

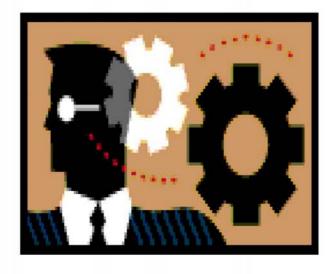
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CS EXECUTIVE

MODULE-1

ECONOMIC, BUSINESS
AND COMMERCIAL LAWS

BY:- CS NITESH KR. JAISWAL

(Company Secretary (FCS), LL.B.)

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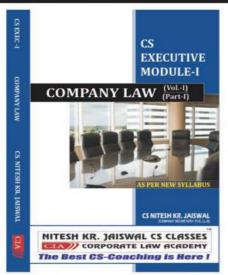
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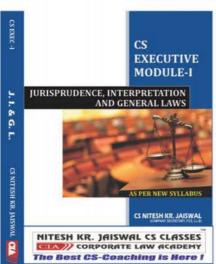
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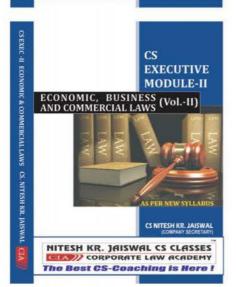
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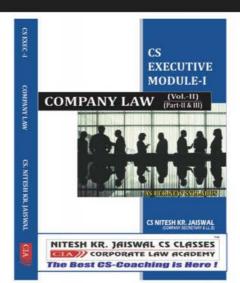
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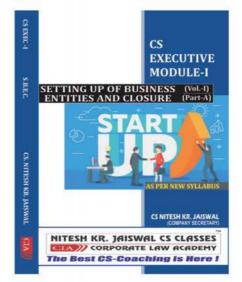
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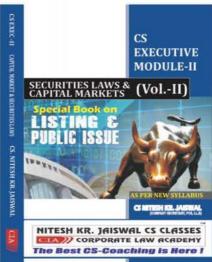












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Acknowledgements

The author thanks the fellow professionals and friends for their fruitful contribution

- CS. Vinita Jangra
- CS. Ashutosh Kumar
- CS. Rohit Kashyab
- CS. Sudhir Kumar
- CS. Sourabh Raha

And



Preface

We have great pleasure in placing the book on Economic, Business and Commercial Laws in the hands of students. This book gives a complete and overall prospect about Economic, Business and Commercial Laws from examination point of view and meets the requirements of all levels of students preparing for Company Secretaryship examination. The focus continues on equipping the students with theories, concepts and techniques that can be applied to various spheres of Company Secretary professional.

The important features of this book are as follows:

- ❖ It is user friendly and provides information in well structured manner.
- It incorporates latest changes relating to the subject, Economic, Business and Commercial Laws.
- It elaborates the concept through practical problems.
- * Tables and diagrams are used for explaining the key concepts.
- Lucid and comprehensive presentation of the complex and advanced subjects matter will help the students in easy understanding.
- ❖ The book is comprehensive and even a student who has not studied the subject earlier can easily understand the concept and system of Economic, Business and Commercial Laws.

There is no denying the fact that improvement is an unending process.

We look forward to the comments, suggestions and criticisms from the readers for improvement of this book and will be gratefully acknowledged.

However, it becomes necessary for every student to constantly update with legislative changes made as well as judicial pronouncements rendered from time to time by referring to the ICSI's monthly journal 'Chartered Secretary' and e-bulletin 'Student Company Secretary' as well as other law/professional journals and reference books.

Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws made upto six months preceding the date of examination.

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CS. NITESH KR. JAISWAL

(Company Secretary (FCS), LL.B.)



EXECUTIVE PROGRAMME Module 2 Paper 7 Economic, Business and Commercial Laws

SYLLABUS

Objectives

Part I: To provide expert knowledge in Foreign Exchange Management and NBFCs.

Part II: To provide expert knowledge in Competition Law.

Part III: To provide working knowledge in Business and Commercial Laws.

Part – I: Foreign Exchange Management & NBFCs (40 Marks)

- 1. Reserve Bank of India Act, 1934
- 2. Foreign Exchange Management Act, 1999
- 3. Foreign Exchange Transactions & Compliances
- 4. Foreign Contribution (Regulation) Act, 2010
- 5. Foreign Direct Investments
- 6. Overseas Direct Investment
- 7. Liberalized Remittance Scheme
- 8. External Commercial Borrowings (ECB)
- 9. Foreign Trade Policy & Procedure
- 10. Non-Banking Finance Companies (NBFCs)
- 11. Special Economic Zones Act, 2005

Part - II: Competition Law (25 Marks)

12. Competition Act, 2002

ECONOMIC, BUSINESS AND COMMERCIAL LAWS (Vol-1)

{Strictly as per new syllabus (2017) prescribed by The Institute of Company Secretaries of India (ICSI)}

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| 2 | FORGEIN EXCHANGE MANAGEMENT ACT, 1999 - INTRODUCTION | 15-34 |
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This book should be read along with "EBCL Vol-2" containing additional 12 Chapters of EBCL Part-III

This book is updated With all amendments Till 30th December, 2019

(Afterwards amendments will be included / discussed in live lectures at classroom)

ICSI Question Paper June 2019

(b)

2015-2020.

| NEV | V SYLLA | ABUS 427 |
|------|-----------|---|
| Roll | No | |
| Time | e allowed | l: 3 hours Maximum marks: 100 |
| Tota | l numbe | r of questions : 6 Total number of printed pages : 6 |
| NO1 | TE: An | swer ALL Questions. |
| | | PART-I |
| 1. | (a) | Reserve Bank of India is a banker of banks. Comment. |
| | (b) | How a person resident in India can hold, own, transfer or invest in any immovable |
| | | property situated outside India. Comment. |
| | (c) | Explain under what circumstances the Central Government is empowered to supersede |
| | | any authority constituted under Special Economic Zones Act, 2005 ? What will be |
| | | the consequences if such power is exercised by Central Government ? |
| | (d) | What are the conditions for the Indian Company to allot sweat equity shares of its |
| | | holding company to its employees, who are resident outside India. |
| | | (5 marks each) |
| | | Attempt all parts of either Q. No. 2 or Q. No. 2A |
| 2. | (a) | Explain the permissible capital account transactions by an individual under the liberalised |
| | | remittance scheme. |
| | | (4 marks) |

1/2019/EBCL/NS P.T.O.

Explain the objectives of 'Foreign Trade Policy' under the Foreign Trade Policy for

(4 marks)

(c) What do you understand by "Offshore Banking Unit" under Special Economic Zone Act, 2005 ?

(4 marks)

(d) Whether conversion of 'External Commercial Borrowing' into equity is permissible?
Comment.

(4 marks)

(e) Discuss the objectives of enacting the Foreign Exchange Management Act, 1999. Explain in brief the scheme of Foreign Exchange Management Act, 1999.

(4 marks)

OR (Alternate question to Q. No. 2)

- **2A.** (i) State the sources within which the Indian mutual funds registered with SEBI are permitted to invest in overseas direct investment.
 - (ii) What are the reporting requirements for non-banking financial companies?
 - (iii) Under what conditions 'Foreign Direct Investment' in limited liability partnership is permitted.
 - (iv) How the "Special Economic Zone Authority" is constituted under Special Economic Zone Act, 2005? Which are the defects or irregularities for which any act or proceedings of an authority can not be invalidated?
 - (v) 'Non-Banking Financial Companies' are akin to that of bank, but they differ from banks in certain cases. Explain.

(4 marks each)

1/2019/EBCL/NS Contd.

PART-II

- 3. (a) How the competition commission will determine whether an agreement has appreciable adverse effect on competition?
 - (b) Whether the jurisdiction of the competition commission of India extends to acts/agreements taking place outside India, which affects competition in India? Explain.
 - (c) What is the purpose of competition policy of India and Competition Act, 2002?
 - (d) What is meant by dominant position under the Competition Act, 2002?
 - (e) Discuss the consequences of making false statement by a person being a party to combination under Competition Act, 2002.

(3 marks each)

- **4.** (a) The Competition Act, 2002 is an improvement on the MRTP Act, 1969. Critically analyse this statement.
 - (b) Explain what is meant by Bid-rigging, tie-in agreement, Exclusive supply agreement, and Refusal to deal.

(5 marks each)

PART-III

5. (a) Ram employed in Mumbai promised to pay ₹ 8,000 per month to his wife Sunita. She was living in Delhi. On receiving information that she has become unfaithful to him, Ram stopped the payment of ₹ 8,000 to Sunita. Sunita approaches to file a case against Ram. Advise her with reference to the Indian Contract Act, 1872.

(4 marks)

1/2019/EBCL/NS P.T.O.

(b) Rajni got herself operated in the Devashri Hospital for removal of her uterus, as a cyst was found to have developed near one of her ovaries. The surgeon, who performed the operation, left abdominal pack in the abdominal. This caused lot of pain, suffering and uneasiness to her. The abdominal pack was subsequently removed by another surgical operation. It was alleged that due to negligence of the surgeon, the patient suffered all the consequences, therefore it should be treated as negligence in the treatment. But the Hospital authorities contended that the patient's problem was removed by the second operation, hence it is not deficiency. Rajni sought the relief under Consumer Protection Act, 1986 stating that this negligence may be treated as deficiency and compensation may be paid to her. Decide whether Ranji will succeed or not? Why?

(4 marks)

(c) A draws and B accepts the bill payable to C or order. C endorses the bill to D and D to E, who is 'holder in due course'. Decide from whom E can recover the amount under the Negotiable Instrument Act, 1881?

(4 marks)

(d) Sachin made an unconditional gift of property to Amit but continued in possession of gifted property. Sachin revoked the gift deed transferred it to Naresh. Amit wants to recover possession from Naresh. Discuss it in the light of provisions of Transfer of Property Act, 1882 whether Naresh can withhold the gifted property?

(4 marks)

1/2019/EBCL/NS Contd.

(e) A minor fraudulently overstated his age and purchased a motor car after executing a promissory note in favour of the owner of the motor car for its price. The car owner compelled the minor to pay the amount of the promissory note. Whether the car owner will succeed? Examine it with reference to Indian Contract Act, 1872 and Specific Relief Act, 1963.

(4 marks)

Attempt all parts of either Q. No. 6 or Q. No. 6A

- **6.** Distinguish between the following:
 - (a) Contract of service and Contract for service
 - (b) Specific performance and Injunction
 - (c) Cheque and Bill of Exchange
 - (d) Mortgage and Charge
 - (e) Conditions and Warranties.

(3 marks each)

OR (Alternate question to Q. No. 6)

6A. (i) Explain the salient features of the Benami Transactions (Prohibition) Act, 1998.(3 marks)

(ii) What are the effects of Money laundering on the economic development of a country?

(3 marks)

1/2019/EBCL/NS P.T.O.

(iii) Explain the functions of 'Real Estate Regulatory Authority' under the Read Estate (Regulation and Development) Act, 2016.

(3 marks)

(iv) Whether a minor may be admitted in the business of partnership firm under the Indian Partnership Act, 1932 ? Whether the minor will have any right in parnership firm ? Explain.

(3 marks)

 (v) Against whom specific performance of a contract may be enforced under the Specific Relief Act, 1963? Explain.

(3 marks)

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ICSI Question Paper December 2018

| NEW SYLLABUS | 427 |
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| Roll No | |
| Time allowed : 3 hours | Maximum marks : 100 |
| Total number of questions : 6 | Total number of printed pages : 6 |

NOTE: Answer ALL Questions.

PART-I

- (a) The object of the Foreign Contribution (Regulation) Act, 2010 is to legalise foreign donations and hospitality to office bearers of political parties. Comment.
 - (b) Capital goods and spares that have become obsolete/surplus, may be exported, transferred to another Special Economic Zone unit but law does not permit to dispose of in Domestic Tariff Area on payment of applicable duties. Comment.
 - (c) Prior approval of RBI is not mandatory for transfer of Capital instruments from resident to non-residents by way of sale. Comment.
 - (d) What are the functions of Reserve Bank of India?

(5 marks each)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (a) What is the object of service export from India Scheme and what are the eligibility conditions of obtaining benefits of the same under Foreign Trade Policy 2015-20?

(4 marks)

2/2018/EBCL/NS P.T.O.

(b) What do you mean by Non-Banking Financial company? Enumerate the powers of Reserve Bank of India vested in the Reserve Bank of India Act for regulating and supervising the Non-Banking Financial companies.

(4 marks)

(c) Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 deals with limits on possession and retention of foreign currency or foreign coins. What is the limit of possession or retention of foreign currency or foreign coins under Regulation 3?

(4 marks)

(d) What are the eligibility criterias for forming the trust under the Indian Trust Act, 1882 ?

(4 marks)

(e) Section 34 of Special Economic Zones Act, 2005 casts upon the Authority a duty to undertake such measures for the development, operation and management of Special Economic Zone. Explain.

(4 marks)

OR (Alternate question to Q. No. 2)

2A. (i) What are the obligations on Indian Party which has made direct investment outside India?

(4 marks)

(ii) Which are the organizations and persons who are specifically debarred from receiving foreign contributions under Foreign Exchange Regulation Act, 2010 ?

(4 marks)

2/2018/EBCL/NS Contd.

(iii) Who is an authorized person under Foreign Exchange Management Act, 1999 and what are his obligations?

(4 marks)

(iv) Who can establish the Special Economic Zone? Discuss.

(4 marks)

(v) State to whom the provisions of Non-Banking Financial Company-Systemically Important Non-Deposit Taking Company and Deposit Taking Company (Reserve Bank) Directions, 2016 shall apply ?

(4 marks)

PART-II

- 3. (a) What do you mean by Cartel ? Explain it with reference to Competition Act, 2002.
 - (b) What agreements are anti competitive agreements under the Competition Act, 2002?
 - (c) What constitutes abuse of dominance under the Competition Act, 2002 ?
 - (d) What do you understand by the term "Combination" under the Competition Act, 2002 ?
 - (e) Who is "consumer" under the Competition Act, 2002 ?

(3 marks each)

4. (a) What factors have to be taken into consideration by Competition Commission of India for the purpose of determining whether an enterprise enjoys dominant position or not? Explain.

(5 marks)

2/2018/EBCL/NS P.T.O.

(b) What orders can be passed by Competition Commission of India under section 27 of the Competition Act, 2002 after any inquiry into agreement entered into by any enterprise or association of enterprises or person or association of persons or an enquiry into abuse of dominant position? Explain.

(5 marks)

PART-III

5. (a) A contract for the sale of land has been entered into between A and B. The transferee has paid the price entering into possession and is willing to carry out his contractual obligations. As registration has not been effected, A the transferor, seeks to evict B from the land. Can he do so ? Explain.

(4 marks)

(b) The complainant booked a ticked from Delhi to New York by a KLM plane. The airport authorities in New Delhi did not find any fault in his visa and other documents. However, at Amsterdam, the airport authorities instituted proceedings of verification because of which the appellant missed his flight to New York. After reaching New York, the airlines tendered apology to the appellant for the inconvenience and paid as a goodwill gesture a sum of ₹ 2,500. The appellant made a complaint to the National Commission under the Consumer Protection Act, 1986. Whether the complainant will succeed? Give reasons with the help of decided case law.

(4 marks)

2/2018/EBCL/NS Contd.

(c) A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belongs to A and the two remaining bighas to a stranger, who refuses to part with them. B files the suit for specific performance against A. Decide with the help of the legal provisions, whether the specific performance suit is maintainable.

(4 marks)

(d) The ABZ company offered by an advertisement, a reward of ₹ 1,000 to anyone who contacted influenza after using smoke ball in the specified manner. Amita used the smoke ball in the specified manner, but was attacked by influenza. She filed the suit against ABZ company and claimed the reward. Decide whether the suit is maintainable.

(4 marks)

(e) Mohit finds a ring of Shardha and sells it to a third person Prachi who purchases it for value and in good faith. Whether Shardha can file a suit to recover the ring? Advise with cogent reasons.

(4 marks)

Attempt all parts of either Q. No. 6 or Q. No. 6A

- **6.** Distinguish between the following:
 - (a) Mortgage and Charge
 - (b) Sale and agreement to sell
 - (c) Contract of Indemnity and Guarantee
 - (d) Negotiability and Assignability
 - (e) Bill of Exchange and Promissory Note.

(3 marks each)

2/2018/EBCL/NS P.T.O.

