy or sell such mortgages of any institution.

Clause (f) of section 14 is also proposed to be amended to enable the National Housing Bank promote mortgage guarantee companies, securitisation companies, reconstruction companies and credit information companies.

Clause (k) of section 14 of the Act providing for the power, of the National Housing Bank to give guidelines to the housing finance institutions to ensure their growth on sound lines is proposed to be omitted consequent to the proposed transfer of powers of regulation of such institutions to the Reserve Bank.

Clause 9.—This clause seeks to amend section 16 of the Act relating to borrowings by the National Housing Bank in foreign currency. It is proposed to amend sub-section (1) of section 16 of the Act so as to substitute the reference of "the Foreign Exchange Management Act, 1999" in place of "the Foreign Exchange Regulation Act, 1973".

Clause 10.—This clause seeks to amend section 16B of the Act relating to holding of amount and security in trust by the institutions borrowing from the National Housing Bank. It is proposed to amend sub-section (1) of this section to enable such institutions repay the amount borrowed by them from the National Housing Bank in accordance with the repayment schedule fixed by the said Bank.

It is also proposed to insert a new sub-section (3) to this section to provide that the amount received by the borrowing institution or the liquidator against the refinanced loans shall be passed on to the National Housing Bank. Further, the National Housing Bank shall be entitled to enforce the securities held by the borrowing institution in trust for it and the liquidator shall pass on such securities and contracts to the National Housing Bank.

Clause 11.—This clause seeks to amend the heading of Chapter V to reflect that the Chapter applies to housing finance institutions which are companies.

Clause 12.—This clause seeks to amend section 29A of the Act relating to requirement of registration and net owned fund of housing finance companies. It is proposed to confer powers relating to registration of housing finance companies which hitherto vested in the National Housing Bank to the Reserve Bank.

The existing clause (b) of sub-section (1) of section 29A of the Act provides for the requirement of net owned fund to twenty-five lakh rupees and confers powers on the National Housing Bank to specify such other higher amount as it may deem fit. It is proposed to confer such powers to the Reserve Bank.

Sub-section (2) of section 29A is proposed to be amended to confer powers upon the Reserve Bank for registration of housing finance companies. It is proposed to provide that the application pending with the National Housing Bank on the appointed date shall be

transferred to the Reserve Bank and the registration granted by the National Housing Bank before the commencement of the proposed legislation shall be deemed to have been granted under the new provision and such companies need not apply again to the Reserve Bank.

Sub-section (3) providing for fulfilment of the requirement of net owned fund by the companies in existence on the commencement of National Housing Bank (Amendment) Act, 2000 within certain specified time is proposed to be omitted as the maximum period provided under that provision has already lapsed.

Consequential changes are proposed in sub-sections (4), (5), (6) and (7) to substitute the Reserve Bank in place of the National Housing Bank as to enable the Reserve Bank to grant or cancel the certificate of registration of the housing finance companies.

It is also proposed to amend the definition of "net owned fund" as contained in *Explanation* to section 29A by providing that the net owned fund shall be calculated by reducing therefrom the amounts representing the investment of such institution in the shares of all other non-banking financial companies as against the existing provision providing for reduction in all other housing finance institutions which are companies.

Clause 13.—This clause seeks to amend section 29B of the Act relating to maintenance of certain percentage of assets in liquid assets by housing finance companies accepting deposits. It provides that higher percentage of investment in liquid assets shall now be prescribed by the Reserve Bank instead of the National Housing Bank. A proviso is also proposed to be inserted to sub-section (3) to provide for furnishing of a copy of the return by the housing finance companies to the Reserve Bank. These amendments are consequent upon the transfer of regulatory powers to the Reserve Bank while continuing supervision with the National Housing Bank.

Clause 14.—This clause seeks to amend section 29C of the Act relating to certain of a reserve fund by the housing finance companies and transferring certain specified sum out of its profits to such fund every year. It is proposed to amend sub-section (2) of this section to provide that the purpose for which such fund can be appropriated shall be specified by the Reserve Bank and such appropriation shall also be reported to that Bank. Consequential changes are also proposed in sub-section (3) of this section.

Clause 15.—This clause seeks to substitute section 30 of the Act relating to powers of the National Housing Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money to confer such powers on the Reserve Bank.

Clause 16.—This clause seeks to substitute section 30A of the Act relating to powers of the National Housing Bank to determine policy and issue directions to confer such powers on the Reserver Bank.

Clause 17.—This clause seeks to substitute section 31 of the Act relating to power of the National Housing Bank to collect information from housing finance institutions as to deposits and give directions. It is proposed to provide that a copy of the statement, information or particulars furnished to the National Housing Bank shall also be submitted to the Reserve Bank. Sub-clause (4) makes provision to confer powers on the Reserve Bank to give directions to the housing finance companies relating to or connected with the receipt of deposits. Sub-clauses (5) and (6) makes provisions to confer powers on the National Housing Bank and the Reserve Bank to prohibit acceptance of deposits by a housing finance companies if it fails to comply with the direction given by the Reserve Bank. Sub-clause (7) makes provision to confer powers on the National Housing Bank to direct a housing finance company to supply copy of its annual statements to its depositors in certain circumstances.

Clause 18.—This clause seeks to substitute section 32 of the Act relating to duty of housing finance institutions to furnish statements, etc., required by National Housing Bank. It is proposed to provide that every housing finance company shall furnish the statements, information or particulars called for and to comply with any direction given to it under the provisions of this Chapter and to do away with the requirement of framing of regulation for calling of such information.

Clause 19.—This clause seeks to substitute section 33 of the Act relating to power and duties of auditors of housing finance companies. It is proposed to amend sub-section (1) of this section to provide that the auditors of the housing finance companies shall also enquire from such companies as to whether they have furnished the required information also to the Reserve Bank in addition to the National Housing Bank and if not shall also make a report to the Reserve Bank. It is further proposed to amend sub-section (1A) to confer powers on the Reserve Bank to give directions to the auditors of the housing finance companies in relation to balance sheet, profit and loss account, etc. It is also proposed to amend sub-section (2) to provide that the report to be made to the Reserve Bank shall also be included in the report to be made under sub-section (2) of section 227 of the Companies Act, 1956. It is also proposed to amend sub-sections (3) and (4) to confer power upon the Reserve Bank to order special audit in certain circumstances and fix the remuneration of such auditors.