OR (Alternate question to Q. No. 6)

- **6A.** (i) Explain the salient features of the Real Estate (Regulation and Development) Act, 2016.
 - (ii) Explain Adjudication of Benami Property under the Benami Transaction Act, 1988.
 - (iii) Explain Seizure and Confiscation under the Essential Commodities Act, 1955.
 - (iv) What do you understand by the term "Money Laundering" under the Prevention of Money Laundering Act, 2002 ?
 - (v) What do you understand by "Holding out" under the Indian Partnership Act, 1932 ? Enumerate the circumstances under which the docrine of "Holding out" is not applicable ?

| (3 | marks | each) |
|----|-------|-------|
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2/2018/EBCL/NS

CHAPTER RESERVE BANK OF INDIA ACT, 1934 Covering-Reserve Bank of India - Establishment Organisational Structure& Management Central Board of Directors Local Boards Offices and Branches Purpose/Functions of the Reserve Bank Reserve Bank as Banker Banks Payment and Settlement Systems Monetary Policy Instruments of monetary policy Constitution of monetary policy committee Advance Your Knowledge Self-Test Questions **EXPECTED MARKS COVERAGE** (1 to 5)

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RESERVE BANK OF INDIA ACT, 1934



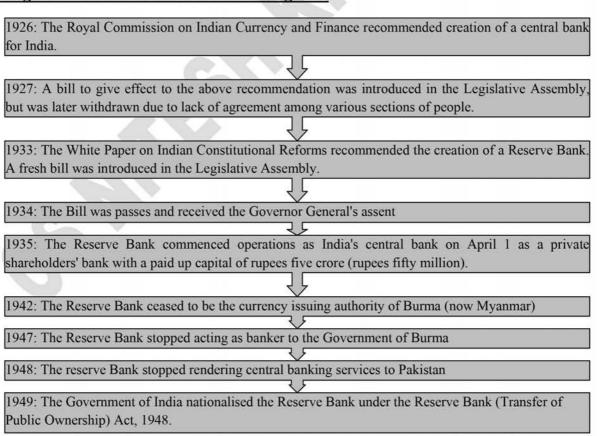
RESERVE BANK OF INDIA-ESTABLISHMENT

The Reserve Bank of India Act, 1934 established the Reserve Bank and set in motion a series of actions culminating in the start of operations in 1935.

Section 3 of the RBI Act states that a bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the Central Government and of carrying on the business of banking in accordance with the provisions of the Act.

Sub section (2) of this section provides that the Bank shall be a body corporate by the name of Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued Starting as a private shareholders' bank, the Reserve Bank was nationalized in 1949. It then assumed the responsibility to meet the aspirations of a newly independent country and its people The Preamble to the Reserve Bank of India Act, 1934 (the Act), under which it was constituted, specifies its objective as "to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage".

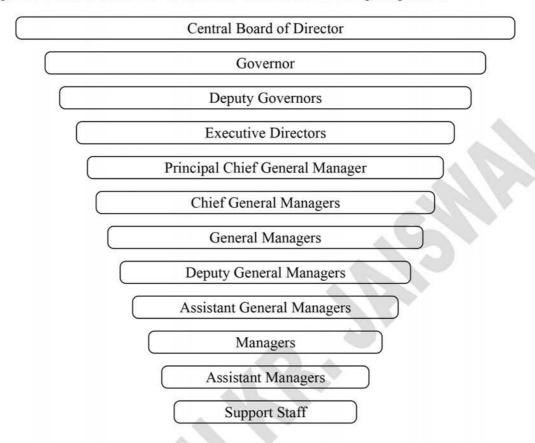
Origin of the Reserve Bank of India at a glance



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ORGANISATIONAL STRUCTURE & MANAGEMENT

The organizational structure of RBI can be classified under the following designations:



CENTRAL BOARD OF DIRECTORS

The Central Board of Directors is at the top of the Reserve Bank's organisational structure. Appointed by the Government under the provisions of Reserve Bank of India Act, 1934, the Central Board has the primary authority and responsibility for the oversight of Reserve Bank. It delegates specific functions to the Local Boards and various committees. The Governor is the Reserve Bank's chief executive.

LOCAL BOARDS

The Reserve Bank Governor and a maximum of four Deputy Governors are also ex officio Directors on the Central Board. The Reserve Bank also has four Local Boards, constituted by the Central Government under the RBI Act, one each for the Western, Eastern, Northern and Southern areas of the country, which are located in Mumbai, Kolkata, New Delhi and Chennai. Each of these Boards has five members appointed byte Central Government for a term of four years and thereafter until his successor is appointed. They are eligible for re-appointment.

OFFICES AND BRANCHES

The Reserve Bank has a network of offices and branches through which it discharges its responsibilities. The units operating in the four metros — Mumbai, Kolkata, Delhi and Chennai — are known as offices, while the units located at other cities and towns are called branches. Currently, the Reserve Bank has its offices, including branches, at 27 locations in India.



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PURPOSE /FUNCTIONS OF THE RESERVE BANK

The purposes for which the Reserve Bank of India established as India's central bank have been spelt out in the preamble to the RBI Act, which states as follows:

- (i) to regulate the issue of banknotes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage; and
- (ii) that it is essential to have a modern monetary policy framework to meet the challenge of an increasingly complex economy: the primary objective of the monetary policy is to maintain price stability while keeping in mind the objective of growth and the monetary policy framework in India shall be operated by the Reserve Bank of India.

The functions of the Reserve Bank of India can be summarized as under:

- (a) Banking Functions
- **(b)** Issue bank notes
- (c) Monetary Policy Functions
- (d) Public Debt Functions
- (e) Foreign Exchange Management
- (f) Banking Regulation & Supervision
- (g) Regulation and Supervision of NBFCs
- (h) Regulation & Supervision of Co-operative banks
- (i) Regulation of Derivatives and Money Market Instruments
- (j) Payment and Settlement Functions
- (k) Consumer Protection Functions

RESERVE BANK AS BANKER TO BANKS

The Reserve Bank to fulfill this function, opens current accounts of banks with itself, enabling these banks to maintain cash reserves as well as to carry out inter-bank transactions through these accounts. Inter-bank accounts can also be settled by transfer of money through electronic fund transfer system, such as, the Real Time Gross Settlement System (RTGS). In addition, the Reserve Bank has also introduced the Centralised Funds Management System (CFMS) to facilitate centralised funds enquiry and transfer of funds across Deposit Accounts Department (DADs). This helps banks in their fund management as they can access information on their balances maintained across different DADs from a single location.

As Banker to Banks, the Reserve Bank provides short-term loans and advances to select banks, when necessary, to facilitate lending to specific sectors and for specific purposes. These loans are provided against promissory notes and other collateral given by the banks.

The Reserve Bank also acts as the 'lender of last resort'. It can come to the rescue of a bank that is solvent but faces temporary liquidity problems by supplying it with much needed liquidity when no one else is willing to extend credit to that bank.

PAYMENT AND SETTLEMENT SYSTEMS

The regulation and supervision of payment systems is being increasingly recognised as a core responsibility of central banks. Safe and efficient functioning of these systems is an important pre-requisite for proper functioning of financial system and the efficient transmission of monetary policy.

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The Payment and Settlement Systems Act, 2007 provides for regulation and supervision of payment systems in India and designates the Reserve Bank as the authority for the purpose. As per the Act, only payment systems authorised by the Reserve Bank can be operated in the country. The Act also provides for the settlement effected under the rules and procedures of the system provider to be treated as final and irrevocable. The Reserve Bank has put in place an institutional framework and structure for oversight of the payment systems. In 2005, it created a Board for Regulation and Supervision of Payment and Settlement Systems (BPSS) as a Committee of the Central Board. A new department called the Department of Payment and Settlement Systems (DPSS) was constituted to assist the BPSS in performing its functions.

MONETARY POLICY

Monetary policy refers to the policy of the central bank with regard to the use of monetary instruments under its control to achieve the goals specified in the Act. The Reserve Bank of India (RBI) is vested with the responsibility of adopting and implementing monetary policy. This responsibility is explicitly mandated under the Reserve Bank of India Act, 1934. The primary objective of monetary policy is to maintain price stability while keeping in mind the objective of growth. Price stability is a necessary precondition to sustainable growth.

INSTRUMENTS OF MONETARY POLICY

There are several direct and indirect instruments that are used for implementing monetary policy.

- (a) <u>Repo Rate:</u> The (fixed) interest rate at which the Reserve Bank provides overnight liquidity to banks against the collateral of government and other approved securities under the Liquidity Adjustment Facility (LAF).
- **(b)** Reverse Repo Rate: The (fixed) interest rate at which the Reserve Bank absorbs liquidity, on an overnight basis, from banks against the collateral of eligible government securities under the LAF.
- (c) <u>Liquidity Adjustment Facility (LAF):</u> The LAF consists of overnight as well as term repo auctions. Progressively, the Reserve Bank has increased the proportion of liquidity injected under fine-tuning variable rate repo auctions of range of tenors. The aim of term repo is to help develop the inter-bank term money market, which in turn can set market based benchmarks for pricing of loans and deposits, and hence improve transmission of monetary policy. The Reserve Bank also conducts variable interest rate reverse repo auctions, as necessitated under the market conditions.
- (d) <u>Marginal Standing Facility (MSF):</u> A facility under which scheduled commercial banks can borrow additional amount of overnight money from the Reserve Bank by dipping into their Statutory Liquidity Ratio (SLR) portfolio up to a limit at a penal rate of interest. This provides a safety valve against unanticipated liquidity shocks to the banking system.
- (e) <u>Corridor:</u> The MSF rate and reverse repo rate determine the corridor for the daily movement in the weighted average call money rate.
- (f) <u>Bank Rate:</u> It is the rate at which the Reserve Bank is ready to buy or rediscount bills of exchange or other commercial papers. The Bank Rate is published under Section 49 of the Reserve Bank of India Act, 1934. This rate has been aligned to the MSF rate and, therefore, changes automatically as and when the MSF rate changes alongside policy reportate changes.
- (g) <u>Cash Reserve Ratio (CRR):</u> The average daily balance that a bank is required to maintain with the Reserve Bank as a share of such per cent of its Net demand and time liabilities (NDTL) that the Reserve Bank may notify from time to time in the Gazette of India.



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- (h) Statutory Liquidity Ratio (SLR): The share of NDTL that a bank is required to maintain in safe and liquid assets, such as, unencumbered government securities, cash and gold. Changes in SLR often influence the availability of resources in the banking system for lending to the private sector.
- (i) Open Market Operations (OMOs): These include both, outright purchase and sale of government securities, for injection and absorption of durable liquidity, respectively.
- (j) Market Stabilisation Scheme (MSS): This instrument for monetary management was introduced in2004. Surplus liquidity of a more enduring nature arising from large capital inflows is absorbed through sale of short-dated government securities and treasury bills. The cash so mobilised is held in a separate government account with the Reserve Bank.

CONSTITUTION OF MONETARY POLICY COMMITTEE

Section 45ZB of the Act states that:-

- (1) The Central Government may, by notification in the Official Gazette, constitute a Committee to be called the Monetary Policy Committee of the Bank.
- (2) The Monetary Policy Committee shall consist of the following Members, namely:—
 - (a) the Governor of the Bank—Chairperson, ex officio;
 - (b) Deputy Governor of the Bank, in charge of Monetary Policy—Member, ex officio;
 - (c) one officer of the Bank to be nominated by the Central Board—Member, ex officio; and
 - (d) three persons to be appointed by the Central Government—Members.
- (3) The Monetary Policy Committee shall determine the Policy Rate required to achieve the inflation target.
- (4) The decision of the Monetary Policy Committee shall be binding on the Bank.

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FORGEIN EXCHANGE CHAPTER MANAGEMENT ACT, 1999 -**INTRODUCTION** Covering-Bare Act Object of the Act Reason for Replacement of FERA, 1973 Comparison of FERA and FEMA Structure of FEMA Authorities Under FEMA Definitions Advance Your Knowledge Self Test Questions **EXPECTED MARKS COVERAGE** (15 to 20)

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THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

ACT No. 42 OF 1999

[29th December, 1999.]

An Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

- Short title, extent, application and commencement.—(1) This Act may be called the Foreign Exchange Management Act, 1999.
 - (2) It extends to the whole of India.
- (3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.
- (4) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint:

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

- 2. Definitions.—In this Act, unless the context otherwise requires.—
 - (a) "Adjudicating Authority" means an officer authorised under sub-section (1) of section 16;
- (b) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 18;
- (c) "authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (I) of section 10 to deal in foreign exchange or foreign securities;

CHAPTER II

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

- Dealing in foreign exchange, etc.—Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—
 - (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;
 - (b) make any payment to or for the credit of any person resident outside India in any manner;
 - (c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation.—For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation.—For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

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FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - INTRODUCTION



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ENFORCEMENT DIRECTORATE

(Foreign Exchange Management Act, 1999 and Prevention of Money Laundering Act, 2002)

The Foreign Exchange Management Act, 1999 (**FEMA**) has been introduced as a replacement for earlier Foreign Exchange Regulation Act, 1973 (FERA). FEMA became an act on the 1stday of June, 2000.

FEMA is applicable to all parts of India. The act is also applicable to all branches, offices and agencies outside India owned or controlled by a person who is a resident of India.

OBJECT OF THE ACT

| | The main objective |
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| | behind the Foreign |
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| | Act (1999) is:- |

- (a) to consolidate and amend the law relating to foreign exchange.
- (b) to facilitate external trade and payments.
- (c) to promote the orderly development and maintenance of foreign exchange market in India.

REASON FOR REPLACEMENT OF FERA, 1973

FEMA was introduced because the FERA didn't fit in with post-liberalisation policies. A significant change that the FEMA brought with it, was that it made all offenses regarding foreign exchange civil offenses, as opposed to criminal offenses as dictated by FERA.

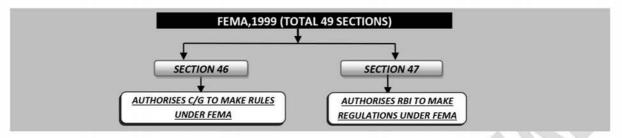
Unlike other laws where everything is permitted unless specifically prohibited, under FERA nothing was permitted unless specifically permitted. Hence the tenor and tone of the Act was very drastic. It provided for imprisonment of even a very minor offence. Under FERA, a person was presumed guilty unless he proved himself innocent whereas under other laws, a person is presumed innocent unless he is proven guilty.

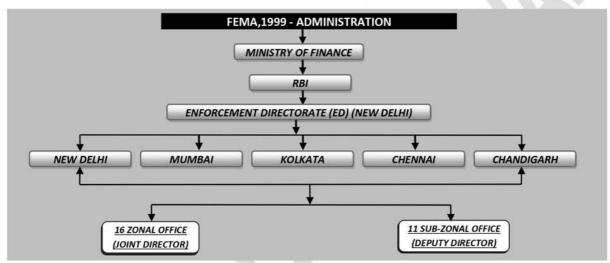
FEMA has brought a new management regime of Foreign Exchange consistent with the emerging frame work of the World Trade Organisation (WTO).

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COMPARISON OF FERA AND FEMA

| S. No. | FERA | FEMA |
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| 1. | FERA was Criminal Law | FEMA is Civil Law |
| 2. | There has 81 Sections | There is 49 Sections |
| 3. | Under FERA there was 3 Authorities (a) Ministry of Finance (b) Reserve Bank of India (c) Enforcement Directorate | Under FEMA there is 3 Authorities (a) Ministry of Finance (b) Reserve Bank of India (c) Enforcement Directorate |
| 4. | Presumption of MENS REA on Defendant | No presumption of MENS REA on Defendant |
| 5. | Imprisonment and fine | Only fine not imprisonment |

STRUCTURE OF FEMA

FEMA, 1999 contains only basic legal framework. Sec. 46 of FEMA authorizer Central Govt. to make Rules and Sec. 47 authorizes RBI to make Regulations to carry out the provisions of the Act.

The legislations, rules and regulations, governing Foreign Exchange Management are as under:

(a) FEMA contains 7 Chapters divided into 49 sections of which 12 sections cover operational part and the rest deals with contravention, penalties, adjudication, appeals, enforcement directorate, etc.

| CHAPTER I – Preliminary (Section 1&2) | |
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| CHAPTER II- Regulation and Management of Foreign Exchange (Section 3 –9) | |
| CHAPTER III – Authorised Person (Section 10 –12) | |
| CHAPTER IV – Contravention and Penalties (Section 13-15) | |
| CHAPTER V – Adjudication and Appeal (Section 16- 35) | |
| CHAPTER VI – Directorate of Enforcement (Section 36-38) | |
| CHAPTER VII- Miscellaneous (Section 39 – 49) | |

- (b) Rules made by Ministry of Finance under section 46 of FEMA (Subordinate or delegated Legislations)
- (c) Regulations made by RBI under section 47 of FEMA (Subordinate or delegated Legislations)
- (d) Master Direction issued by RBI on every year
- (e) Foreign Direct Investment policy issued by Department of Industrial Policy and Promotion.
- (f) Notifications and Circulars issued by Reserve Bank of India.

The Rules made under FEMA are as follows:

| 1. | FEM (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000 | |
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| 2. | FEM (Authentication of Documents) Rules, 2000 | |
| 3. | FEM (Current Account Transaction) Rules, 2000 | |
| 4. | FEM (Adjudication Proceedings and Appeal) Rules, 2000 | |
| 5. | FEM (Compounding Proceedings) Rules, 2000 | |
| 6. | The Appellate Tribunal for Foreign Exchange (Recruitment, Salary and Allowances and Other | |
| | Conditions of Service of Chairperson and Members) Rules, 2000 | |

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The Regulations made under FEMA are as follows:

- 1. FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015
- 2. FEM (Borrowing and Lending in Rupees) Regulations, 2000
- 3. FEM (Borrowing or Lending in Foreign Exchange) Regulations, 2000
- 4. FEM (Deposit) Regulations, 2016
- 5. FEM (Export and Import of Currency) Regulations, 2015
- 6. FEM (Guarantees) Regulations, 2000
- 7. FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2000
- FEM (Establishment in India of Branch office or a Project office or any other Place of Business)Regulations, 2016
- 9. FEM (Export of Goods and Services) Regulations, 2015
- 10. FEM (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015
- 11. FEM (Insurance) Regulations, 2015
- 12. FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000
- 13. FEM (Manner of Receipt and Payment) Regulations, 2016
- 14. FEM (Permissible Capital Account Transactions) Regulations, 2000
- 15. FEM (Possession and Retention of Foreign Currency) Regulations, 2015
- 16. FEM (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2015
- 17. FEM (Remittance of Assets) Regulations, 2016
- 18. FEM (Transfer or Issue of Security by a person Resident outside India) Regulations, 2017
- 19. FEM (Foreign Exchange Derivative Contracts) Regulations, 2000
- 20. FEM (Transfer or Issue of any Foreign Security) Regulations, 2004
- 21. FEM (Crystallization of inoperative Foreign Currency Deposits) Regulations, 2014

AUTHORITIES UNDER FEMA

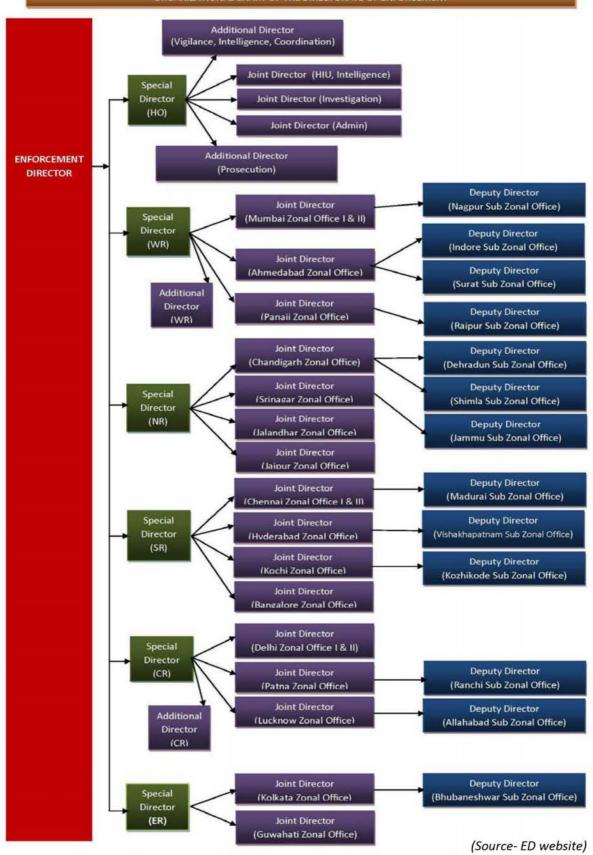
Reserve Bank of India is the overall controlling authority in respect of FEMA. In addition to RBI, Directorate of Enforcement has also been formed for the implementation of FEMA.

The FEMA head-office, also known as **Enforcement Directorate** is situated in New Delhi and is headed by a Director. The Directorate is further divided into 5 zonal offices in Delhi, Mumbai, Kolkata, Chennai and Jalandhar and each office is headed by a Deputy Director. Each zone is further divided into 7 subzonal offices headed by the Assistant Directors and 5 field units headed by Chief Enforcement Officers.



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DEFINITIONS

SECTION 2

1. FOREIGN EXCHANGE

| Foreign | (a) Deposits, credits and balance payable in any foreign currency | |
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| exchange means | (b) Drafts, travelers' cheques, letters of credit or bill of exchanges expressed or | |
| foreign currency | drawn in Indian currency but payable in foreign currency | |
| and includes the | (c) Drafts, travelers' cheques, letters of credit or bill of exchange drawn by | |
| following :- | banks, institutions or person outside India payable in Indian currency | |

2. FOREIGN SECURITY

Foreign security means any security in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency. Further, the term foreign security also includes security expressed in foreign currency but where redemption or any form of return such as interest or dividend is payable in Indian currency.

3. PERSON

Person includes an individual, a Hindu Undivided Family, a company, a firm, an association of persons or body of individuals, whether incorporated or not; any agency, office or branch owned or controlled by such persons. Further, it includes any other artificial person.

4. PERSON RESIDENT IN INDIA

Person resident in India means the following:-

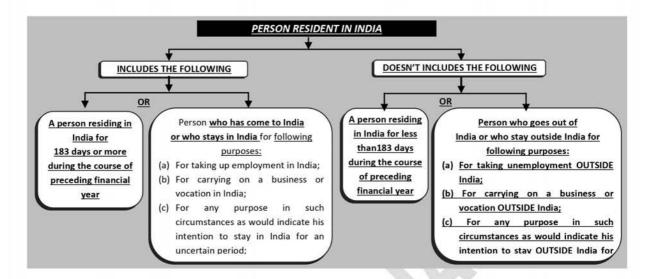
- (1) A person residing in India for **more** than **182 days** during the course of preceding financial year but **does not include the following**:
 - (A) Person who has gone out of India or who stays outside India for any of the following purposes:-
 - (a) For taking up employment outside India;
 - (b) For carrying on a business or vocation outside India;
 - (c) For any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - **(B)** Person who has come to India or who stays in India for any purpose other than the following purposes:
 - (a) For taking up employment in India;
 - (b) For carrying on a business or vocation in India;
 - (c) For any purpose in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (2) Any person or body corporate registered or incorporated in India;
- (3) An office, branch or agency established in India which is owned or controlled by a person resident outside India;
- (4) An office, branch, or agency established outside India, which is owned or controlled by a person resident in India.

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5. PERSON RESIDENT OUTSIDE INDIA

It means a person who is not resident in India

6. PERSON OF INDIAN ORIGIN

It means a citizen of any country other than Pakistan <u>or</u> <u>Bangladesh if:-</u>

- (a) He/she at any time held an Indian passport; or
- **(b)** He/she or either of his/her parents or grandparents were the citizen of India; or
- (c) He/she is a spouse of an Indian citizen or a spouse of a person referred to in the above clauses.

7. REPATRIATE TO INDIA

Repatriate to India means the realized foreign exchange should be sold to an authorized person in India in exchange for rupees. It also includes the holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve Bank and includes use of the realized amount for the discharge of a debt or liability denominated in foreign exchange.

8. NON-RESIDENT INDIAN

Non-resident India means a person resident outside India who is a citizen of India or a person of Indian origin.

9. AUTHORIZED PERSON

Authorized person means an authorized dealer, moneychanger, off shore banking unit or any other person for the time being authorized for the following purposes:-

- (a) To deal in or transfer any foreign exchange of foreign security to any person;
- (b) To receive any payment by order or on behalf of any person resident outside India in any name;
- (c) To open the various accounts like Non-Resident (Ordinary) Rupee A/c, Non-Resident(External) Rupee A/c, Foreign Currency (Non-resident) A/c, Resident Foreign Currency A/c, Exchange Earners Foreign Currency A/c.
- (d) To sale or purchase foreign exchange for current account transactions;
- (e) To sale or purchase foreign exchange for permissible capital account transactions.

Power of the Reserve Bank to issue directions to authorised person

Section 11 of the Act empowers the RBI to issue directions to the authorised person in regard to making of payment or doing or desist from doing any act relating to foreign exchange or foreign security. Reserve Bank has also been empowered to issue directions to the authorised persons to furnish such information in such manner as it deems fit.

Power of Reserve Bank to Inspect authorised person

Section 12 of the Act empowers RBI to inspect the business of any authorised person for the purpose of verifying the correctness of any statement/information or particulars furnished. In case authorised person fails to furnish the information sought, the RBI can initiate inspection of the authorised person for obtaining such information. RBI may also inspect the business of an authorised person for securing compliance with the provisions of the Foreign Exchange Management Act or any of the Rules, Regulations or directions. The Reserve Bank may make an order in writing authorising any of its officer for this purpose.

10. CURRENT ACCOUNT TRANSACTIONS

Current account transaction means a transaction other than a capital account transaction.

Without prejudice to the generality of the foregoing provisions include the following:-



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- (a) Payments due in connection with foreign trade, other current business, services and short-term banking and credit facilities in the ordinary course of business;
- (b) Payments due as interest on loans and as net income from investments;
- (c) Remittances for living expenses of parents, spouse and children residing abroad;
- (d) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

11. CAPITAL ACCOUNT TRANSACTIONS

Capital account transaction means a transaction, which alters the assets and liabilities, including contingent liabilities outside India of person resident in India or assets and liabilities in India of a person resident outside India.

Capital account transaction relate to movement of capital. These include transactions in property and investments and lending and borrowing money.

12. APPELLATE TRIBUNAL

'Appellate Tribunal' means Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the adjudicating authorities and Special Directors (Appeals) under the Act.



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CHAPTER FOREIGN EXCHANGE TRANSACTIONS & **COMPLIANCES** Covering-Dealing and holdings in foreign exchange, foreign security, etc. Realisation, repatriation and holding of foreign currency Transactions under FEMA Provisions relating to current account transactions Provisions relating to capital account transactions Foreign exchange management regulations 2000 Adjudication and appeal Contravention and penalties Compounding of contraventions Advance Your Knowledge Self Test Questions > From Past CS Exam From ICSI Module

EXPECTED MARKS COVERAGE (1 to 5)

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FOREIGN EXCHANGE TRANSACTIONS & COMPLIANCES

DEALINGS AND HOLDINGS IN FOREIGN EXCHANGE, FOREIGN SECURITY, ETC.

DEALING IN FOREIGN EXCHANGE, ETC SECTION-3

Save as otherwise provided in this Act, rules or regulations made there under, or with the general or special permission of the Reserve Bank, no person shall:—

- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;
- (b) make any payment to or for the credit of any person resident outside India in any manner;
- (c) receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner;

Explanation.—For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation—For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

HOLDING OF FOREIGN EXCHANGE, FOREIGN SECURITY & IMMOVABLE PROPERTY

SECTION-4

Save as otherwise provided in the Act, rules or regulations, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

FOREIGN EXCHANGE MANAGEMENT (POSSESSION AND RETENTION OF FOREIGN CURRENCY) REGULATIONS, 2015

Foreign exchange can be possessed and retained subject to the following conditions:-

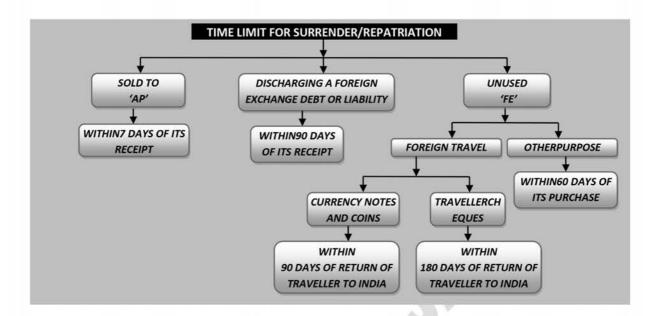
- (a) A person resident in India can retain foreign exchange up to US \$ 2000 or its equivalent in aggregate *provided:*-
 - (1) Such foreign exchange have been acquired by him while on a visit to any place out of India by way of payment for services or by way of honorarium or gift. or,
 - (2) Such foreign exchange have been acquired by him from any person resident outside India and who is on a visit to India for services rendered or by way of honorarium or gift or in settlement of any lawful obligation. or,
 - (3) Such foreign exchange represents unspent amount of foreign exchange acquired by him from an authorized person for travel abroad;



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- (b) Any person can possess foreign coins without limit;
- (c) Authorized person can retain or possess foreign currency and coins within the scope of his authority without any limit
- (d) A person resident in India but not permanently resident in India may possess foreign exchange without any limit if such foreign exchange was acquired, held or owned by him when he was resident outside India and has been brought into India in accordance with the prescribed regulations.

The expression 'not permanently resident' means a person resident in India for employment of a specified duration or for a specific job or assignment, the duration of which does not exceed 3 years.

REALISATION, REPATRIATION AND HOLDING OF FOREIGN **CURRENCY**

FOREIGN EXCHANGE MANAGEMENT (REALISATION, REPATRIATION AND SURRENDER OF FOREIGN EXCHANGE) REGULATIONS, 2015

A person resident in India to whom any foreign exchange is due or has accrued, should take all reasonable steps to realise and repatriate to India such foreign exchange.

A person resident in India, to refrain from doing anything/taking any action, resulting in delay in receipt of foreign exchange in whole or part, or ceasing in whole or part the foreign exchange receivable by him.

MANNER OF REPATRIATION

After realisation of foreign exchange due, the person concerned shall repatriate the same to India and sell it to an authorised person or retain it to the specified extent in an account with an authorised dealer or use it for discharging a foreign exchange debt or liability to the specified extent.

TIME LIMIT FOR SURRENDER OF REALISED FOREIGN EXCHANGE

Any foreign exchange should be sold by the person concerned to an authorised person within a period of seven days of its receipt, and in all other cases within 90 days from the date of its receipt.

any person who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to an authorised person and does not use it for such purpose or for any other purpose for which purchase or acquisition of foreign exchange is permissible, shall surrender such foreign exchange or the unused portion thereof to an authorised person within a period of sixty days from the date of its acquisition or purchase by him.

However, in case the foreign exchange acquired or purchased by any person from an authorised person is for the purpose of foreign travel, then, the unspent balance of such foreign exchange shall be surrendered to an authorised person:-

- (a) within ninety days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of currency notes and coins; and
- (b) within one hundred eighty days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of travellers cheques.

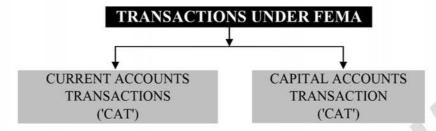
The provisions of Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulation are not applicable to foreign exchange in the form of currency of Nepal or Bhutan.

EXEMPTION FROM REALISATION OR REPATRIATION

Possession of foreign currency or coins by any person or class of persons, as the Reserve Bank may specify is not prohibited. A person or class of persons may hold and operate foreign currency account within the prescribed limits as may be specified by the Reserve Bank.

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TRANSACTIONS UNDER FEMA



PROVISIONS RELATING TO CURRENT ACCOUNT TRANSACTIONS

DEALINGS IN CURRENT ACCOUNT TRANSACTIONS

SECTION 5

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction

Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed

Thus, *generally all current account transactions are free subject to reasonable restrictions*, which may be imposed by Central govt. in consultation with RBI.

FOREIGN EXCHANGE MANAGEMENT (CURRENT ACCOUNT TRANSACTIONS) RULES, 2000

> PROHIBITION ON DRAWAL OF FOREIGN EXCHANGE FOR CERTAIN TRANSACTIONS

Rule 3 prohibits the drawal of foreign exchange for the purposes of transactions;

- (a) specified in the Schedule I or
- (b) a travel to Nepal and/or Bhutan or a transaction with a person resident in Nepal or Bhutan.

However, in the case of transaction with a person resident in Nepal and Bhutan, the prohibition may be exempted by RBI subject to such terms and conditions as it may consider necessary.

Schedule I enumerate the following situations in which the drawal of foreign exchange is prohibited:-

- (a) Remittance out of lottery winnings;
- (b) Remittance of income from racing/riding etc. or any other hobby;
- (c) Remittance for purchase of lottery tickets, banned/prescribed magazine, football pools, etc.
- (d) Payment of commission on exports made towards equity investment in joint ventures/wholly owned subsidiaries abroad of Indian Companies.
- (e) Payment of Commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of exports of tea and tobacco.
- (f) Payment related to 'call back service' of telephone.
- (g) Remittance of interest income on funds held in Non-resident Special Rupee Scheme Account.

> PRIOR APPROVAL OF GOVERNMENT OF INDIA FOR CERTAIN TRANSACTIONS

Rule 4 requires prior approval of the Government of India for the transactions as specified in Schedule II. However, this does not apply to the cases where the payment is made out of funds held in Resident Foreign Currency Account (RFC) of the remitter.

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In the following situations prior Central Government approval will be necessary:

- (a) For cultural tours, permission of minister of HRD (department of education and cultural) is required.
- (b) Advertisements abroad by any public sector undertaking, State Government and central Government department for any purpose other than for promotion of tourism, foreign investment and for international bidding (exceeding US \$10000) will require approval from ministry of Finance (Department of Economic Affairs).
- (c) Payment for freight of vessels chartered by public sector undertakings or import by a government department or a public sector undertaking on CIF basis can be made with the approval of Ministry of Shipping.
- (d) Payment of import through ocean transport by government or a public sector undertaking on CIF basis requires approval of ministry of transport.
- (e) Multi-modal transport operators making payments to their agents abroad have to obtain registration certificate from Ministry of Transport.
- (f) Remittance of hiring charges of transponders by TV channels should be approved by Ministry of Information and Broadcasting and remittance of hiring of transponders by Internet Service providers is required to be approved by Ministry of Communication and Information Technology.
- (g) Remittance of container detention charges exceeding rates prescribed by Director General of Shipping requires approval from Ministry of Shipping.
- (h) Under foreign technology agreement, remittance of royalty exceeding 5% on local sales and exceeding 8% on exports and remittance of lump sum payment exceeding US \$2 million requires approval from Ministry of Industry and Commerce.
- (i) Remittance of prize money/sponsorship of sports activity abroad will require approval from Ministry of HRD (Department of Youth Affairs and Sports), if the remittance amount exceeds US\$1lakh. It may be noted that aforesaid permission is not required irrespective of amount, if remittance is made by International /National/ State level Sports Bodies.

> PRIOR APPROVAL OF RESERVE BANK FOR CERTAIN TRANSACTION

As per Rule 5 of the Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015, every drawal of foreign exchange for transactions included in Schedule III shall be governed as provided therein:

Provided that this rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.