Clause 20.—This clause seeks to substitute section 33A of the Act relating to power of the National Housing Bank to prohibit acceptance of deposit and alienation of assets. It is proposed to confer such powers also on to the Reserve Bank consequent to transfer of regulation to the Reserve Bank. It provides for exercise of powers by the Reserve Bank and the National Housing Bank to prohibit acceptance of deposits by housing finance companies in certain circumstances. It further provides to confer powers upon the National Housing Bank to prohibit alienation of assets by housing finance companies for a period of six months from the date of prohibitory order.

Clause 21.—This clause seeks to amend section 33B of the Act relating to winding of housing finance companies. Clause (c) of sub-section (1) of this section provides for filing of application for winding up by the National Housing Bank where that Bank is satisfied that the housing finance company has been prohibited by the National Housing Bank from receiving deposits by an order and such order has been in force for a period of not less than three months. It is proposed to amend this provision to include such orders may also be passed by the Reserve Bank. The existing provision of sub-section (3) requires the National Housing Bank to send a copy of the application for winding up made by it also to the Registrar of Companies. It is proposed to amend this sub-section to provide that a copy of such application shall also be made to the Reserve Bank.

Clause 22.—This clause seeks to amend section 34 of the Act relating to inspection of housing finance companies. The existing provision of this section confers powers of inspection only in respect of companies accepting deposits. It is proposed to amend this section to confer powers relating to inspection of all the housing finance companies.

It is further proposed to insert new sub-sections (4) and (5) to this section to provide that a copy of the report of inspection shall be submitted by the National Housing Bank to the Reserve Bank and the powers of inspection referred to in this section exercisable by the National Housing Bank can also be exercised by the Reserve Bank, where it consider necessary to do so.

Clause 23.—This clause seeks to amend section 35 of the Act providing that the deposits not to be solicited by unauthorised persons. It is proposed to amend this provision so as to clarify that the same applies to the housing finance institutions which are companies and the prospectus or advertisement made by the companies complies with the orders made by the Reserve Bank and is consequential to the amendment of section 30 of the Act.

Clause 24.—This clause seeks to amend section 35A of the Act relating to disclosure of the information. It is proposed to amend this provision to clarify that the same applies to the information collected from housing finance institutions which are companies. It is further proposed to apply the provision of the section to information furnished to the Reserve Bank in addition to the National Housing Bank.

Clause 25.—This clause seeks to substitute section 35B of the Act relating to power of the National Housing Bank to exempt any housing finance institution from the applicability of Chapter V. It is proposed to confer such power on the Reserve Bank consequent to transfer of regulatory powers to that Bank. It is also proposed to provide that every order made under this section shall be laid before each House of Parliament.

Clause 26.—This clause seeks to amend section 36A of the Act relating to power to order repayment of deposits. The existing provision of sub-section (2) of this section confers powers on the officers of the National Housing Bank authorised by the Central Government for this purpose to order such repayment where the housing finance companies have failed to do so. It is proposed to substitute sub-section (2) of this section to confer such powers on the Company Law Board as in the case of the depositors of the non-banking financial companies referred to in the Reserve Bank of India Act, 1934.

Clause 27.—This clause seeks to amend section 36B of the Act relating to nomination by the depositors. It is proposed to amend this section to clarify that the same applies to the depositors of housing finance institutions which are companies.

Clause 28.—This clause seeks to omit Chapter VA of the Act containing special provisions for recovery of over dues of the approved institutions.

Clause 29.—This clause seeks to amend section 37 of the Act relating to establishment of General Fund and other Funds by the National Housing Bank. The existing provision of sub-section (2) of this section provides for creation of a special fund or a reserve fund also on the direction of the Reserve Bank. It is proposed to amend this section to make provisions for creation of such fund on the direction of the Central Government.

Clause 30.—This clause seeks to amend sub-section (2) of section 38 so as to change the present annual closing date of books of accounts as March 31st each year in place of June 30th each year.

Clause 31.—This clause seeks to substitute section 39 of the Act relating to disposal of surplus. It is proposed to provide that the surplus shall be transferred to the Central Government in case it holds the whole of the issued capital of the National Housing Bank and in other cases to the Central Government and any other person holding the issued capital proportionately as may be decided by the Board.

Clause 32.—This clause seeks to amend section 40 of the Act to provide for appointment of the auditors of the National Housing Bank by the Central Government in consultation with the Reserve Bank instead of appointment by the Reserve Bank.

Clause 33.—This clause seeks to amend section 41 of the Act to provide furnishing of the return also to the Central Government in addition to the Reserve Bank.

Clause 34.—This clause seeks to amend section 42 of the Act relating to preparation of the Annual Report on housing by the National Housing Bank. It is proposed to insert new sub-sections (2) and (3) to this section to enable the National Housing Bank to call for any information relating to housing from any institution or organisation and to provide that it shall be duty of such institution to furnish such information.

Clause 35.—This clause seeks to amend section 44 of the Act to apply the obligation relating to fidelity and secrecy also to the Reserve Bank.

Clause 36.—This clause seeks to amend section 46 of the Act to extend the protection in respect of action taken under this Act also to the Reserve Bank.

Clause 37.—This clause seeks to amend section 49 of the Act relating to penalties. Sub-section (2B) is proposed to be amended consequent to the amendment of section 33. Sub-section (2C) is proposed to be amended consequent to the amendment of section 36A. Sub-section (3) is proposed to be amended consequent to the amendment of section 33A.

Clause 38.—This clause seeks to amend section 51 of the Act relating to cognizance of offences. It is proposed to include the application to be made by the officers authorised by the Reserve Bank. It is further proposed to provide that the Magistrate may dispense with the personal attendance of the officers of the Reserve Bank as in the case of the National Housing Bank.

Clause 39.—This clause seeks to amend section 52 of the Act relating to application of fine. It is proposed to amend this section to clarify that the same applies to the housing finance institution which is a company.

Clause 40.—This clause seeks to substitute section 52A of the Act relating to imposition of penalty. It is proposed to confer powers upon the Reserve Bank and the National Housing Bank to impose monetary penalties.

Clause 41.—This clause seeks to omit section 54A of the Act and is consequent to the proposed omission of Chapter VA of the Act.

Clause 42.—This clause seeks to amend section 55 of the Act relating to the powers of the Board to make regulations. It is proposed to provide for making of regulations with the previous approval of the Central Government instead of previous approval of the Reserve Bank and in consultation of the Central Government. It is further proposed to omit clause (f) of sub-section (2) consequent to modification of section 32. Further, it is also proposed to omit clauses (fa), (fb), (fc) and (fd) consequent to omission of Chapter VA.

Clause 43.—This clause seeks to amend section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and to insert in sub-section (1) in clause (m) any housing finance institution which is a company registered under section 29A of the National Housing Bank Act, 1987 to cover such institution for the purposes of the said Act.

FINANCIAL MEMORANDUM

Clause 5 of the Bill proposes to insert new sections 4A and 4B which provides for transfer and vesting of capital of the National Housing Bank to the Central Government and payment by the Central Government to the Reserve Bank an amount equal to the face value of the subscribed capital of the National Housing Bank.

2. The face value of the subscribed capital of the National Housing Bank as on date is four hundred fifty crores rupees which is required to be paid by the Central Government to the Reserve Bank of India if the proposed legislations is enacted and brought into force.

3. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to substitute the proviso to section 4 of the National Housing Bank Act, 1987 (the said Act) to enable the Central Government to increase the authorised capital to such amount as may be specified in the notification from time to time.

2. Clause 12 of the Bill seeks to amend section 29A of the Act which provides that the net owned fund of a housing finance company shall be two hundred lakhs rupees and empowers the Reserve Bank to specify higher amount from time to time.

3. Clause 13 of the Bill seeks to amend section 29B of the Act which requires a housing finance company to maintain certain percentage of its assets in unencumbered securities and specified term deposits. The proposed amendment confers power upon the Reserve Bank to increase, by notification, the limit of such investments.

4. Clause 25 of the Bill seeks to substitute section 35B which empowers the Reserve Bank to exempt, by notification, any housing finance company from the provision of Chapter V of the Act. It further provides that every such order shall be laid before each House of Parliament.

5. The matters in respect of which notification may be issued are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE NATIONAL HOUSING BANK ACT, 1987

(53 OF 1987)

* * * * *

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

* * * * *

(d) “housing finance institution” includes every institution, whether incorporated or not, which primarily transacts or has as one of its principal objects, the transacting of the business of providing finance for housing, whether directly or indirectly;

* * * * *

CHAPTER II

ESTABLISHMENT OF THE NATIONAL HOUSING BANK AND CAPITAL THEREOF

3. (1) * * * * * Establish-
ment and
incorporation
of National
Housing
Bank.

(3) The head office of the National Housing Bank shall be at Bombay or at such other place as the Reserve Bank may, by notification, specify.

4. (1) The authorised and paid-up capital of the National Housing Bank shall be three hundred and fifty crores of rupees: Capital.

Provided that the Central Government may, in consultation with the Reserve Bank, by notification, increase the authorised capital up to two thousand crores of rupees.

* * * * *

6. (1) The Board of Directors of the National Housing Bank shall consist of the following, namely:— Board of
Directors.

* * * * *

(d) two directors from out of the directors of the Reserve Bank;

* * * * *

(2) The Chairman, the Managing Director and other directors excluding the directors referred to in clauses (ca) and (d), shall be appointed by the Central Government in consultation with the Reserve Bank and directors referred to in clause (d) shall be nominated by the Reserve Bank.

7. (1) * * * * * Term of
office of
Chairman,
Managing
Director and
other
directors,
service
conditions,
etc.

(5) The directors shall be paid such fees and allowances as may be prescribed for attending the meetings of the Board or of any of its committees and for attending to any other work of the National Housing Bank:

Provided that no such fee shall be payable to any director, who is an official of the Government or a director of the Reserve Bank.

* * * * *

CHAPTER IV

BUSINESS OF THE NATIONAL HOUSING BANK

Business of the National Housing Bank.

14. Subject to the provisions of this Act, the National Housing Bank may transact all or any of the following kinds of business, namely:—

* * * * *

(b) making of loans and advances or rendering any other form of financial assistance whatsoever for housing activities to housing finance institutions, scheduled banks, state co-operative agricultural and rural development banks or any other institution or class of institutions as may be notified by the Central Government;

* * * * *

(ea) buying, selling or otherwise dealing in any loans or advances secured by mortgage or charge of the immovable property relating to scheduled banks or housing finance institutions;

* * * * *

(f) promoting, forming, conducting or associating in the promotion, formation or conduct of companies, mortgage banks, subsidiaries, societies, trusts or such other association of persons as it may deem fit for carrying out all or any of its functions under this Act;

* * * * *

(k) providing guidelines to the housing finance institutions to ensure their growth on sound lines;

* * * * *

Loans in foreign currency.

16. (1) Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1973 or in any other law for the time being in force relating to foreign exchange, the National Housing Bank may, for the purpose of making loans and advances under this Act, borrow in such manner and on such conditions as may be prescribed in consultation with the Reserve Bank and with the previous approval of the Central Government, foreign currency from any bank or financial institution in India or elsewhere.

46 of 1973.

* * * * *

Amount and security to be held in trust.

16B. (1) Any sums received by a borrowing institution in repayment or realisation of loans and advances financed or refinanced either wholly or partly by the National Housing Bank shall, to the extent of the accommodation granted by the National Housing Bank and remaining outstanding, be deemed to have been received by the borrowing institution in trust for the National Housing Bank, and shall accordingly be paid by such institution to the National Housing Bank.

* * * * *

CHAPTER V

PROVISIONS RELATING TO HOUSING FINANCE INSTITUTIONS RECEIVING DEPOSITS

* * * * *

Requirement of registration and net owned fund.

29A. (1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no housing finance institution which is a company shall commence or carry on the business of a housing finance institution without—

* * * * *

(b) having the net owned fund of twenty-five lakh rupees or such other higher amount, as the National Housing Bank may, by notification, specify.