Transactions included in Schedule III

1. Facilities for individuals—

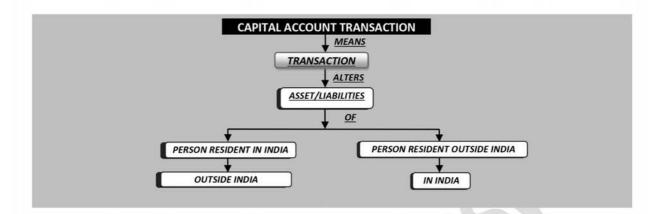
Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the following Purposes shall require prior approval of the Reserve Bank of India.

- Private visits to any country (except Nepal and Bhutan)
- (ii) Gift or donation.
- Going abroad for employment (iii)
- (iv) Emigration
- (v) Maintenance of close relatives abroad

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- Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
- (vii) Expenses in connection with medical treatment abroad
- (viii) Studies abroad
- Any other current account transaction

Provided that for the purposes mentioned at item numbers (iv), (vii) and (viii), the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme if it is so required by a country of emigration, medical institute offering treatment or the University, respectively.

Provided further that if an individual remits any amount under the said Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 2,50,000 by the Amount so remitted.

Provided also that for a 'person who is resident but not permanently resident in India' and

- (a) is a citizen of a foreign State other than Pakistan; or
- (b) is a citizen of India, who is on deputation to the office or branch of a foreign company or Subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident Fund and other deductions).

Explanation: For the purpose of this item, a person resident in India on account of his Employment or deputation of a specified duration (irrespective of length thereof) or for a specific Job or assignments, the duration of which does not exceed three years, is a resident but not Permanently resident:

Provided also that a person other than an individual may also avail of foreign exchange Facility, mutatis mutandis, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein above.

2. Facilities for persons other than individual -

The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India.

- Donations exceeding one per cent. Of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for-
 - (a) creation of Chairs in reputed educational institutes,
 - (b) contribution to funds (not being an investment fund) promoted by educational institutes; and
 - (c) contribution to a technical institution or body or association in the field of activity of the Donor Company.
- (ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial Plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
- (iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy Services procured from outside India.
- (iv) Remittances exceeding five per cent of investment brought into India or USD 100,000Whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses."

3. Procedure

The procedure for drawal or remit of any foreign exchange under this schedule shall be the same as applicable for remitting any amount under the said Liberalised Remittance Scheme.

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PROVISIONS RELATING TO CAPITAL ACCOUNT TRANSACTIONS

REGULATION OF CAPITAL ACCOUNT TRANSACTION

SECTION 6

Section 6 empowers RBI to specify, in consultation with the Central Government, the permissible capital account transactions and the limits up to which foreign exchange will be allowed for such transactions by making the appropriate regulations.

Thus, capital account transactions are permitted to the extent specifically permitted by RBI.

FOREIGN EXCHANGE MANAGEMENT (PERMISSIBLE CAPITAL ACCOUNTTRANSACTIONS) REGULATIONS, 2000

> PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS

- (a) of persons resident in India(PRI)- SCH-I
- (b) persons resident outside India(PROI)- SCH-II

| | Following are Permissible Capital Account Transactions of persons resident in India(PRI) | | Following are Permissible Capital Account Transactions of persons resident outside in India(PROI) |
|------------|---|-----|---|
| (a) (b) | investment in foreign securities. foreign currency loans raised in India and abroad; | (a) | Investment in security of body corporate India |
| (c) (d) | transfer of immovable property outside India guarantees issued in favour of a person resident | (b) | investment by way of contribution to the capital of a firm or a |
| (e) | outside India; export, import and holding of currency/currency notes; | (c) | proprietorship concern or an association of persons in India. Acquisition and transfer of |
| (f) | loans and overdrafts from a person resident outside India; | (d) | immovable property in India. Guarantee favour of, or on behalf of |
| (g) | maintenance of foreign currency accounts in India and outside India | (e) | a person resident in India. Import and export of |
| (h) | taking out of insurance policy from an insurance company outside India; | | currency/currency notes into/from India |
| (i) | loans and overdrafts to a person resident outside India; | (f) | Maintenance Foreign Currency accounts in India |
| (j) (k) | remittance outside India of capital assets; sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad. | (g) | Remittance outside India of capital assets in India. |

> PROHIBITED CAPITAL ACCOUNT TRANSACTIONS

Except as otherwise provided in the Act, no person resident outside India is entitled to make investment in India, in any form, in any entity which is engaged or proposed to engage in the business of-

- (a) chit funds, or
- (b) Nidhi company, or
- (c) in agricultural or plantation activities,
- (d) or real estate business, or
- (e) construction of farm houses, or
- (f) trading in Transferable Development Rights (TDRs).

For this purpose real estate business includes development of townships, construction of residential/commercial premises, roads or bridges.

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'Trading in Transferable Development Rights (TDRs)' means a certificate issued by the government to any person whose land is compulsorily acquired by the government without paying any monetary compensation.

MANNER FOR PAYMENT FOR INVESTMENT

The payment for investment are required to be made by remittance from abroad through normal banking channels or by debit to an account of the investor maintained with an authorised person in India in accordance with the regulation made by the Reserve Bank of India.

DECLARATION TO BE FURNISHED

Every person selling or drawing foreign exchange to or from an authorised person for a capital account transaction is required to furnish to Reserve Bank a declaration within the time specified in the regulations relevant to the transactions.

FOREIGN EXCHANGE MANAGEMENT **(ACQUISITION** TRANSFER OF **IMMOVABLE PROPERTY** IN INDIA) **REGULATIONS, 2000**

> ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA

A person resident in India requires RBI permission for acquiring or transferring any immovable property situated outside India.

However, the approval of RBI is not required in the following cases:-

- (a) property held by a person resident in India who is a national of a foreign state;
- (b) property acquired by a person resident in India on or before 8th July, 1947 and continued to be held by him with the permission of the Reserve Bank.
- (c) Property acquired by way of gift or inheritance from a person (a) who was resident outside India, (b) acquired by a person resident in India on or before July 8, 1947 and continued to be held by him with the permission of RBI.

A person resident in India who has acquired immovable property outside India as above may transfer it by way of gift to his relative who is a person resident in India.

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA ACQUISITION AND TRANSFER OF PROPERTY IN INDIA BY AN INDIAN CITIZEN RESIDENT OUTSIDE INDIA

An Indian citizen resident outside India may-

- (a) acquire any immovable property in India other than agricultural/plantation/farm house,
- (b) transfer any property in India to a person resident in India, and
- (c) transfer any property other than agricultural or plantation property or farm house to an Indian citizen or to a person of Indian origin, resident outside India.

ACQUISITION AND TRANSFER OF PROPERTY IN INDIA BY A PERSON OF INDIAN ORIGIN

A person of Indian origin resident outside India may acquire any immovable property other than agricultural land/farm house/ plantation property in India. He may also acquire any immovable property in India other than agricultural land/farm house/plantation property by way of gift or Inheritance.

Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China are debarred, without prior permission of the Reserve Bank, from acquiring any immovable property in India.

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RESTRICTION ON ESTABLISHMENT OF BRANCH OR OFFICE IN INDIA

No person resident outside India shall, without the prior approval of the RBI, establish in India a branch office or liaison office or a project office or any other place of business by whatever name called. However, no approval is necessary for banking if such company has obtained necessary approval is necessary approval under the provisions of the Banking Regulations Act, 1994.

Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China are debarred, without prior permission of the Reserve Bank, from establishing in India, a branch or liaison office or a project office or any other place of business by whatever name called.

ACQUISITION OF IMMOVABLE PROPERTY FOR CARRYING ON BUSINESS BY PROI

A person resident outside India who has established in India, a branch, office or other place of business for carrying on in India any activity, except a liaison office, may acquire any immovable property in India, which is necessary for or incidental to carrying on such activity, provided that all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and the person files with the Reserve Bank a declaration in the **Form IPI** not later than **ninety days** from the date of such acquisition.

REPATRIATION OF SALE PROCEEDS

A person resident outside India, or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property.

In the event of sale of immovable property **other than** <u>agricultural land/farm house/plantation</u> <u>property</u> in India by a person resident outside India who is a citizen of India or a person of Indian origin, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied—

- (a) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force
- (b) the amount to be repatriated does not exceed the amount paid for acquisition of the immovable property
- (c) In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

ADJUDICATION AND APPEAL

DIRECTORATE OF ENFORCEMENT

Section 36 of the act empowers the central government to establish a directorate of enforcement with a director and other officers or class of officers, for the purposes of the enforcement of the act.

> APPOINTMENT OF ADJUDICATING AUTHORITY

Section 16 empowers the central government to appoint by notification in the official gazette as many adjudicating authorities as it may think fit for holding enquiries under section 13. The central government is, however under obligation to specify the jurisdiction of the adjudicating authority.

There are 3 levels of Adjudicating Authorities i.e. Deputy Director, Additional Director and Director of Directorate of Enforcement in the ascending order of hierarchy. The assistant Director of Directorate of Enforcement normally makes a complaint before the Adjudicating Authorities but sometimes he can also act as Adjudicating Authority.

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The jurisdiction of various Adjudicating Authorities is as follows:-

| Authority | Jurisdiction |
|---------------------|---|
| Deputy Director | Cases involving amount up to₹75 lakhs |
| Additional Director | Cases involving amount more than₹75 lakhs and up to₹1 crore |
| Director | Cases involving amount more than₹1 crore |

The adjudicating authority has been empowered to hold any enquiry on a complaint made in writing by an officer authorised by a general or special order by the central government. The officers so appointed shall exercise the like powers which are conferred on income tax authorities under the income tax act, 1961, subject to such conditions and limitations as laid down under that act.

In case, a complaint has been made in respect of a person alleged to have committed the contravention, such person shall be given a reasonable opportunity of being heard before imposing any penalty under section 13.

➤ APPEAL TO SPECIAL DIRECTOR (APPEALS)

Section 17 of the act provides for appointment of one or more special directors (appeals) to hear appeals against the orders of the adjudicating authorities.

The appeal shall be filed in Form No. 1 (in triplicate) of Foreign Exchange Management Rules, 2000 along with a fee of ₹5000 within 45 days from the date of the receipt of the order by aggrieved person.

The special director (appeals) has however, been empowered to entertain appeal after the expiry of the said period of forty five days.

> ESTABLISHMENT OF APPELLATE TRIBUNAL

Under section 18, the central government is empowered to establish an appellate tribunal, by a notification in the official gazette, to hear appeals against the orders of adjudication authorities and special director (appeals).

The central government or any person aggrieved by the orders of adjudicating authority or special director (appeals) may prefer an appeal to the appellate tribunal.

> APPEAL TO HIGH COURT

A right to appeal to high court lies with the appellant who is aggrieved by the decision of the tribunal. Such appeal must be filed within 60 days from the date of communication of the decision or order of the tribunal.

The appeal to the high court can be made on any question of law arising out of such order. A relaxation for a maximum period of sixty days for making an appeal may be granted by the high court, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the specified period.

> INVESTIGATION

Section 37 of the Act empowers the Director of Enforcement and other officers below the rank of an Assistant Director to take up for investigation the contravention referred to in Section 13 of the Act. In addition, the Central Government may also authorise any officer or class of officers in the Central Government, State Government, Reserve Bank of India, not below the rank of Under Secretary to Government of India, to investigate any contravention under Section 13 of the Act. The officers so appointed shall exercise the like powers which are conferred on income tax authorities under the Income Tax Act, 1961, subject to such conditions and limitations as laid down under that Act.

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CONTRAVENTION AND PENALTIES

Section 13 provides that any person contravening any provision of the act, shall be liable for penalty upon adjudication, which may extend upto thrice the sum involved in such contravention where such amount is quantifiable or upto two lakh rupees where the amount is not quantifiable. If the contravention continues, the penalty of \$5,000 per day during the period in which the contravention continues, shall be imposed.

CONTRAVENTION BY COMPANIES

where the person committing the contravention of the act or rules happened to be a company, every person who at the time the contravention was committed, was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the contravention and liable to be proceeded against and punished accordingly.

However, no such persons shall be deemed to be guilty of committing any offence if he proves that such contravention took place without his knowledge or that he exercised adequate steps to prevent such contravention.

In case the contravention is committed by a company and it is proved that such contravention is committed with the knowledge, consent and connivance or is attributed to the neglect on the part of any director, manager or secretary or other officer of the company, they will also be deemed to be guilty of contravention and liable to be proceeded against and punished accordingly.

> ENFORCEMENT OF THE ORDERS OF ADJUDICATING AUTHORITY

In terms of section 14 of the act, if any person fails to make full payment of the penalty imposed within a period of ninety days from the date on which the notice of payment of such penalty is served on him, he shall be liable for **civil imprisonment**.

COMPOUNDING OF CONTRAVENTIONS

Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/regulations/notification/orders/directions/circulars issued there under. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contraventions as defined under section 13 of FEMA, 1999. Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank.

> POWERS OF RESERVE BANK TO COMPOUND CONTRAVENTION

| Sum involved in contravention | Compounding authority |
|---|--------------------------------------|
| 10 lakhs rupees or below | assistant general manager of the RBI |
| more than rupees 10 lakhs but less than rupees 40 lakhs | deputy general manager of RBI |
| 40 lakhs or more but less than rupees 100 lakhs | general manager of RBI |
| rupees 100 lakhs or more | chief general manager of the RBI |

The benefit of above provisions shall not be available in case a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

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> POWERS OF ENFORCEMENT DIRECTORATE TO COMPOUND **CONTRAVENTION**

Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement.

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CHAPTER

4

LIBERALIZED REMITTANCE SCHEME (LRS)

Covering-

- The Permissible Capital Account Transactions by an Individual Under LRS
- The Permissible Current Account Transactions by an Individual Under LRS
- Remittance facilities to persons other than individuals
- Prohibited Transactions
- Self Test Questions

EXPECTED
MARKS COVERAGE
(15 to 20)

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LIBERALIZED REMITTANCE SCHEME (LRS)

The Reserve Bank of India as part of its liberalization measure to facilitate resident individuals to remit funds abroad for permitted current or capital account transactions or combination of both issues Liberalised Remittance Scheme.

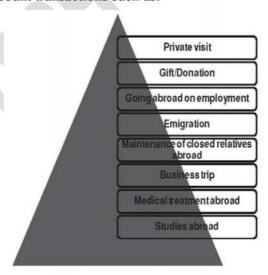
Liberalised Remittance Scheme permits the Authorised Dealers to freely allow remittances by resident individuals up to USD 2,50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both. The Scheme is available to all resident individuals including minors.

THE PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS BY AN INDIVIDUAL UNDER LRS

- (i) opening of foreign currency account abroad with a bank;
- (ii) purchase of property abroad;
- (iii) making investments abroad;
- (iv) setting up Wholly owned subsidiaries and Joint Ventures abroad;
- (v) extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are Relatives as defined in Companies Act, 2013.

PERMISSIBLE CURRENT ACCOUNT TRANSACTIONS BY AN INDIVIDUAL UNDER LRS

The limit of USD 2,50,000 per Financial Year (FY) under the Scheme also includes/subsumes remittances for current account transactions such as:



a. Private visits

For private visits abroad, other than visit to Nepal and Bhutan, resident individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000, from an Authorised Dealer, in any one financial year, irrespective of the number of visits undertaken during the year.



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(b) Gift/donation

Any resident individual may remit up-to USD 2,50,000 in one Financial Year as gift to a person residing outside India or as donation to an organization outside India.

(c) Going abroad on employment

A person going abroad for employment can draw foreign exchange up to USD 2,50,000 per Financial Year from any Authorised Dealer in India.

(d) Emigration

A person wanting to emigrate can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 250,000.

Remittance of any exchange outside India in excess of this limit may be allowed only towards meeting incidental expenses in the country of immigration.

(e) Maintenance of close relatives abroad

A resident individual can remit up-to USD 2,50,000 per Financial Year towards maintenance of close relatives.

(f) Business trip

Visits by individuals in connection with attending of an international conference, seminar, specialised training, apprentice training, etc., are treated as business visits. For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD 2,50,000 in a Financial Year irrespective of the number of visits undertaken during the year.

(g) Medical treatment abroad

Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 or its equivalent per Financial Year without insisting on any estimate from a hospital/doctor. For amount exceeding the above limit, Authorised Dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital/ doctor abroad.

(h) Facilities available to students for pursuing their studies abroad

AD Category I banks and AD Category II, may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University. However, AD Category I bank and AD Category II may allow remittances (without seeking prior approval of the Reserve Bank of India) exceeding USD 2,50,000 based on the estimate received from the institution abroad.

Documentation by the remitter

- (a) The resident individual is required to compulsorily designate a branch of an AD through which all the remittances under the Scheme will be made. The resident individual seeking to make the remittance should furnish Form A2 for purchase of foreign exchange under LRS.
- (b) It is mandatory to have PAN card to make remittances under the Scheme for capital account transactions.