(2) Every such housing finance institution shall make an application for registration to the National Housing Bank in such form as may be specified by the National Housing Bank:

15 of 2000. Provided that a housing finance institution which is a company in existence on the commencement of the National Housing Bank (Amendment) Act, 2000, shall make an application for registration to the National Housing Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1), may continue to carry on the business of housing finance institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

15 of 2000. (3) Notwithstanding anything contained in sub-section (1), a housing finance institution which is a company in existence on the commencement of the National Housing Bank (Amendment) Act, 2000, and having a net owned fund of less than twenty-five lakh rupees, may, for the purpose of enabling such institution to fulfil the requirement of the net owned fund, continue to carry on the business of a housing finance institution—

(i) for a period of three years from such commencement; or

(ii) for such further period as the National Housing Bank may, after recording the reasons in writing for so doing, extend,

subject to the conditions that such institution shall, within three months of fulfilling the requirement of the net owned fund, inform the National Housing Bank about such fulfilment:

Provided that the period allowed to continue business under this sub-section shall in no case exceed six years in the aggregate.

(4) The National Housing Bank, for the purpose of considering the application for registration, may require to be satisfied by an inspection of the books of such housing finance institution or otherwise that the following conditions are fulfilled:—

(a) that housing finance institution is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b) that the affairs of the housing finance institution are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c) that the general character of the management or the proposed management of the housing finance institution shall not be prejudicial to the public interest or the interests of its depositors;

(d) that the housing finance institution has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration to the housing finance institution to commence or to carry on the business in India;

(f) that the grant of certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country; and

(g) any other condition, fulfilment of which in the opinion of the National Housing Bank, shall be necessary to ensure that the commencement of or carrying on the business in India by a housing finance institution shall not be prejudicial to the public interest or in the interests of the depositors.

(5) The National Housing Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

(6) the National Housing Bank may cancel a certificate of registration granted to a housing finance institution under this section if such institution—

* * * * *

(iv) fails—

(a) to comply with any direction issued by the National Housing Bank under the provisions of this Chapter; or

(b) to maintain accounts in accordance with the requirement of any law or any direction or order issued by the National Housing Bank under the provisions of this Chapter; or

(c) to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the National Housing Bank; or

(v) has been prohibited from accepting deposit by an order made by the National Housing Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration on the ground that the housing finance institution has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4), the National Housing Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the housing finance institution, shall give an opportunity to such institution on such terms as the National Housing Bank may specify for taking necessary steps to comply with such provision or fulfilment of such condition:

Provided further that before making any order of cancellation of certificate of registration, such institution shall be given a reasonable opportunity of being heard.

(7) A housing finance institution aggrieved by the order or rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the National Housing Bank where no appeal has been preferred, shall be final:

Provided that before making any order of rejection of appeal, such institution shall be given a reasonable opportunity of being heard.

Explanation.—For the purposes of this section,—

(1) “net owned fund” means—

* * * * *

(b) further reduced by the amounts representing—

(1) investments of such institution in shares of—

* * * * *

(iii) all other housing finance institutions which are companies;

and

* * * * *

Maintenance of percentage of assets.

29B. (1) Every housing finance institution shall invest and continue to invest in India in unencumbered approved securities, valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than five per cent. or such higher percentage not exceeding twenty-five per cent. as the National Housing Bank may, from time to time and by notification, specify, of the deposits

outstanding at the close of business on the last working day of the second preceding quarter.

(2) Every housing finance institution shall maintain in India in an account with a scheduled bank in term deposits or certificate of deposits (free of charge or lien) or in deposits with the National Housing Bank or by way of subscription to the bonds issued by the National Housing Bank, or partly in such account or in such deposit or partly by way of such subscription, a sum which, at the close of business on any day, together with the investment made under sub-section (1) shall not be less than ten per cent. or such higher percentage not exceeding twenty-five per cent., as the National Housing Bank may, from time to time and by notification specify, of the deposits outstanding in the books of the housing finance institution at the close of business on the last working day of the second preceding quarter.

(3) For the purpose of ensuring compliance with the provisions of this section, the National Housing Bank may require every such housing finance institution to furnish a return to it in such form, in such a manner and for such period as may be specified by the National Housing Bank.

(4) If the amount invested by a housing finance institution at the close of business on any day is less than the rate specified under sub-section (1) or sub-section (2), such housing finance institution shall be liable to pay to the National Housing Bank, in respect of such shortfall, a penal interest at a rate of three per cent. per annum above the bank rate on such amount by which the amount actually maintained or invested falls short of the specified percentage, and where the shortfall continues in the subsequent quarters, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent quarter.

(5) (a) The penal interest payable under sub-section (4) shall be payable within a period of fourteen days from the date on which a notice issued by the National Housing Bank demanding payment of the same is served on the housing finance institution and, in the event of a failure of the housing finance institution to pay the same within such period, may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting housing finance institution is situated and such direction shall be made only upon and application made in this behalf to the court by the National Housing Bank; and

(b) When the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the housing finance institution and every such certificate shall be enforceable in the manner as if it were a decree made by the court in a suit.

(6) Notwithstanding anything contained in this section, if the National Housing Bank is satisfied that the defaulting housing finance institution had sufficient cause for its failure to comply with the provisions of sub-section (1) or sub-section (2), it may not demand the payment of the penal interest.

Explanation.— For the purposes of this section,—

(i) “approved securities” means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government;

(ii) “unencumbered approved securities” includes the approved securities lodged by the housing finance institution with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner;

(iii) “quarter” means the period of three months ending on the last day of March, June, September or December.

Reserve fund.

29C. (1) * * * *

(2) No appropriation of any sum from the reserve fund including any sum in the special reserve which has been taken into account for the purposes of reserve fund in terms of sub-section (1), shall be made by such housing finance institution except for the purpose as may be specified by the National Housing Bank from time to time and every such appropriation shall be reported to the National Housing Bank within twenty-one days from the date of such withdrawal:

Provided that the National Housing Bank may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the National Housing Bank and having regard to the adequacy of the paid-up capital and reserves of a housing finance institution which is a company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not be applicable to such housing finance institution for such period as may be specified in the order:

Provided that no such order shall be made unless the amount in the reserve fund under sub-section (1), together with the amount in the share premium account, is not less than the paid-up capital of the housing finance institution.

National Housing Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money.

30. The National Housing Bank may, if it considers necessary in the public interest so to do, by general or special order,—

(a) regulate or prohibit the issue by any housing finance institution of any prospectus or advertisement soliciting deposit of money from the public; and

(b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.

Power of the National Housing Bank to determine policy and issue directions.

30A. (1) If the National Housing Bank is satisfied that, in the public interest or to regulate the housing finance system of the country to its advantage or to prevent the affairs of any housing finance institution being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the housing finance institutions, it is necessary or expedient so to do, it may subject to the provisions of sub-section (5) of section 5, determine the policy and give directions to all or any of the housing finance institution relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a housing finance institution or a group of housing finance institutions or housing finance institutions generally, as the case may be, and such housing finance institutions shall be bound to follow the policy so determined and the direction so issued.

(2) Without prejudice to the generality of the powers vested under sub-section (1), the National Housing Bank may give directions to housing finance institutions generally or to a group of housing finance institutions or to any housing finance institution in particular as to —

(a) the purpose for which advances or other fund-based or non-fund-based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the housing finance institution and other relevant considerations, may be made by that housing finance institution to any person or a company or to a group of companies.

31. (1) The National Housing Bank may at any time direct that every housing finance institution accepting deposits shall furnish to the National Housing Bank in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by the housing finance institution, as may be specified by the National Housing Bank by general or special order.

Power of National Housing Bank to collect information from housing finance institutions as to deposits and to give directions.

(2) Without prejudice to the generality of the power vested in the National Housing Bank under sub-section (1), the statements, information or particulars to be furnished under sub-section (1), may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, such deposits are received.

(3) The National Housing Bank may, if it considers necessary in the public interest so to do, give directions to housing finance institutions accepting deposits either generally or to any group of housing finance institutions accepting deposits, and in particular, in respect of any matters relating to, or connected with, the receipt of deposits, including credit rating of the housing finance institution accepting deposits, the rates of interest payable on such deposits, and the periods for which deposits may be received.

(4) If any housing finance institution accepting deposits fails to comply with any direction given by the National Housing Bank, under sub-section (3), the National Housing Bank may prohibit the acceptance of deposits by that housing finance institution.

(5) Every housing finance institution receiving deposits, shall, if so required by the National Housing Bank and within such time as the National Housing Bank may specify, cause to be sent at the cost of the housing finance institution, a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the housing finance institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by the National Housing Bank.

32. Every housing finance institution shall furnish the statements, information or particulars called for, in such form as may be prescribed and to comply with any direction given to it, under the provisions of this Chapter.

Duty of housing finance institutions to furnish statements, etc., required by National Housing Bank.

33. (1) The auditor of every housing finance institution shall enquire whether or not the housing finance institution has furnished to the National Housing Bank such statements, information or particulars relating to or connected with deposits received by it, as are required to be furnished under this Chapter, and the auditor shall, except where he is satisfied on such enquiry that the housing finance institution has furnished such statements, information or particulars, make a report to the National Housing Bank giving the aggregate amount of such deposits held by the housing finance institution.

Powers and duties of auditors.

(1A) The National Housing Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interest of the depositors or for the purpose of proper assessment of the books of account, issue directions to any housing finance institution or any group of housing finance institutions or housing finance companies generally or to the auditors of such housing finance institution or institutions relating to balance-sheet, profit and loss account, disclosure of liabilities in the books of account or any matter relating thereto.

(2) Where, in the case of a housing finance institution, being a company, the auditor has made, or intends to make a report to the National Housing Bank under sub-section (1), he shall include in his report under sub-section (2) of section 227 of the Companies Act, 1956, the contents of the report which he has made, or intends to make, to the National Housing Bank.

(3) Where the National Housing Bank is of the opinion that it is necessary so to do in the public interest or in the interest of the housing finance institution or in the interest of the

depositors of such institution, it may at any time by order, direct that a special audit of the accounts of the housing finance institution in relation to any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and the National Housing Bank may appoint an auditor or auditors to conduct such special audit and direct the auditor or the auditors to submit the report to it.

(4) The remuneration of the auditors as may be fixed by the National Housing Bank, having regard to the nature and volume of work involved in the audit and the expenses of or incidental to the audit, shall be borne by the housing finance institution so audited.

Power of National Housing Bank to prohibit acceptance of deposit and alienation of assets.

33A. (1) if any housing finance institution violates the provisions of any section or fails to comply with any direction or order given by the National Housing Bank under any of the provisions of this Chapter, the National Housing Bank may prohibit the housing finance institution from accepting any deposit.

(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the National Housing Bank on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the housing finance institution against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the National Housing Bank for such period not exceeding six months from the date of the order.

Power of National Housing Bank to file winding up petition.

33B. (1) The National Housing Bank, on being satisfied that a housing finance institution which is a company,—

* * * * *

(c) has been prohibited by the National Housing Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or

* * * * *

(3) A copy of every application made by the National Housing Bank under subsection (1) shall be sent to the Registrar of Companies.

* * * * *

Inspection.

34. (1) The National Housing Bank may, at any time, cause an inspection to be made by one or more of its officers or employees or other persons (hereafter in this section referred to as the inspecting authority) of any housing finance institution accepting deposits, for the purpose of verifying the correctness or completeness of any statement, information or particulars furnished to the National Housing Bank or for the purpose of obtaining any information or particulars which the housing finance institution has failed to furnish on being called upon to do so.

(2) It shall be the duty of every director or member of any committee or other body or any person for the time being vested with the management of the whole or part of the affairs of every housing finance institution accepting deposits or other officer or employee thereof to produce to the inspecting authority all such books, accounts and other documents in his custody or power and to furnish that authority with any statement and information relating to the business of the institution as that authority may require of him, within such time as may be specified by that authority.

(3) The inspecting authority may examine on oath any director or member of any committee or body or any other person for the time being vested with the management of the affairs of the housing finance institution accepting deposits, or any officer or employee thereof, in relation to its business.

35. No person shall solicit on behalf of any housing finance institution either by

publishing or causing to be published any prospectus or advertisement or in any other manner deposits of money from the public unless—

Deposits not to be solicited by unauthorised persons.

(a) he has been authorised in writing by the said housing finance institution to do so and specifies the name of the institution which has so authorised him; and

(b) the prospectus or advertisement complies with any order made by the National Housing Bank under section 30 and with any other provision of law for the time being in force applicable to the publication of such prospectus or advertisement.

35A. (1) Any information relating to a housing finance institution,—

Disclosure of information.

(a) contained in any statement or return submitted by such institution under the provisions of this Chapter; or

(b) obtained through audit or inspection or otherwise by the National Housing Bank,

shall be treated as confidential and shall not, except otherwise provided in this section, be disclosed.