REMITTANCE FACILITIES TO PERSONS OTHER THAN INDIVIDUALS

Gift/donation

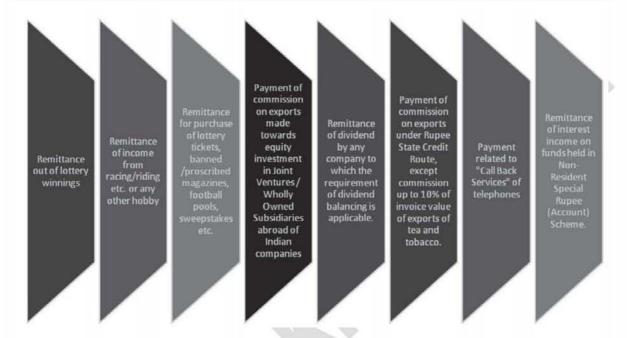
General permission has been granted to persons other than individuals to remit towards donations up-to one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000,whichever is less, for creation of Chairs in reputed educational institutes,



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- (a) contribution to funds (not being an investment fund) promoted by educational institutes; and
- **(b)** contribution to a technical institution or body or association in the field of activity of the donor Company.
- (c) Any additional remittance in excess of the same shall require prior approval of the Reserve Bank of India.

PROHIBITED TRANSACTIONS



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CHAPTER

(5)

FORGEIN DIRECT INVESTMENT – REGULATION & POLICY

Covering-

- Introduction
- · Foreign direct investment in India
- General conditions on FDI
- Permitted Sectors
- Reporting of inflow
- FDI in E-Commerce Activities
- Other Conditions on investment
- FDI Prohibited Sectors
- Reporting of issue of shares
- Export of goods and services
- Advance Your Knowledge
- Self Test Questions

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FOREIGN DIRECT INVESTMENT – REGULATION AND POLICY

INTRODUCTION

To promote Foreign Direct Investment (FDI), the Government has put in place an investor-friendly policy, wherein except for a small negative list, most sectors are open for 100% FDI under the Automatic route. Further, the policy on FDI is reviewed on an ongoing basis, to ensure that India remains attractive & investor friendly destination.

FOREIGN DIRECT INVESTMENTS IN INDIA

FOREIGN DIRECT INVESTMENT POLICY 2016

INTENT AND OBJECTIVE

In a globalized world today, India's growth story is intrinsically linked with the story of both Indian entrepreneurship and Foreign Direct Investment (FDI). The Government has put in place a policy framework on Foreign Direct Investment, which is transparent, predictable and easily comprehensible. This framework is embodied in the Circular on Consolidated FDI Policy, which may be updated every year, to capture and keep pace with the regulatory changes, effected in the interregnum. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/Press Releases which are notified by the Reserve Bank of India as amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.

These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified otherwise therein. In case of any conflict, the relevant FEMA Notification will prevail.

GENERAL CONDITIONS ON FDI

WHO CAN INVEST IN INDIA?

A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, insectors/activities other than defence, space and atomic energy and sectors/activities prohibited for foreign investment.

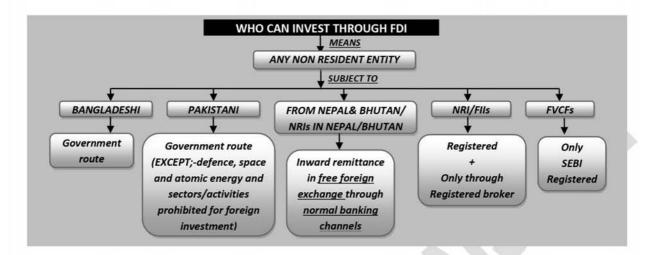
NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

Only registered FIIs and NRIs as per Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India)Regulations, 2000, can invest/trade through a registered broker in the capital of Indian Companies on recognised Indian Stock Exchanges. A SEBI registered Foreign Venture Capital Investor (FVCI)can also invest.

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ENTITIES INTO WHICH FDI CAN BE MADE

1. FDI in an Indian Company

Indian companies can issue capital against FDI.

2. FDI in Partnership Firm/Proprietary Concern

- (i) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis provided;
 - (a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks.
 - (b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.
 - (c) Amount invested shall not be eligible for repatriation outside India.

3. FDI in Venture Capital Fund (VCF)

FVCIs are allowed to invest in Indian Venture Capital Undertakings (IVCUs)/Venture Capital Funds (VCFs)/other companies

4. FDI in Trusts

FDI in Trusts other than VCF is not permitted.

5. FDI in Limited Liability Partnerships (LLPs)

FDI in LLPs is permitted, subject to the following conditions:-

- (a) FDI will be allowed, through the Government approval route, only in LLPs operating insectors/activities where 100% FDI is allowed, through the automatic route.
- (b) LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.

6. FDI in other Entities

FDI in resident entities other than those mentioned above is not permitted.

TYPES OF INSTRUMENTS FOR INVESTMENT



Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares subject to pricing guidelines/valuation norms prescribed under FEMA Regulations.

The price/conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA regulations [as per any internationally accepted pricing methodology on arm's length basis for the unlisted companies and valuation in terms of SEBI(ICDR) Regulations, for the listed companies].

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ISSUE/TRANSFER OF SHARES

The capital instruments should be issued within 180 days from the date of receipt of the inward remittance received through normal banking channels including escrow account opened and maintained for the purpose or by debit to the NRE/FCNR (B) account of the non-resident investor. In case, the capital instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be. Non-compliance with the above provision would be reckoned as a contravention under FEMA and would attract penal provisions.

ISSUE PRICE OF SHARES

Price of shares issued to persons resident outside India under the FDI Policy, shall not be less than-

- (a) the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company are listed on any recognised stock exchange in India;
- (b) the fair valuation of shares done by a SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology on arm's length basis, where the shares of the company are not listed on any recognised stock exchange in India; and
- (c) the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment. However, where non-residents (including NRIs) are making investments in an Indian company in compliance with the provisions of the Companies Act, as applicable, by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

TRANSFER OF SHARES AND CONVERTIBLE DEBENTURES

Non-resident investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders.

General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:

- (a) A person resident outside India (other than NRI and erstwhile OCB) may transfer byway of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).
- **(b)** NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.
- (c) A person resident outside India can transfer any security to a person resident in India by way of gift.
- (d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.
- (e) A person resident in India can transfer by way of sale, shares/ convertible debentures(including transfer of subscriber's shares), of an Indian company under private arrangement to a person resident outside India, subject to the applicable guidelines.
- (f) General permission is also available for transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the applicable guidelines.

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(h) The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the <u>Form FCTRS</u> within the given timeframe would be on the transferor/transferee, resident in India.

However, in cases where the NR investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the investee company would have to file form FC-TRS with the AD Category-I bank.

ISSUE OF RIGHTS/BONUS SHARES

FEMA provisions allow Indian companies to freely issue Rights/Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of bonus/rights shares has to be in accordance with other laws/statutes like the Companies Act, as applicable, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (in case of listed companies), etc. The offer on right basis to the persons resident outside India shall be:

- (a) in the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company;
- (b) in the case of shares of a company not listed on a recognized stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to resident shareholders.

ACQUISITION OF SHARES UNDER SCHEME OF MERGER/DEMERGER/AMALGAMATION

Mergers/demergers/ amalgamations of companies in India are usually governed by an order issued by a competent Court on the basis of the Scheme submitted by the companies undergoing merger/demerger/amalgamation. Once the scheme of merger or demerger or amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India, subject to the conditions that:

- (i) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap, and
- (ii) the transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy.

Note: FIPB approval would not be required in case of mergers and acquisitions taking place insectors under automatic route.

ISSUE OF SHARES UNDER EMPLOYEES STOCK OPTION SCHEME (ESOPS)

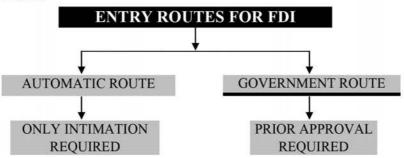
- (i) Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad, who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to citizens of Bangladesh with the prior approval of FIPB. Subject to this, Government approval is not required for issue of ESOPs in sectors under automatic route. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:-
 - (a) The scheme has been drawn in terms of relevant regulations issued by the SEBI, and
 - (b) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.
- (ii) Unlisted companies have to follow the provisions of the Companies Act, as applicable.

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ENTRY ROUTES FOR INVESTMENT

Foreign Direct Investments (FDI) can be made under two routes:—

- (a) Automatic Route and
- (b) Government Route.



Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment. Only an intimation is required to be given to RBI.

Government Route

FDI in activities not covered under the automatic route requires prior approval of the Government. Proposals for foreign investment under Government route, are considered by respective Administrative Ministry/Department.

Foreign investment in sectors/activities under government approval route will be subject to government approval where:

- (i) An Indian company is being established with foreign investment and is not owned by a resident entity or
- (ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or.

Competent Authority

Following are the Competent Authorities for grant of approval for foreign investment for sectors/activities requiring Government approval:

| S. No. | Activity/ sector | Administrative Ministry/ Department | |
|--------|---|--|--|
| 1. | Mining | Ministry of Mines | |
| 2. | Defence | | |
| 6 | (a) Items requiring Industrial Licence under the Industries (Development & Regulation) Act, 1951, and/or Arms Act, 1959 for which the powers have been delegated by Ministry of Home Affairs to DIPP. | Production, Ministry of | |
| | (b) Manufacturing of Small Arms and Ammunitions covered under Ministry of Hom Arms Act 1959. | | |
| 3. | Broadcasting | Ministry of Information & | |
| 4. | Print Media | Broadcasting | |
| 5. | Civil Aviation | Ministry of Civil Aviation | |
| 6. | Satellites | Department of Space | |
| 7. | Telecommunication | Department of Telecommunications | |

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| 8. | Private Security Agencies | | |
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| 9. | Applications involving investments from <i>Countries of Concern</i> which presently include Pakistan and Bangladesh, requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, amended from time to time | Ministry of Home Affairs | |
| 10. | Trading (Single brand, Multi brand and Food Product retail trading) | | |
| 11. | FDI proposals by Non-Resident Indians (NRIs)/ Export Oriented Units requiring approval of the Government | | |
| 12. | Applications relating to issue of equity shares under the FDI policy under the Government route for import of capital goods/machinery/equipment (excluding second-hand machinery) | Daliar & Duamatian | |
| 13. | Applications relating to issue of equity shares for preoperative/ pre- incorporation expenses (including payments of rent etc.) | | |
| 14. | Financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight | Department of Economic Affairs | |
| 15. | Applications for foreign investment into a Core Investment Company or an Indian company engaged only in the activity of investing in the capital of other India Company/ies | | |
| 16. | Banking (Public and Private) | Department of Financial Services | |
| 17. | Pharmaceuticals | Department of Pharmaceuticals | |

PERMITTED SECTORS

FDI Permitted in:

| Sector / Activity | % of Equity/FDI Cap | Entry Route |
|--|---------------------------|-------------|
| Floriculture, Horticulture, and Cultivation of Vegetables & Mushrooms under controlled conditions; | 100% | Automatic |
| Development and Production of seeds and planting material; | 100% | Automatic |
| Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, Apiculture; | 100% | Automatic |
| Services related to agro and allied sectors Note: Besides the above, FDI is not allowed in any other agricultural sector/activity | 100% | Automatic |
| Tea sector including tea plantations | 100% | Automatic |
| Coffee plantations | 100% | Automatic |
| Rubber plantations | 100% | Automatic |
| Cardamom plantations | 100% | Automatic |
| Palm oil tree plantations | 100% | Automatic |
| Olive oil tree plantations Note: Besides the above, FDI is not allowed in any other plantation sector/activity. | 100% | Automatic |

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| Terrestrial Broadcasting FM(FM Radio), subject to such terms and | | |
| conditions, as specified from time to time, by Ministry of Information | 49% | Government |
| & Broadcasting, for grant of permission for setting up of FM Radio | | |
| stations Up-linking of 'News & Current Affairs' TV Channels | 49% | Government |
| | 4970 | Government |
| Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels | 100% | Automatic |
| Publishing of newspaper and periodicals dealing with news and current affairs | 26% | Government |
| Publication of Indian editions of foreign magazines dealing with news and current affairs | 26% | Government |
| Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting. | 100% | Government |
| Publication of facsimile edition of foreign newspapers | 100% | Government |
| Airport (Greenfield projects) | 100% | Automatic |
| Airport (Existing projects) | 100% | |
| Automatic Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline | 100% | Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49% |
| Regional Air Transport Service | 100% | Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49% |
| Non-Scheduled Air Transport Services | 100% | Automatic |
| Helicopter services/seaplane services requiring DGCA approval | 100% | Automatic |
| Ground Handling Services subject to sectoral regulations and security clearance. | 100% | Automatic |
| Maintenance and Repair organizations; flying training institutes; and technical training institutions. | 100% | Automatic |
| Construction-development projects (which would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships) | 100% | Automatic |
| Industrial Parks -new and existing | 100% | Automatic |
| Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO | 100% | Government |
| Private Security Agencies | 74% | Automatic up to 49% Government route beyond 49% and up to 74% |

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| Telecom Services (including Telecom Infrastructure Providers | | |
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| Category-I) | | |
| All telecom services including Telecom Infrastructure Providers | | |
| Category-I, viz. Basic, Cellular, United Access Services, Unified | | A |
| License (Access Services), Unified License, National/ International | 1000/ | Automatic up to 49% |
| Long Distance, Commercial V-Sat, Public Mobile Radio Trunked | 100% | Government route |
| Services (PMRTS), Global Mobile Personal Communications | | beyond 49% |
| Services (GMPCS), All types of ISP licenses, Voice Mail/ | | |
| Audiotex/UMS, Resale of IPLC, Mobile Number Portability | | |
| Services, Infrastructure Provider Category-I (providing dark fibre, | | |
| right of way, duct space, tower) except Other Service Providers. | | |
| Cash & Carry Wholesale Trading/Wholesale Trading (including | 100% | Automatic |
| sourcing from MSEs) | | |
| E-commerce activities | 100% | Automatic |
| Single Brand product retail trading | | Automatic up to 49% |
| | 100% | Government route |
| | 74.274.3 | beyond 49% |
| Multi Brand Retail Trading | 51% | Government |
| Duty Free Shops | 100% | Automatic |
| Railway Infrastructure Construction, operation and maintenance of | | |
| the following: | | |
| (i) Suburban corridor projects through PPP, (ii) High speed train | | |
| projects, (iii) Dedicated freight lines, (iv) Rolling stock including | | |
| train sets, and locomotives/ coaches manufacturing and maintenance | 100% | Automatic |
| facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) | 20070 | |
| Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in | | |
| industrial park pertaining to railway line/sidings including electrified | | |
| railway lines and connectivity's to main railway line and (x) Mass | | |
| Rapid Transport Systems. | | |
| Asset Reconstruction Company | 100% | Automatic |
| Banking- Private Sector | | Automatic up to 49% |
| | 74% | Government route |
| | 7 7 7 0 | beyond 49% and up to |
| | | 74%. |
| Banking- Public Sector subject to Banking Companies (Acquisition | | |
| & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also | 20% | Government |
| applicable to the State Bank of India and its associate Banks. | | |
| Credit Information Companies | 100% | Automatic |
| Infrastructure companies in Securities Markets, namely, stock | | |
| exchanges, commodity exchanges, depositories and clearing | 49% | Automatic |
| corporations, in compliance with SEBI Regulations | | |
| Insurance Company | 49% | Automatic |
| Insurance Brokers | 49% | Automatic |
| Third Party Administrators | 49% | Automatic |
| Surveyors and Loss Assessors | 49% | Automatic |
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| Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) | 49% | Automatic |
|--|------|---|
| Pension Sector | 49% | Automatic |
| Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010. | 49% | Automatic |
| White Label ATM Operations | 100% | Automatic |
| Financial Services activities regulated by financial sector regulators, viz., RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India. | 100% | Automatic |
| Pharmaceutical (Greenfield) | 100% | Automatic |
| Pharmaceutical(Brownfield) | 100% | Automatic up to 74% Government route beyond 74% |

FDI IN E-COMMERCE ACTIVITIES

Subject to provisions of FDI Policy, e-commerce entities would engage only in Business to Business (B2B) ecommerce and not in Business to Consumer (B2C) e-commerce.

E-commerce means buying and selling of goods and services including digital products over digital & electronic network.

E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2(v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.

Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

Marketplace based model of e-commerce means providing of an information technology platform by an ecommerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

OTHER CONDITIONS OF INVESTMENT

- (a) 100% FDI under automatic route is permitted in marketplace model of e-commerce.
- (b) FDI is not permitted in inventory based model of e-commerce.
- (c) Digital & electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc.
- (d) Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.

FDI-PROHIBITED SECTORS

FDI is prohibited in:-

- 1. Lottery Business including Government/private lottery, online lotteries, etc.
- 2. Gambling and Betting including casinos etc.
- 3. Chit funds
- 4. Nidhi company

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- 5. Trading in Transferable Development Rights (TDRs)
- 6. Real Estate Business or Construction of Farm Houses
- 7. Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- **8.** Activities/sectors not open to private sector investment

REPORTING OF INFLOW

- (i) An Indian company receiving investment from outside India for issuing shares/convertible debentures/preference shares under the FDI Scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank not later than 30 days from the date of receipt in the Advance Reporting Form.
- (ii) Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares/convertible debentures, through an AD Category-I bank, together with a copy evidencing the receipt of the remittance along with the KYC report on the non-resident investor from the overseas bank remitting the amount.

REPORTING OF ISSUE OF SHARES

- (i) After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP)/fully, mandatorily & compulsorily convertible debentures/fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file Form FC-GPR, not later than 30 days from the date of issue of shares.
- (ii) Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorized Dealer of the company, who will forward into the Reserve Bank.

The following documents have to be submitted along with the form:

- (a) A <u>certificate from the Company Secretary of the company certifying that:</u>
 - (A) all the requirements of the Companies Act, as applicable, have been complied with;
 - (B) terms and conditions of the Government's approval, if any, have been complied with;
 - (C) the company is eligible to issue shares under these Regulations; and
 - (D) the company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.

Note: For companies with paid up capital with less than ₹5 crore, the above mentioned certificate can be given by a practicing company secretary.

- (b) A certificate from SEBI registered Merchant Banker or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.
- (c) The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.
 - Note: An Indian company issuing partly paid equity shares shall file a report in form FC-GPR to the extent they become paid up.
- (d) Annual return on Foreign Liabilities and Assets should be filed on an annual basis by the Indian company, directly with the Reserve Bank. This is an annual return to be submitted by 15th of July every year, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years.

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(e) Issue of bonus/ rights shares or stock options to persons resident outside India directly or on amalgamation/ merger/ demerger with an existing Indian company, as well as issue of shares on conversion of ECB/royalty/ lumpsum technical know-how fee/ import of capital goods by units in SEZs, has to be reported in Form FC-GPR.

EXPORT OF GOODS AND SERVICES

Export of goods and services is regulated by the provisions of Sections 7 and 8 of FEMA, 1999 and Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

Export includes the taking or sending out of India goods by land, sea or air, on consignment or by way of sale, lease, hire purchase or under any other arrangement by whatever name called. In the case of software, export also includes transmission of any data through any electronic medium.

In general, all exports are free.

CERTAIN EXPORTS REQUIRING PRIOR APPROVAL

Generally, exports are free but in the case of following exports, prior approval of RBI is required:

(a) Export of goods on lease, hire, etc.

No person is allowed, except with the prior permission of the reserve bank, to take or send out by land, sea or air any goods from India to any place outside India on lease or hire or under any arrangement or in any other manner other than sale or disposal of such goods.

(b) Exports under trade agreement/rupee credit etc.

Export of goods under special arrangement between the central government and government of a foreign state, are governed by the terms and conditions set out in the relative public notices issued by the trade control authority in India and the instructions issued from time to time by the reserve bank. The export under the line of credit extended to a bank or a financial institution operating in a foreign state by the exim bank for financing exports from India, are governed by the terms and conditions advised by the reserve bank to the authorised dealers from time to time.

(c) Counter trade

Any arrangement involving adjustment of value of goods imported into India against value of goods exported from India, requires prior approval of the Reserve Bank.

DECLARATION AS REGARDS EXPORT OF GOODS AND SERVICES

Every exporter of goods or software, in physical form or through any other form either directly or indirectly to any place outside India, other than Nepal and Bhutan, is required to furnish to the specified authority a declaration in the prescribed form within 21 days of export.

In respect of export of services to which none of the forms specified apply, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due or accrues on account of such export and to repatriate the same to India.

EXPORT OF GOODS OR SERVICES WITHOUT DECLARATION

| Export of goods or | (a)trade samples of goods and publicity material supplied free of cost; | |
|------------------------|---|--|
| services may be made | (b)personal effects of travellers, whether accompanied or unaccompanied; | |
| without furnishing | (c) goods or software accompanied by a declaration by the exporter that they | |
| the declaration in the | are not more than twenty five thousand rupees in value; | |
| following cases, | (d) by way of gift of goods accompanied by a declaration by the exporter that | |
| namely:- | they are not more than one lakh rupees in value; | |

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MANNER OF PAYMENT OF EXPORT VALUE OF GOODS

Unless otherwise authorised by the Reserve Bank, the amount representing the full export value of the goods exported shall be paid through an authorised dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000.

TIME LIMIT FOR REALISATION OF EXPORT VALUE OF GOODS/SOFTWARE

The amount representing the full export value of goods or software exported is required to be realised and repatriated to India within six months from the date of export.

However in the following case the stipulation of period of realization and repatriation to India shall not apply:-

- 1) In case of star export houses, export value can be realized within 12 months.
- 2) Export oriented units and units in FHTP/STP/BTP can realize and repatriate full value of exports proceeds within 12 months from the date of export.
- 3) In the case of units in SEZ, there is no time limit for realization of export proceeds.

PAYMENT FOR THE EXPORT

In respect of export of any goods or software for which a declaration is required to be furnished no person shall, except with the permission of the Reserve Bank or authorized dealer, of or refrain form doing anything or take or refrain from taking any action which has the effect of securing:-

- (a) That the payment for the goods or software is made otherwise than in the specified manner; or
- (b) That he payment is delayed beyond the period specified under these Regulations; or
- (c) That the proceeds of sale of the good or software do not represent the full export value of the goods or software.

PROJECT EXPORTS

Regulation 18 deals with project exports and provides that where the export of goods or services is proposed to be made:-

- In Export of engineering goods on deferred payment terms;
- in execution of a turnkey project or,
- > a civil construction contract,

the exporter shall, before entering into any such export arrangement, submit the proposal for prior approval to the authority which shall consider the proposal in accordance with the guidelines issued by the Reserve Bank from time to time.



ADVANCE YOUR KNOWLEDGE







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CHAPTER OVERSEAS DIRECT INVESTMENTS (ODI) Covering-Overseas Direct Investments Route for ODI Eligibility to make overseas direct investment under the automatic route ODI Transactions that require RBI Approval Permissible source for funding overseas direct investment Eligibility criteria for trust Eligibility criteria for society Advance Your Knowledge Self Test Questions **EXPECTED MARKS COVERAGE** (1 to 5)

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OVERSEAS DIRECT INVESTMENTS (ODI)

OVERSEAS INVESTMENTS

Overseas investments (or financial commitment) in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognised as important avenues for promoting global reach of Indian entrepreneurs. Joint Ventures are perceived as a medium of economic and business co-operation between India and other countries.

<u>"Financial Commitment"</u> means the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.

"Direct investment outside India" means investments, either under the Automatic Route or the Approval Route, by way of contribution to the capital or subscription to the Memorandum of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (JV or WOS).

ROUTE FOR ODI

The Government has adopted two way approach to the approval of direct investment, i.e. Automatic Route and Approval Route.

Under the Automatic Route, an Indian Party does not require any prior approval from the Reserve Bank for making direct investments in a JV/WOS abroad. The Indian Party should approach an Authorized Dealer Category – I bank with an application in Form ODI and the prescribed enclosures / documents for effecting the remittances towards such investments. However, in case of investment in the financial services sector, prior approval is required from the regulatory authority concerned, both in India and abroad.

Proposals not covered by the conditions under the automatic route require prior approval of the Reserve Bank for which a specific application in Form ODI with the documents prescribed therein is required to be made through Authorized Dealer Category – I banks.

ELIGIBILITY TO MAKE OVERSEAS DIRECT INVESTMENT UNDER THE AUTOMATIC ROUTE

An Indian Party is eligible to make overseas direct investment under the Automatic Route. An Indian Party is a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act 1932 or a Limited Liability Partnership (LLP)incorporated under the Limited Liability Partnership Act, 2008 and any other entity in India as may be notified by the Reserve Bank. When more than one such company, body or entity makes investment in the foreign JV / WOS, such combination will also form an "Indian Party".

ODI TRANSACTIONS THAT REQUIRE RBI APPROVAL

Some of the proposals which require prior approval are:

- (i) Overseas Investments in the energy and natural resources sector exceeding the prescribed limit of net worth of Indian companies as on the date of the last audited balance sheet;
- (ii) Overseas Investments by proprietorship concerns and unregistered partnership firms satisfying certain eligibility criteria;



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- (iii) Investments by Registered Trusts / Societies (satisfying certain eligibility criteria) engaged in the manufacturing / educational / hospital sector in the same sector in a JV / WOS outside India;
- (iv) Corporate guarantee by the Indian Party to second and subsequent level of Step Down Subsidiary(SDS);
- (v) All other forms of guarantees which are offered by the Indian Party to its first and subsequent level of SDS:
- (vi) Restructuring of the balance sheet of JV/WOS involving write-off of capital and receivables in the books of listed/ unlisted Indian Company satisfying certain eligibility;
- (vii) Capitalization of export proceeds remaining unrealized beyond the prescribed period of realization to require prior approval of the Reserve Bank; and
- (viii)Proposals from the Indian party for undertaking *financial commitment* without equity contribution in JV / WOS may be considered by the Reserve Bank under the approval route based on the business requirement of Indian Party and legal requirement of host country in which JV/WOS is located.

PERMISSIBLE SOURCES FOR FUNDING OVERSEAS DIRECT INVESTMENT

Funding for overseas direct investment can be made by one or more of the following sources:

- 1. Drawal of foreign exchange from an AD bank in India
- 2. Swap of shares (refers to the acquisition of the shares of an overseas JV/WOS by way of exchange of the shares of the Indian party).
- 3. Capitalization of exports and other dues and entitlements

| Proceeds of Externa | l Commercial | Borrowings/Foreign | Currency | Convertible Bonds. |
|---------------------|--------------|--------------------|----------|--------------------|
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In exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and the guidelines issued by Government of India in the matter.

Balance held in Exchange Earners Foreign Currency account of tee Indian Party maintained with an Authorized Dealer

Proceeds of foreign currency funds raised through ADR/GDR issues

ELIGIBILITY CRITERIA FOR TRUST

- (i) The Trust should be registered under the Indian Trust Act, 1882;
- (ii) The Trust deed permits the proposed investment overseas;
- (iii) The proposed investment should be approved by the trustee/s;
- (iv) The AD Category I bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- (v) The Trust has been in existence at least for a period of three years;
- (vi) The Trust has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, Central Bureau of Investigation (CBI), etc.

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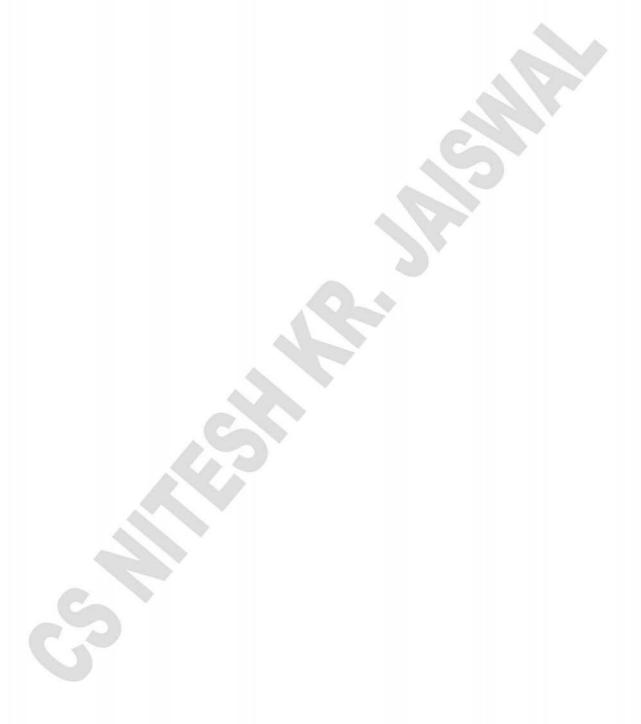
ELIGIBILITY CRITERIA FOR SOCIETY

- (i) The Society should be registered under the Societies Registration Act, 1860.
- (ii) The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body/ council or a managing/ executive committee.
- (iii) The AD Category I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a *bonafide* activity;
- (iv) The Society has been in existence at least for a period of three years;
- (v) The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.



ADVANCE YOUR KNOWLEDGE







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CHAPTER EXTERNAL COMMERCIAL BORROWINGS (ECB) Covering-External Commercial Borrowings (ECB) Type of ECB Reporting Requirements Advance Your Knowledge Self Test Questions **EXPECTED** MARKS COVERAGE (1 to 5)

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EXTERNAL COMMERCIAL BORROWINGS (ECB)

EXTERNAL COMMERCIAL BORROWINGS (ECBs)

MEANING OF ECB

External Commercial Borrowing includes commercial Bank loans, Buyer's Credit, Suppliers Credit and Commercial Borrowing from Multi-National financial institutions such as Asian Development Bank, International Finance Corporation etc.

Generally any money that has been borrowed from foreign sources for financing the commercial activities in India is called External Commercial Borrowings.

The Government of India permits ECBs as a source of finance for Indian Corporates for expansion of existing capacity as well as for fresh investment

Objective of ECB

- 1. Government permits the ECBs as an additional source of financing for expanding the existing capacity as well as for fresh investments.
- 2. The ECB policy of the Government seeks to emphasize the priority of investing in the infrastructure and core sectors such as Power, telecom, Railways, Roads, Urban infrastructure etc.

ECB is different from FDI

- 1. ECB means any kind of funding other than Equity.
- 2. If the foreign money is used to finance the Equity Capital, it would be termed as Foreign Direct Investment.

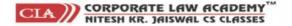
FORMS OF ECB

The ECB Framework enables permitted resident entities to borrow from recognized non-resident entities in the following forms: -

- 1. Loans including bank loans;
- 2. Securitized instruments
- 3. Buyers' credit;
- 4. Suppliers' credit;
- 5. Foreign Currency Convertible Bonds (FCCBs);
- 6. Financial Lease;
- 7. Foreign Currency Exchangeable Bonds (FCEBs)

Benefits to Borrower

- 1. For corporates, the ECB funding helps in many purposes such as paying other countries etc that may not be available in India.
- 2. The cost of funds borrowed from external sources at times is cheaper funds.
- 3. The borrower can diversify the investor base.
- 4. It opens the international market for the borrowers.



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GOVERNMENT GUIDELINES FOR ECBs

RBI/FED/2018-19/67 FED Master Direction No.5/2018-19 March 26, 2019 (Updated as on August 08, 2019)

Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations

PART - I External Commercial Borrowings Framework

1. ECB Framework: The framework for raising loans through ECB (hereinafter referred to as the ECB Framework) comprises the following two options:

| Parameters | FCY denominated ECB | INR denominated ECB |
|--|---|---|
| Currency of borrowing | Any freely convertible Foreign Currency | Indian Rupee (INR) |
| Forms of ECB | bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease. | floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease. |
| Eligible borrowers | FDI. Further, the following | (a) All entities eligible to raise FCY ECB; and (b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations. |
| Recognised lenders | country, including on transfe a) Multilateral and Regional Fi member country will also be b) Individuals as lenders can o | nt of FATF or IOSCO compliant or of ECB. However, nancial Institutions where India is a considered as recognised lenders; only be permitted if they are foreign scription to bonds/debentures listed |
| The second secon | categories mentioned below, therein: Sr.No. Ca (a) ECB raised by manufac 50 million or its equival (b) ECB raised from foreig capital purposes, generate repayment of Rupee loa (c) ECB raised for (i) working capital purposes | the MAMP will be as prescribed at egory turing companies up to USD 1 year ent per financial year. In equity holder for working al corporate purposes or for ms 10 rposes or general corporate |
| | Currency of borrowing Forms of ECB Eligible borrowers Recognised lenders Minimum Average Maturity Period | Currency of borrowing Currency Forms of ECB Loans including bank loans: floating/ fixed rate notes, bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease. Eligible borrowers All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India. Recognised lenders The lender should be resident country, including on transfera Multilateral and Regional Firms member country will also be b) Individuals as lenders can one equity holders or for substabroad; and Minimum Average MAMP for ECB will be 3 categories mentioned below, therein: Sr.No. Ca (a) ECB raised by manufact 50 million or its equival (b) ECB raised from foreig capital purposes, generate repayment of Rupee load (c) ECB raised for (i) working capital purposes, generate repayment of Rupee load (c) ECB raised for (ii) working capital purposes. |

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| v | | MAMP for ECB will be 3 years. However, for the specific categories | | | |
|------|---------------------------|--|---|-----------|--|
| | Maturity Period (MAMP) | Sr. No. | ned below, the MAMP will be as prescribed therein: Category | MAMP | |
| | | | <u> </u> | | |
| | | (a) | ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year. | 1 year | |
| | | (b) | ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans | | |
| | | (c) | ECB raised for | 10 | |
| | | | (i) working capital purposes or general corporate purposes(ii) on-lending by NBFCs for working capital | | |
| | | | purposes or general corporate purposes | | |
| | | (d) | ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure | 7 years | |
| | | | (ii) on-lending by NBFCs for the same purpose | | |
| | | (e) | ECB raised for | 10 | |
| | | | (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure(ii) on-lending by NBFCs for the same purpose | years | |
| vi | All-in-cost ceiling pe | r Benchr | mark rate plus 450 bps (Basis Points) spread. | | |
| vii | Other costs | covena | Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount. | | |
| viii | | | gative list, for which the ECB proceeds cannot be | utilised, | |
| | list) | would include the following: | | | |
| | | (a) Real estate activities. | | | |
| | | (b) Investment in capital market. | | | |
| | | (c) Equity investment. | | | |
| | | (d) Working capital purposes, | | | |
| | | (e) General corporate purposes, | | | |
| | | (f) Re | (f) Repayment of Rupee loans, | | |

- 2. Limit and leverage: Under the aforesaid framework, all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route.
- Issuance of Guarantee, etc. by Indian banks and Financial Institutions: Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted.
- 4. Parking of ECB proceeds: ECB proceeds are permitted to be parked abroad as well as domestically.
 - (a) Parking of ECB proceeds abroad: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation.
 - **(b) Parking of ECB proceeds domestically:** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India.
- 5. Procedure of raising ECB: All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework. For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank.