(2) Nothing in this section shall apply to—

(a) the disclosure by any housing finance institution, with the previous permission of the National Housing Bank, of any information furnished to the National Housing Bank under sub-section (1);

(b) the publication by the National Housing Bank, if it considers necessary in the public interest so to do, of any information collected by it under sub-section (1) in such consolidated form as it may think fit without disclosing the name of any housing finance institution or its borrowers;

(c) the disclosure by the housing finance institution or by the National Housing Bank of any such information to any other housing finance institution or in accordance with the practice and usage customary amongst such institutions or as permitted or required under any other law:

Provided that any such information received by a housing finance institution under this clause shall not be published except in accordance with the practice and usage customary amongst institutions or as permitted or required under any other law.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, the National Housing Bank, if it is satisfied that, in the public interest or in the interest of the depositors or the housing finance institution or to prevent the affairs of any housing finance institution being conducted in a manner detrimental to the interest of the depositors, it is expedient so to do, may, either on its own motion or on being requested, furnish or communicate any information relating to the conduct of business by any housing finance institution to any authority constituted under any law.

(4) Notwithstanding anything contained in any other law for the time being in force, no court or tribunal or other authority shall compel the National Housing Bank to produce or to give inspection of any statement or other material obtained by the National Housing Bank under any provision of this Chapter.

35B. The National Housing Bank on being satisfied that it is necessary so to do, may, declare by notification that any or all the provisions of this Chapter shall not apply to a housing finance institution or a group of housing finance institutions either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose.

Power of National Housing Bank to exempt any housing finance institution.

* * * * *
36A. (1) * * * * *

Power to order
repayment of
deposit.

(2) Where a housing finance institution which is a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, such officer of the National Housing Bank, as may be authorised by the Central Government for the purpose of this section (hereinafter referred to as the “authorised officer”) may, if he is satisfied, either on his own motion or on any application of the depositor, that it is necessary so to do to safeguard the interests of the housing finance institution, the depositors or in the public interest, direct, by order, such housing finance institution to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the authorised officer may, before making any order under this sub-section, give a reasonable opportunity of being heard to the housing finance institution and the other persons interested in the matter.

Nomination
by depositors.

36B. (1) Where a deposit is held by a housing finance institution to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949 one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the housing finance institution.

10 of 1949.

(2) Notwithstanding anything contained in any other law for the time being in force, or in any deposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made purports to confer on any person the right to receive the amount of deposit from the housing finance institution, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, any person to receive the amount of deposit in the event of his death during the minority of the nominee.

10 of 1949.

(4) Payment by a housing finance institution in accordance with the provisions of this section shall constitute a full discharge to the housing finance institution of its liability in respect of the deposit:

10 of 1949.

Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

(5) No notice of the claim of any person, other than the person or persons in whose name a deposit is held by the housing finance institution, shall be receivable by the housing finance institution, nor shall the housing finance institution be bound by any such notice even though expressly given to it:

Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such deposit is produced before a housing finance institution, the housing finance institution shall take due note of such decree, order, certificate or other authority.

OTHER PROVISIONS RELATING TO HOUSING FINANCE INSTITUTIONS

36C. In this Chapter, unless the context otherwise requires,—

(a) “Appellate Tribunal” means the Appellate Tribunal established under section 36-I; Definitions.

(b) “approved institution” means—

(i) a housing finance institution which has been granted a certificate of registration under sub-section (5) of section 29A;

(ii) a scheduled bank;

(iii) National Housing Bank acting as trustee or otherwise in a transaction of securitisation of housing mortgages undertaken by the National Housing Bank;

(iv) such other institutions as the Central Government may, on the recommendation of the National Housing Bank, by notification, specify;

(c) “assistance” means any direct or indirect financial assistance granted, by an approved institution during the course of any housing finance activity undertaken by it;

(d) “borrower” means any person to whom any assistance has been given by an approved institution for the purposes of purchase, construction, repairs, extension or renovation of a residential house;

(e) “dues” means any liability which is claimed as due from any person by an approved institution and includes interest, costs, charges and other amount payable in relation thereto;

(f) “recovery officer” means an officer appointed under section 36D.

36D. (1) The Central Government may, in consultation with the National Housing Bank, by notification appoint such persons being the officers of the approved institution, as it may deem fit, to be recovery officers for the purpose of this Chapter who shall have such qualifications as the Central Government may by rules made under this Act specify.

Appointment of recovery officer.

(2) The local limits within which the recovery officer shall exercise the powers conferred and perform the duties imposed on by or under this Chapter shall be such as may be specified by the Central Government by notification.

36E. (1) Where any borrower, who is under a liability to an approved institution under an agreement, makes any default in repayment of any assistance or any instalment thereof or otherwise fails to comply with the terms of said agreement, then, without prejudice to the provisions of section 69 of the Transfer of Property Act, 1882, the approved institution may apply, to the recovery officer within the limits of whose jurisdiction the borrower actually and voluntarily resides, or carries on business or personally works for gain, or the cause of action wholly or in part arises, for the sale of the property pledged, mortgaged, hypothecated or assigned to the approved institution as security for the dues.

Application to the recovery officer.

(2) Where an approved institution, which has to recover its dues from any borrower, has filed an application to the recovery officer under sub-section (1) and the same property is also pledged, mortgaged, hypothecated or assigned to another approved institution or person, the other approved institution or person may join the approved institution at any stage of the proceedings, before the final order is passed, by making an application to that recovery officer.

(3) In the application under sub-section (1) or sub-section (2), the nature and extent of the liability of the borrower to the approved institution or person, the grounds on which it is made shall be stated and it be in such form and be accompanied by such documents or other evidence as may be prescribed.

Procedure in respect of application under section 36E.

36F. (1) On receipt of an application under section 36E, if the recovery officer is of opinion that the borrower is under a liability to an approved institution under an agreement, or has made default in repayment of the assistance or any instalment thereof or has otherwise failed to comply with the terms of said agreement, he shall cause a written notice of demand in such form as may be prescribed to be served on the borrower, calling upon him to pay the amount specified in the notice within a period of ninety days from the date of service thereof or to show cause as to why the relief prayed for should not be granted.

(2) The recovery officer may after giving the applicant and the borrower an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(3) The recovery officer may also consider and if satisfied, allow any claim of set-off or counter-claim set up by the borrower against the approved institution or person.

(4) The recovery officer shall supply a copy of every order passed by it to the approved institution and the borrower.