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- **6. Reporting Requirements:** Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:
 - (a) Loan Registration Number (LRN): Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India.
 - **(b)** Changes in terms and conditions of ECB: Changes in ECB parameters in consonance with the ECB norms, should be reported to the DSIM (Department of Statistics and Information Management) through revised Form ECB at the earliest.
 - (c) Monthly Reporting of actual transactions: The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates.
- 7. Cancellation of LRN: The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECB contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to DSIM.
- 8. Refinancing of existing ECB: Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost of existing ECB.

CONVERSION OF ECB INTO EQUITY

- (i) Conversion of ECB into equity is permitted subject to the following conditions:-
 - (a) The activity of the borrowing company is covered under the automatic route for Foreign Direct Investment (FDI) or approval from the Foreign Investment Promotion Board (FIPB), wherever applicable, for foreign equity participation has been obtained as per the FDI policy;
 - **(b)** The foreign equity holding after such conversion of debt into equity is within the applicable sectoral cap;
 - (c) Applicable pricing guidelines for shares are complied with.
- (ii) Partial or full Conversion of ECB may be reported to the RBI as follow:-
 - (a) For partial conversion, the converted portion is to be reported to the concerned Regional Office of the Foreign Exchange Department of RBI in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM (Department of Statistics and Information Management) in ECB 2 Return will be with suitable remarks "ECB partially converted to equity".
 - (b) For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in ECB 2 Return should be done with remarks —ECB fully converted to equity. Subsequent filing of ECB 2 Return is not required.
 - (c) For conversion of ECB into equity in <u>phases</u>, reporting through **ECB 2** Return will also be in phases.

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| Q. 1. | |
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| Q. 2. | |
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CHAPTER

8

FOREIGN TRADE POLICY & PROCEDURE, 2015-2020

Covering-

- ABC Analysis
- FTP, 2015-2020 Objectives
- Focus of the Foreign Trade Policy (FTP)
- Legal basis Foreign Trade Policy (FTP)
- General Provisions regarding imports and exports
- Importer-Exporter Code (IEC) Number
- Mandatory documents for Export/Import of goods from/into India
- Restrictions on Export/Import/Principles of Restrictions
- Quality complaints and trade disputes
- Status Holder
- Export Oriented Units, Electronics Hardware Technology Parks,
 Software Technology Parks and Bio-Technology Parks
- Advance Your Knowledge
- Self Test Questions
 - From Past CS Exam
 - > From ICSI Module

EXPECTED
MARKS COVERAGE
(1 to 5)

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FOREIGN TRADE POLICY & PROCEDURE 2015-2020

ABC Analysis



- 1. FTP, 2015-2020 Objectives
- 2. Importer-Exporter Code (IEC) Number
- 3. Special Economic Zones (SEZ)

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- 4. Concept of Status Holder
- Export Oriented Units, Electronics Hardware Technology Parks, Software Technology Parks and Bio-Technology Parks

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- 6. Mandatory documents for Export/Import of goods from/into India
- 7. Quality complaints and trade disputes



Ministry of Commerce & Industry Government of India

India's Foreign Trade Policy (FTP) has, conventionally, been formulated for five years at a time and reviewed annually. The focus of the FTP has been to provide a framework of rules and procedures for exports and imports and a set of incentives for promoting exports.

FTP, 2015-2020-OBJECTIVES

The FTP for 2015-2020 seeks to achieve the following objectives:

- (i) To provide a stable and sustainable policy environment for foreign trade in merchandise and services;
- (ii) To link rules, procedures and incentives for exports and imports with other initiatives such as "Make in India", "Digital India" and "Skills India" to create an "Export Promotion Mission" for India;
- (iii) To promote the diversification of India's export basket by helping various sectors of the Indian economy to gain global competitiveness with a view to promoting exports;
- (iv) To create an architecture for India's global trade engagement with a view to expanding its markets and better integrating with major regions, thereby increasing the demand for India's products and contributing to the government's flagship "Make in India" initiative;
- (v) To provide a mechanism for regular appraisal in order to rationalise imports and reduce the trade imbalance.

FOCUS OF THE FOREIGN TRADE POLICY (FTP)

The Foreign Trade Policy is primarily focused on accelerating exports. This is sought to be implemented through various schemes intended to exempt and remit indirect taxes on inputs physically incorporated in the export product, import capital goods at concessional duty, stimulate services exports and focus on specific markets and products.

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LEGAL BASIS OF FOREIGN TRADE POLICY (FTP)

The Foreign Trade Policy 2015-20, is notified by Central Government, in exercise of powers conferred under Section 5 of the **Foreign Trade (Development & Regulation) Act, 1992**, as amended. The Foreign Trade Policy, 2015-20 came into force with effect from 01.04.2015.

GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

Exports and Imports - 'Free', unless regulated

- (a) Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports.
- (b) Further, there are some items which are 'free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports

- (a) ITC (HS) is a compilation of codes for all merchandise / goods for export/ import. Goods are classified based on their group or sub-group at 2/4/6/8 digits.
- (b) ITC (HS) is aligned at 6 digit level with international Harmonized System goods nomenclature maintained by World Customs Organization.

However, India maintains national Harmonized System of goods at 8 digit level.

Authority to specify Procedures

Director General of Foreign Trade (DGFT) may specify procedure to be followed by an exporter or importer or by any licensing/Regional Authority (RA) or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and FTP.

IMPORTER-EXPORTER CODE (IEC) NUMBER / E-IEC

An IEC is a 10-digit number allotted to a person that is mandatory for undertaking any export/import activities. Now the facility for IEC in electronic form or e-IEC has also been operationalised.

Application for obtaining IEC can be filed manually and submitting the form in the office of Regional Authority (RA) of DGFT. Alternatively, Exporters / Importers shall file an application in ANF 2A format for grant of e-IEC. Those who have digital signatures can sign and submit the application online along with the requisite documents. Others may take a printout of the application, sign the undertaking/declaration, upload the same with other requisite documents and thereafter submit the signed copy of the online application form to concerned jurisdictional Regional Authorities (RA) either through post or by hand.

No Export/Import without IEC:

No export or import shall be made by any person without obtaining an IEC number unless specifically exempted.

The following categories of importers or exporters are exempted from obtaining IEC.

IEC Number Exempted Categories:

- (i) Importers covered by clause 3(1) and exporters covered by clause 3(2) of Foreign Trade (Exemption from application of Rules in certain cases) Order, 1993.
- (ii) Ministries /Departments of Central or State Government
- (iii) Persons importing or exporting goods for personal use not connected with trade or manufacture or agriculture.



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(iv) Persons importing/exporting goods from/to Nepal, Myanmar through Indo-Myanmar border areas and China (through Gunji, Namgaya Shipkila and Nathula ports), provided CIF(Cost, insurance & freight) value of a single consignment does not exceed Indian ₹25,000. In case of Nathula port, the applicable value ceiling will be ₹1,00,000/-

MANDATORY DOCUMENTS FOR EXPORT/IMPORT OF GOODS FROM/INTO INDIA

- (a) Mandatory documents required for export of goods from India:-
 - 1. Bill of Lading/Airway Bill
 - 2. Commercial Invoice cum Packing List
 - 3. Shipping Bill/Bill of Export
- (b) Mandatory documents required for import of goods into India:-
 - 1. Bill of Lading/Airway Bill
 - 2. Commercial Invoice cum Packing List
 - 3. Bill of Entry

RESTRICTIONS ON EXPORT/ IMPORT/ PRINCIPLES OF RESTRICTIONS

DGFT may, through a Notification, impose restrictions on export and import, necessary for: -

- (a) Protection of public morals;
- (b) Protection of human, animal or plant life or health;
- (c) Protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
- (d) Protection of national treasures of artistic, historic or archaeological value;
- (e) Conservation of exhaustible natural resources:
- (f) Prevention of traffic in arms, ammunition and implements of war.

QUALITY COMPLAINTS AND TRADE DISPUTES

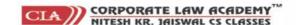
Exporters need to project a good image of the country abroad to promote exports. Maintaining an enduring relationship with foreign buyers is of utmost importance, and complaints or trade disputes, whenever they arise, need to be settled amicably as soon as possible. Importers too may have grievances as well.

In an endeavour to resolve such complaints or trade disputes and to create confidence in the business environment of the country, a mechanism is being laid down to address such complaints and disputes in an amicable way.

Quality Complaints/ Trade Disputes

The following type of complaints may be considered:

- (a) Complaints received from foreign buyers in respect of poor quality of the products supplied by exporters from India;
- (b) Complaints of importers against foreign suppliers in respect of quality of the products supplied; and
- (c) Complaints of unethical commercial dealings categorized mainly as non-supply/ partial supply of goods after confirmation of order; supplying goods other than the ones as agreed upon; non-payment; non-adherence to delivery schedules, etc. Obligation on the part of importer/ exporter



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STATUS HOLDER

- (a) Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs.
- (b) All exporters of goods, services and technology having an import-export code (IEC)number shall be eligible for recognition as a status holder. Status recognition depends upon export performance. An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years, as indicated in Foreign Trade Policy. The export performance will be counted on the basis of FOB (free/freight on board) value of export earnings in free foreign exchange.
- (c) For deemed export, FOR (free/freight on Road) value of exports in Indian Rupees shall be converted in US\$ at the exchange rate notified by CBEC, as applicable on 1st April of each Financial Year.
- (d) For granting status, export performance is necessary in at least two out of three years.

STATUS CATEGORY

| Status Category | Export Performance FOB / FOR (as converted) Value(in US \$ million) | |
|-------------------------|---|--|
| One Star Export House | 3 | |
| Two Star Export House | 25 | |
| Three Star Export House | 100 | |
| Four Star Export House | 500 | |
| Five Star Export House | 2000 | |

PRIVILEGES OF STATUS HOLDERS

A Status Holder shall be eligible for privileges as under:-

- (a) Authorisation and Customs Clearances for both imports and exports may be granted oneself-declaration basis;
- (b) Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP
- (c) Two star and above Export houses shall be **permitted to establish Export Warehouses** as per Department of Revenue guidelines.
- (d) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
- (e) Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India.

EXPORT ORIENTED UNITS (EOUs), ELECTRONICS HARDWARE TECHNOLOGY PARKS (EHTPs), SOFTWARE TECHNOLOGY PARKS (STPs) AND BIO-TECHNOLOGY PARKS (BTPs)

- (a) Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, remaking, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, poultry. Trading units are not covered under these schemes.
- **(b)** Objectives of these schemes are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.



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Merchandise Exports from India Scheme (MEIS)

The objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural in efficiencies and associated costs involved in export of goods/products, which are produced/ manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

Entitlement under MEIS:

Exports of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B of Appendices and Aayat Niryat Forms of FTP 2015-2020, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise]. The basis of calculation of reward would be on realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless otherwise specified.

Service Exports from India Scheme (SEIS)

The objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.

Entitlement under SEIS:

Service Providers of eligible services shall be entitled to Duty Credit Scrip at notified rates on net foreign exchange earned.

Eligibility:

- (a) Service Providers of notified services, located in India, shall be rewarded under SEIS, subject to conditions as may be notified. The notified services and rates of rewards are listed in Appendix 3DofAppendices and Aayat Niryat Forms of FTP 2015-2020. Following Services shall be eligible:
 - (i) Supply of a 'service' from India to any other country; (Model- Cross border trade)
 - (ii) Supply of a 'service' from India to service consumer(s) of any other country; (Mode 2-Consumption abroad).
- (b) Such service provider should have minimum net free foreign exchange earnings of US\$15,000 in preceding financial year to be eligible for Duty Credit Scrip. For Individual Service Providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US\$10,000 in preceding financial year.

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ADVANCE

YOUR KNOWLEDGE



Q. 1. DISTINGUISH BETWEEN 'DUTY FREE REPLENISHMENT CERTIFICATE' AND 'DUTY ENTITLEMENT PASSBOOK SCHEME'.

Ans. DFRC is issued to a merchant-exporter or manufacture-exporter for the import of inputs used in the manufacture of goods without payment of basic customs duty. However, such input is subject to the Payment of additional customs duty equal to the excise duty at the time of import. DFRC is issued on minimum value addition of 25% except for items in gems and jewellery sector for which prescribed value addition is applicable.

The objective of Duty Entitlement Passbook Scheme (DEPB) is to neutralise the incidence of Customs duty on the import content of the export product. The neutralization has been provided by way of grant of duty credit against the export product.

DFRC may be issued in respect of export for which payments are received in non-convertible currency. Such export have, however, been made subject to value addition and prescribed conditions.

In fact, DFRC is issued only in respect of products covered under the standard Input Output Norm (SION) as notified by DGFT. DFRC is issued for import of inputs as per SION as indicated in the shipping bills. The validity of such authorization is 24 months.

The holder of DERB has been given an option to pay additional customs duty, if any, in cash as well. The DEPB is valid for a period of 24 months from the date of issue. The DEPB and/or the items imported against it are freely transferable. The transfer of DEPB should however be for import at the port specified in the DEPB.

Normally, the export made under the DEPB scheme are not entitled for drawback. However, the additional customs duty/excise duty paid in cash or through debit under DEPB is adjusted as CENVAT credit or duty drawback.

Q. 2. STATE THE METHOD OF APPOINTMENT AND FUNCTIONS OF THE DEVELOPMENT COMMISSIONER.

Ans. The functions of the Development Commissioner include:

- (a) To guide the entrepreneurs for setting up of Units in the Special Economic Zone;
- (b) To ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;
- (c) To ensure proper coordination with the Central Government or State Government Departments concerned or agencies with respect to, or for above purposes;

(d) To monitor the performance of the Developer and the Units in SEZ:

- (e) To discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force, and
- **(f)** To any other functions as may be delegated to him by the Board of approval.

Q. 3. WHAT DO YOU MEAN BY OFFSHORE BANKING UNIT?

Ans. "Offshore Banking Unit" means a branch of a bank located in a Special Economic Zone and which has obtained the permission under Section 23(1)(a) of the Banking Regulation Act, 1949.

Q. 4. What is meant by 'Service Export from India Scheme' (SEIS). Which services shall be eligible under service export from India scheme.[Dec. 2017]

Ans. Service Exports from India Scheme (SEIS) is a Scheme for Export under Foreign Trade Policy 2015-20. The objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.

Services Eligible under SEIS:

- (a) Service Providers of notified services, located in India, shall be rewarded under SEIS, subject to conditions as may be notified. The notified services and rates of rewards are listed in FTP 2015-2020. Following Services shall be eligible:
 - (i) Supply of a 'service' from India to any other country; (Mode 1- Cross border trade)
 - (ii) Supply of a 'service' from India to service consumer(s) of any other country; (Mode 2-Consumption abroad).
- (b) Such service provider should have minimum net free foreign exchange earnings of US\$15,000 in preceding financial year to be eligible for Duty Credit Scrip. For Individual Service Providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US\$ 10,000 in preceding financial year.
- (c) Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in FTP 2015-2020.
- (d) Net Foreign exchange earnings for the scheme are defined as under.

Net Foreign Exchange = Gross Earnings of Foreign Exchange minus Total expenses/payment/remittances of Foreign exchange by the IEC holder, relating to services sector in the Financial year.



- (e) If the IEC holder is a manufacturer of goods as well as service provider, then the foreign exchange earnings and Total expenses/payment/remittances shall be taken into account for service sector only.
- (f) In order to claim reward under the scheme, service provider shall have to have an active IEC at the time of rendering such services for which rewards are claimed.
- Q. 5. DESCRIBE THE PRIVILEGES OF EXPORT AND TRADING HOUSE STATUS HOLDERS IN PURSUANCE TO THE FOREIGN TRADE POLICY.
- Ans. Privileges of Export and Trading House Status Holder are as under:
 - (a) Authorisation and Customs Clearances for both imports and exports may be granted on selfdeclaration basis;
 - (b) Input-Output norms may be fixed on priority within 60 days by the Norms Committee;
 - (c) Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP or Hand Book of Procedure (HBP);
 - (d) Exemption from compulsory negotiation of documents though banks, Remittance/receipts, however, would be received through banking channels:
 - (e) Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.

- (f) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.
- (g) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
- (h) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to selfcertify their manufactured goods. Subsequently, the scheme may be extended to remaining Status Holders.
- (i) Manufacturer exporters who are also Status Holders shall be eligible to self-Laurity 2013 goods as originating from India as per of Hand Book of Procedures.
- (j) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹10 lakh or 2% of average annual export realization during preceding three licensing years whichever is higher.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



- Stare the difference between 'Market Access Initiative' (MDA) and 'Market Development Assistance'.
- Write notes on 'Board of Trade' under the Foreign Trade (Development and Regulation) Act, 1992.
- "Special Economic Zones (SEZs) are English of growth." Discuss.
- 4. What is market development assistance (MDA) scheme?
- 5. With reference to the relevant legal enactments, write short notes on the following:
 - (i) Start Export Houses
 - (ii) Salient features of the Special Economic Zone Act, 2005.
 - (iii) Privileges to a star export house

FROM ICSI MODULE



Answer the following:-

- 1. What are the objectives of foreign trade policy?
- Specify the authority responsible for the administration and execution of the FTP?
- 3. What do you mean by IEC Number?
- Distinguish between Market Access Scheme and Market development Assistance.
- 5. Write short notes on:
 - (i) Board of Trade
 - (ii) Star Export House
- 6. Special Economic Zones are growth engines. Discuss.
- 7. Discuss in detail the salient features of SEZ Act, 2005.
- 8. Explain the procedure for establishment of SEZ.
- Briefly discuss the duties, powers and functions of Board of Approval in respect of Special Economic Zones.
- 10. What are the functions of Approval Committee under SEZ Act, 2005?