(5) The recovery officer may make an interim order (whether by way of injunction or stay or attachment) against the borrower to debar him from transferring, alienating or otherwise dealing with or disposing of, any property which is pledged, mortgaged, hypothecated or assigned to the approved institution as security for the dues.

(6) The application made to the recovery officer under section 36E shall be dealt with by him as expeditiously as possible and endeavour shall be made by him to dispose of the application finally within six months from the date of receipt of the application.

Enforcement of order of recovery officer.

36G. (1) Where the borrower refuses or fails to comply with the order within the time specified therein the recovery officer may, take possession of any property pledged, mortgaged, hypothecated or assigned to the approved institution as security for any assistance in respect of which default has been made and transfer by way of sale, lease or otherwise such property.

(2) Any transfer by way of sale, lease or otherwise under this section shall be conducted in such manner as may be prescribed.

(3) Any transfer of property made by the recovery officer, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred, as if the transfer has been made by the owner of the property.

(4) Where any action has been taken against the borrower under the provisions of sub-section (1), all costs, charges, expenses which in the opinion of the recovery officer have been properly incurred by him as incidental thereto, shall be recoverable from the borrower and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and secondly, in discharge of debt, due to the approved institution, and the residue of the money so received shall be paid to the person entitled thereto.

(5) If the dues of the approved institution, together with all costs, charges and expenses incurred by the recovery officer, are tendered to the approved institution or to the recovery officer at any time before the date fixed for sale or transfer, the property shall not be sold or transferred, and no further steps shall be taken for transfer or sale of that property.

Chief Metropolitan Magistrate and District Magistrate to assist recovery officer in taking charge of property.

36H. (1) Where any property is sold or leased in pursuance of any power conferred by section 36E, the recovery officer may, for the purpose of taking into custody or under control any such property, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such property or other documents relating thereto may be situated or found to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him,—

- (a) take possession of such property and documents relating thereto; and
- (b) forward them to the recovery officer.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

36-I. (1) The Central Government shall, by notification, establish one or more Appellate Tribunals, to be known as the Housing Finance Institutions Debt Recovery Appellate Tribunals, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Establishment of Appellate Tribunal.

(2) The Central Government shall also specify in the notification referred to in sub-section (1), the areas in relation to which the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Central Government may authorise the Presiding Officer of an Appellate Tribunal to discharge also the functions of the Presiding Officer of other Appellate Tribunal.

36-J. An Appellate Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Appellate Tribunal) to be appointed, by notification, by the Central Government.

Composition of Appellate Tribunal.

36-K. A person shall not be qualified for appointment as the Presiding Officer of an Appellate Tribunal, unless he—

Qualifications for appointment as Presiding Officer of Appellate Tribunal.

(a) is, or has been, or is qualified to be a District Judge;

(b) has been a Member of the Indian Legal Service and has held a post in Grade II of that Service for at least three years.

36-L. The Presiding Officer of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Term of office.

36-M. (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as that Government may think fit.

Staff of Appellate Tribunal.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as the Central Government may by rules made under this Act specify.

36-N. The salary and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Presiding Officer of an Appellate Tribunal shall be such as the Central Government may by rules made under this Act specify:

Salaries and allowances and other terms and conditions of service of Presiding Officers.

Provided that neither the salary and allowances nor the other terms and conditions of a Presiding Officer shall be varied to his disadvantage after appointment.

36-O. If, for any reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of an Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Filling up of vacancies.

Resignation
and removal.

36P. (1) The Presiding Officer of an Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the said Presiding Officer shall, unless he is permitted by the Central Government, to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

(2) The Presiding Officer of an Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after enquiry made by a Judge of a High Court in which the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges.

(3) The Central Government may, by rules made under this Act, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding Officer.

Orders
constituting
Appellate
Tribunal to be
final and not
to invalidate
its proceed-
ings.

36Q. No order of the Central Government appointing any person as the Presiding Officer of an Appellate Tribunal shall be called in question in any manner, and no act or proceeding before an Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the establishment of an Appellate Tribunal.

Jurisdiction,
powers and
authority of
Appellate
Tribunal.

36R. An Appellate Tribunal shall exercise the jurisdiction, powers and authority to entertain appeals against any order made or deemed to have been made by the recovery officer under this Act.

Appeal to the
Appellate
Tribunal.

36S. (1) Any person aggrieved by an order made or deemed to have been made by the recovery officer under this Chapter, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made or deemed to have been made by the recovery officer is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

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

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

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

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

Deposit of
amount due,
on filing ap-
peal.

36T. Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent, of the amount due from him as determined by the recovery officer:

Provided that the Appellate Tribunal may, for the reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

5 of 1908.	<p>36U. (1) The recovery officer and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any regulations, the recovery officer and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.</p>	Procedure and powers of recovery officer and Appellate Tribunal.
5 of 1908.	<p>(2) The recovery officer and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—</p> <p style="margin-left: 20px;">(a) summoning and enforcing the attendance of any person and examining him on oath;</p> <p style="margin-left: 20px;">(b) requiring the discovery and production of documents;</p> <p style="margin-left: 20px;">(c) receiving evidence on affidavits;</p> <p style="margin-left: 20px;">(d) issuing commissions for the examination of witnesses or documents;</p> <p style="margin-left: 20px;">(e) reviewing its decisions;</p> <p style="margin-left: 20px;">(f) dismissing an application for default or deciding it <i>ex parte</i>;</p> <p style="margin-left: 20px;">(g) setting aside any order of dismissal of any application for default or any order passed by it <i>ex parte</i>; and</p> <p style="margin-left: 20px;">(h) any other matter which may be prescribed.</p> <p>(3) Any proceeding before the recovery officer or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the recovery officer or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.</p>	
45 of 1860. 2 of 1974. 36 of 1963.	<p>36V. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to recovery officer.</p>	Limitation.
45 of 1860.	<p>36W. The Presiding Officer, other officers and employees of an Appellate Tribunal and the recovery officer shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.</p>	Presiding Officer, recovery officer, other officers and employees to be public servant.
	<p>36X. No suit, prosecution or other legal proceedings shall lie against the Central Government or against the Presiding Officer of an Appellate Tribunal or against the recovery officer for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rule or regulation or order made thereunder.</p>	Protection of action taken in good faith.
	<p>36Y. No Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in this Chapter.</p>	Bar of jurisdiction.
51 of 1993.	<p>36Z. Notwithstanding anything contained in this Act till the establishment of the Appellate Tribunal under section 36-I for any area, the Appellate Tribunal established under section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and which is functioning in that area shall exercise the jurisdiction, powers and authority conferred on the Appellate Tribunal under this Act.</p>	Transitional provisions.

CHAPTER VI

FUNDS, ACCOUNTS AND AUDIT

General Fund and other funds.	<p>37. (1) * * * *</p> <p>(2) The Board may, and shall, if so directed by the Reserve Bank, create a special fund or a reserve fund or such other funds as may be prescribed.</p>
Preparation of balance sheet, etc., of National Housing Bank.	<p>38. (1) * * * *</p> <p>(2) The Board shall cause the books and accounts of the National Housing Bank to be balanced and closed as on the thirtieth day of June, each year.</p>
Disposal of surplus.	<p>39. After making provision for bad and doubtful debts, depreciation of assets and all other matters for which provision is necessary or expedient or which is usually provided for by bankers, the National Housing Bank shall transfer—</p> <p style="padding-left: 40px;">(i) for a period of fifteen years, following the accounting year during which the National Housing Bank is established, the amount remaining (hereafter in this section referred to as surplus) such of the funds referred to in section 37 as the Reserve Bank may specify; and</p> <p style="padding-left: 40px;">(ii) after the expiry of the said period of fifteen years, the National Housing Bank shall, after making provision for the funds referred to in section 37, transfer the balance of surplus to the Reserve Bank.</p>
Audit.	<p>40. (1) The accounts of the National Housing Bank shall be audited by auditors duly qualified to act as auditors under sub-section (1) of section 226 of the Companies Act, 1956, who shall be appointed by the Reserve Bank, for such term and on such remuneration as the Reserve Bank may fix.</p>
	* * * *
Returns.	<p>41. The National Housing Bank shall furnish, from time to time, to the Reserve Bank such information and returns as the Reserve Bank may require.</p>
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Obligation as to fidelity and secrecy.	<p>44. (1) The National Housing Bank shall not, except as otherwise required by this Act or any other law, divulge any information relating to, or to the affairs of, its constituents except in circumstances in which it is, in accordance with the law or practice and usage customary among bankers, necessary or appropriate for the National Housing Bank to divulge such information.</p>
	* * * *
Protection of action taken under the Act.	<p>46. No suit or other legal proceeding shall lie against the National Housing Bank or any director or any officer or other employee of the National Housing Bank or any other person authorised by the National Housing Bank to discharge any functions under this Act for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or of any other law or provision having the force of law.</p>
	* * * *

1 of 1956.

49. (1) * * * * * Penalties.

(2B) If any auditor fails to comply with any direction given or order made by the National Housing Bank under section 33, he shall be punishable with fine which may extend to five thousand rupees.

(2C) Whoever fails to comply with any order made by the authorised officer under sub-section (2) of section 36A, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues.

(3) If any person other than an auditor—

* * * * *

(aa) fails to comply with any direction given or order made by the National Housing Bank under any of the provisions of Chapter V; or

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51. (1) No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the National Housing Bank, generally or specially authorised in writing in this behalf by the National Housing Bank, and no court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or a court superior thereto shall try any such offence. Cognizance of offences.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Magistrate may, if he sees reasons so to do, dispense with the personal attendance of the officer of the National Housing Bank filing the complaint but the Magistrate may in his discretion, at any stage of the proceedings, direct the personal attendance of the complainant.

52. A court imposing fine under the Act may direct that the fine, if realised shall be applied— Application of fine.

* * * * *

(b) secondly for repayment of the deposit to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the housing finance institution to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged.

52A. (1) Notwithstanding anything contained in section 49, if the contravention or default of the nature referred to in section 49 is committed by a housing finance institution which is a company, the National Housing Bank may impose on such institution— Power of National Housing Bank to impose fine.

(a) a penalty not exceeding five thousand rupees; or

(b) where the contravention or default is under sub-section (2A) or clause (a) or clause (aa) of sub-section (3) of section 49, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the National Housing Bank shall serve a notice on the housing finance institution requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such housing finance institution.

(3) Any penalty imposed by the National Housing Bank under this section shall be payable within a period of thirty days from the date on which notice issued by the National Housing Bank demanding payment of the sum is served on the housing finance institution

and, in the event of failure of the housing finance institution to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where the registered office or the head office of the housing finance institution is situated:

Provided that no such direction shall be made, except on an application made by an officer of the National Housing Bank authorised in this behalf, to the principal civil court.

(4) The court which makes a direction under sub-section (3), shall issue a certificate specifying the sum payable by the housing finance institution and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.

(5) No complaint shall be filed against any housing finance institution in any court of law pertaining to any contravention or default in respect of which any penalty has been imposed by the National Housing Bank under this section.

(6) Where any complaint has been filed against a housing finance institution in a court in respect of contravention or default of the nature referred to in section 49, no proceedings for imposition of penalty against the housing finance institution shall be taken under this section.

* * * * *

Power to make rules.

54A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) qualifications for appointment as a recovery officer under sub-section (1) of section 36D;

(b) the salaries and allowances and other terms and conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 36M;

(c) the salaries and allowances and other terms and conditions of service of the Presiding Officers of the Appellate Tribunal under section 36N; and

(d) the procedure for the investigation of misbehaviour or incapacity of the Presiding Officers of the Appellate Tribunals under sub-section (3) of section 36P.

Powers of the Board to make regulations.

55. (1) The Board may, with the previous approval of the Reserve Bank and in consultation with the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions 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:—

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(f) the form in which the statements, information, etc., is to be furnished under section 32;

(fa) the form of application to be made under section 36E and the documents to be annexed to such application;

(fb) the form in which notice of demand is required to be served on the borrower under sub-section (1) of section 36F;

(fc) the manner in which the property shall be transferred under sub-section (2) of section 36G;

(fd) the form in which the appeal can be filed with the Appellate Tribunal under section 36S and the amount of fee required to be deposited with such appeal;

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EXTRACT FROM THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (54 OF 2002)

* * * * *

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

Definitions.

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(m) “financial institution” means—

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LOK SABHA

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further to amend the National Housing Bank Act, 1987.

(Shri Pranab Mukherjee, Minister of Finance)