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CHAPTER NON-BANKING FINANCE COMPANIES (NBFCs) Covering-Non Banking Financial Company NBFC's Type/Categories Benefits of incorporating an NBFC NBFC's Incorporation Registration Process with Reserve Bank of India Procedure for filing application with Reserve Bank of India Corporate Governance Advance Your Knowledge Self Test Questions **EXPECTED** MARKS COVERAGE (1 to 5)

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NON-BANKING FINANCE COMPANIES(NBFCs)

NON BANKING FINANCIAL COMPANY

A Non-Banking financial Company (NBFC) is a company registered under the Companies Act,2013 engaged in the business of loans and advances, acquisition of shares/ stocks/bonds/ debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business **but does not include** any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any good (other than securities) or providing any services and sale/ purchase /construction of immovable property.

NBFCs lend and make investments and hence their activities are same to that of banks: <u>however there</u> are a few differences as given below:-

- (a) NBFC cannot accept demand deposits:
- (b) NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself:
- (c) Deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

NBFC'S - TYPES/CATEGORIES

(a) Asset finance Company (AFC):

An AFC is a company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive/ economic activity, such as automobiles ,tractors, machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines.

Principal business for this purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising there from is not less than 60% of its total assets and income respectively.

(b) Investment company (IC):

IC means any company which is a financial institution carrying on its principal business the acquisition of securities,

(c) Loan Company (LC):

LC means any company which is a financial institution carrying on as its principal business the providing of finance whether by making loans, or advances or otherwise for any activity than its own but does not include an Asset Finance Company.

(d) Infrastructure Finance Company (IFC):

IFC is a non-banking finance company

- (a) which deploys at least 75 per cent of its total assets in infrastructure loans,
- (b) b)has a minimum Net Owned Funds of 300 crore,
- (c) c)has a minimum credit rating 'A' or equivalent d) and a CRAR of 15%.



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(e) Systemically Important Core Investment Company (CIC-ND-SI):

CIC-ND-SI is an NBFC carrying on the business of acquisition of shares and securities which satisfies the following conditions:-

- (i) It holds not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, debt or loans in group companies:
- (ii) Its investment in the equity shares (including instruments compulsorily Convertible into equity shares within a period not exceeding 10 years from the Date of issue)in group companies constitutes not less than 60% of Total Assets:
- (iii) it does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
- (iv) It does not carry on other financial activity referred to in Section 451(c) and 451 (f) of the RBI act, 1934 except investment in bank deposits ,money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies.
- (v) Its asset size is 100 crore or above and It accepts public funds

(f) Infrastructure Debt fund: Non-Banking Financial Company (IDF-NBFC):

IDF-NBFC is a company registered as NBFC to facilitate the flow of long term debt into infrastructure projects. IDF-NBFC raise resources through issue of Rupee or Dollar denominated bonds of minimum 5 year maturity. Only Infrastructure Finance Companies (IFC) can sponsor IDFNBCs.

(g) Non -Banking Financial Company -Micro Finance Institution (NBFC-MFI):

NBFC-MFI is a non-deposit taking NBFC having not less than 85% its assets in the nature of qualifying assets which satisfy the following criteria:

- 1. Loan disbursed by an NBFC-MFI to a borrower with a household annual income not exceeding 1,00,000 or urban and semi-urban household income not exceeding 1,60,000;
- 2. loan amount does not exceed 50,000 in the first cycle and 1,00,000 in subsequent cycles;
- 3. total indebtedness of the borrower does not exceed 1,00,000;
- **4.** tenure of the loan not to be less than 24 months for loan amount excess of 15,000 with prepayment without penalty;
- 5. loan to be extended without collateral;
- **6.** aggregate amount of loans, given for income generation, is less than 50 per cent of the total loans given by the MFIs;
- 7. loan is repayable on weekly, fortnightly or monthly installments at the choice the borrower

(h) Non -Banking Financial Company-Factors (NBFC-Factors):

NBFC-Factor is a no-deposit taking NBFC engaged in the principal business of factoring. The financial assets in the factoring business should constitute at least 50 percent of its total assets and its income derived from factoring business should not be than 50 percent of its gross income.

(i) Mortgage Guarantee Companies (MGC)-

MGC are financial institution for which at least 90% of the business turnover is mortgage guarantee business or at least 90% of the gross income is mortgage guarantee business and net owned fund is 100 crore.



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(j) NBFC-Non Operative Financial Holding Company

(NOFHC) is financial through which promoter/promoter groups will be permitted to set up a new bank It 's a wholly-owned Non-Operative Financial Holding Company (NOFHC) which will hold the bank as well as other Financial services companies regulated by RBI or other financial sector regulators, to the extent permissible under the applicable regulatory prescriptions.

BENEFITS OF INCORPORATING AN NBFC

1. COMPETITIVE INCORPORATING RATES

Rate of interest is one of the main the main aspects of all types of loans. Non –Banking Financial Sectors have brought down the interest rates to either equal to bank lending rates or at times even lower to bank rates.

2. QUICK PROCESSING

At banks, it is very important that the applicant should fulfill the eligibility criteria but NBFC are lenient in this aspect. This makes loan approval easier, smoother process and quicker.

3. LESS RULES AND REGULATIONS

As NBFC are incorporated under the Companies Act, (though regulated by the Reserve Bank of India), the rules and regulations for lending are not as stringent as bank. This helps borrowers to get loans easily. NBFC's do not have statutory reserve ratios and can open branches at will.

4. LOAN AVAILABLE FOR INDIVIDUALS WITH POOR CREDIT RATING

Individuals with poor credit rating generally will not get loans from banks. Unless the credit score is above 600-650 it is difficult to get a loan sanctioned from banks. On the other hand ,loans will be offered to individuals with low credit score by NBFCs but most of the time the interest rates for such of borrowers will be higher than market rates.

NBFC'S - INCORPORATION

The procedure for incorporating a Non Banking Finance Company (NBFC) is the same as any other company. After incorporation of the company, the NBFC must obtain certificate of registration from RBI.

Since the Net Owned Funds of the entity should not be less than ₹ Two Crore, it must be ensured that the Authorized Share Capital of the NBFC is not less than ₹Two Crore.

REGISTRATION PROCESS WITH RESERVE BANK OF INDIA

After incorporation of the company, the NBFC must obtain certificate of registration. Before applying for registration, the company should ensure the following:-

- (a) It should have minimum one director from NBFC background or senior Bankers as full-time director in the company
- (b) Clean CIBIL records
- (c) Understanding of NBFC / Finance business



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In terms of Section 45-IA of the RBI Act, 1934, a Non-banking Financial company can commence or carry on business of a non-banking financial institution only after

- (a) Obtaining a certificate of registration from the Reserve Bank of India and
- (b) Having a Net Owned Funds of Rs. Two Crore.

However, Certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI, viz.

- (a) Venture Capital Fund/Merchant Banking companies/Stock broking companies registered with SEBI,
- (b) Insurance Company holding a valid Certificate of Registration issued by IRDA,
- (c) Nidhi companies as notified under the Companies Act,
- (d) Chit companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982,
- (e) Housing Finance Companies regulated by National Housing Bank,
- (f) Stock Exchange or a Mutual Benefit company.

PROCEDURE FOR FILING APPLICATION WITH RESERVE BANK OF INDIA

- (1) The applicant company is required to apply online and submit a physical copy of the application along with the necessary documents to the Regional Office of the Reserve Bank of India.
- (2) The application can be submitted online by accessing RBI's securedwebsitehttps://cosmos.rbi.org.in.
- (3) The company can click on "CLICK" for Company Registration on the login page of the COSMOS(Open Source Managed Operating System) Application. The company can then download suitable application form (i.e. Nifco SC/RC) from the above website, key in the data and upload the application form.
- (4) The company may note to indicate the correct name of the Regional Office in the field "C-8". The company would then get a Company Application Reference Number (CARN) for the application filed on-line.
- (5) Thereafter, the company has to submit the hard copy of the application form (indicating the online Company Application Reference Number) along with the supporting documents, to the concerned Regional Office.
- (6) The company can then check the status of the application from the above mentioned secure address, by keying in the acknowledgement number.

CORPORATE GOVERNANCE

Constitution of Committees of the Board

(1) Audit Committee

(i) All applicable NBFCs shall constitute an Audit Committee, consisting of not less than three members of its Board of Directors.

Explanation I: The Audit Committee constituted by an applicable NBFC as required under section 177 of the Companies Act, 2013 shall be the Audit Committee.

Explanation II: The Audit Committee constituted under this paragraph shall have the same powers, functions and duties as laid down in section 177 of the Companies Act, 2013.



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(ii) The Audit Committee must ensure that an Information System Audit of the internal systems and processes is conducted at least once in two years to assess operational risks faced by the applicable NBFCs.

(2) Nomination Committee

All applicable NBFCs shall form a Nomination Committee to ensure 'fit and proper' status of proposed/existing directors.

Explanation I: The Nomination Committee constituted under this paragraph shall have the same powers, functions and duties as laid down in section 178 of the Companies Act, 2013.

(3) Risk Management Committee

To manage the integrated risk, all applicable NBFCs shall form a Risk Management Committee, besides the Asset Liability Management Committee.

Applicability of Know Your Customer (KYC) Direction, 2016

All applicable NBFCs having customer interface shall follow the Know Your Customer (KYC) Direction, 2016, issued by the Department of Banking Regulation as amended from time to time.

NON-BANKING FINANCIAL COMPANY – PEER TO PEER LENDING PLATFORM (RESERVEBANK) DIRECTIONS, 2017

Non-banking financial company - "Peer to Peer Lending Platform" (NBFC-P2P) means a non-banking institution which carries on the business of a Peer to Peer Lending Platform.

"Peer to Peer Lending Platform" is an intermediary providing services of loan facilitation via online medium or otherwise, to person who has entered into an arrangement with NBFC-P2P to lend on it or to avail of loan facilitation services provided by it.

Eligibility Criteria

- (i) No non-banking institution other than a company can undertake the business of Peer to Peer Lending Platform.
- (ii) No NBFC-P2P can commence or carry on the business of a Peer to Peer Lending Platform without obtaining a Certificate of Registration (hereinafter referred to as "CoR") from the Bank. However, an entity carrying on the business of a Peer-to-Peer Lending Platform as on the effective date of these directions, can continue to do so, subject to the conditions laid down in this directions.
- (iii) Every company seeking registration with the Bank as an NBFC-P2P is required to have a net owned fund of not less than rupees twenty million or such higher amount as the Bank may specify.

Scope of Activities

The scope of activities of a Non-banking financial company - Peer to Peer Lending Platform" (NBFC-P2P) are as follows:

- (a) act as an intermediary providing an online marketplace or platform to the participants involved in Peer to Peer lending;
- (b) not to raise deposits as defined by or under Section 45I(bb) of the Act or the Companies Act, 2013;
- (c) not to lend on its own;
- (d) not to provide or arrange any credit enhancement or credit guarantee

Process of Registration

Every existing and prospective NBFC-P2P is required to make an application for registration to the Department of Non-Banking Regulation, Mumbai of the Bank, in the form which will be specified by the Bank for the purpose





ADVANCE YOUR KNOWLEDGE







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CHAPTER SPECIAL ECONOMIC ZONES ACT, 2005 (10)Covering-Special Economic Zones Act, 2005 Procedure for establishment of special economic zone Advance Your Knowledge Self Test Questions From Past CS Exam From ICSI Module **EXPECTED MARKS COVERAGE** (5 to 10)

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SPECIAL ECONOMIC ZONES ACT, 2005

SPECIAL ECONOMIC ZONES (SEZ)

Special Economic Zone (SEZ) is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs. Goods and services going into the SEZ area from DTA shall be treated as exports and goods coming from the SEZ area into DTA shall be treated as if these are being imported. SEZ units may be set up for manufacture of goods and rendering of services.

A SEZ may be set up in the public, private, joint sector or by state Government or its agencies.

"Domestic Tariff Area (DTA)" means area within India which is outside SEZs and Export Oriented Undertaking (EOU) / Electronic Hardware Technology Park (EHTP) / Software Technology Park (STP) Biotechnology Park (BTP).

The objectives of SEZ are-

- (a) Making available goods and services free of taxes.
- (b) Providing integrated infrastructure for export.
- (c) Single window approval mechanism.
- (d) Expeditious grant of permission.
- (e) Promoting export by giving package of incentives.

Various contributions/advantages of SEZ are-

- (a) They dynamically contribute to increase in production in industries.
- (b) Promote export
- (c) Generate employment.

SPECIAL ECONOMIC ZONES ACT, 2005-SALIENT FEATURES

The salient features of the Act are as under:—

- (a) matters relating to establishment of Special Economic Zone
- (b) matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;
- (c) the fiscal regime for developers of Special Economic Zones and units set up therein;
- (d) single window clearance mechanism at the Zone level;
- (e) establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and
- (f) designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

PROCEDURE FOR ESTABLISHMENT OF SPECIAL ECONOMIC ZONE

Section 3 of the Act provides that the Central Government, State Government, or any other person, jointly or severally, may establish a Special Economic Zone. Any person who, intends to set up a Special Economic Zone, may, after identifying the area, make a proposal to the State Government concerned for the purposes of setting up a Special Economic Zone.



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In case a State Government intends to set up the Special Economic Zone, it may after identifying the area, forward the proposal directly to the Board of Approval for setting up of Special Economic Zone. However, the Central Government has been empowered to set up and notify the Special Economic Zone without consulting the State Government concerned; without referring the proposal to the Board.

The State Government may, on receipt of the proposal for setting up a Special Economic Zone forward the proposal together with its recommendations to the Board of Approval within the specified time. The Board of Approval may, after receipt of the proposal for setting up a Special Economic Zone either approve the proposal or, approve the proposal subject to such terms and conditions as it may deem fit to impose. It can also modify or reject the proposal for setting up a Special Economic Zone.

Constitution of Board of Approval

Section 8 empowers the Central Government to constitute, by notification, the Board of Approval within fifteen days of the commencement of the Act.

Duties, powers and functions of Board of Approval

Section 9 casts upon the Board the duty to promote and ensure orderly development of the Special Economic Zones. The powers and functions of the Board, inter alia, include:

- (a) granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones;
- **(b)** granting approval of authorised operations to be carried out in the Special Economic Zones by the Developer;
- (c) granting of approval to the Developers or Units (other than the Developers or the Units which are exempt from obtaining approval under any law or by the Central Government) for foreign collaborations and foreign direct investments (including investments by a person resident outside India) in the Special Economic Zone for its development, operation and maintenance;
- (d) granting of approval or rejecting proposal for providing infrastructure facilities in a Special Economic Zone or modifying such proposals;
- (e) granting, a licence to an industrial undertaking referred to in section 3(d) of IDR Act, if such undertaking is established, as a whole or part thereof, or proposed to be established, in a Special Economic Zone;
- (f) suspension of the letter of approval granted to a Developer and appointment of an Administrator under Section 10(1) of the Act;
- (g) disposing of appeals preferred under Section 15(4) and Section 16(4) of the Act;
- (h) performing such other functions as may be assigned to it by the Central Government.

Management of SEZ

SEZ has been put under the administrative control of the Development Commissioner. All activities of SEZ units within the Zone, unless otherwise specified, including export and re-import of goods have been permitted through self-certification procedure.

DEVELOPMENT COMMISSIONER

Section 11 empowers the Central Government to appoint the Development Commissioner for one or more Special Economic Zones and such Officers and other employees as it considers necessary to assist every Development Commissioner.



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The functions of the Development Commissioner include:

- (a) guide the entrepreneurs for setting up of Units in the Special Economic Zone;
- (b) ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;
- (c) ensure proper coordination with the Central Government or State Government Departments concerned or agencies with respect to, or for above purposes;
- (d) monitor the performance of the Developer and the Units in SEZ;
- (e) discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force; and
- (f) any other functions as may be delegated to him by the Board of approval.

CONSTITUTION OF APPROVAL COMMITTEE

Section 13 empowers the Central Government to constitute by notification, a Committee for every Special Economic Zone, to be called the Approval Committee to exercise the powers and perform the functions as specified.

Powers and Functions of Approval Committee

Section 14 empowers every Approval Committee to discharge the functions and exercise the powers in respect of the following matters:

- (a) approve, the import or procurement of goods from the Domestic Tariff Area, for carrying on the authorised operations by a Developer in the Special Economic Zone;
- **(b)** approve providing of services by a service provider from outside India or from the Domestic Tariff Area for carrying on the authorised operations by the Developer, in the Special Economic Zone;
- (c) monitor the utilisation of goods or services or warehousing or trading in the Special Economic Zone;
- (d) approve, modify or reject proposals for setting up Units for manufacturing or rendering of services or warehousing or trading in SEZ in accordance with the provisions of Section 15(8) of the Act;
- (e) allow on receipt of approval foreign collaborations and foreign direct investments, including investments by a person outside India for setting up a Unit;
- (f) monitor and supervise compliance of conditions subject to which the letter of approval or permission, if any, is granted to the Developer or entrepreneur; and
- (g) perform any other functions as may be entrusted to it by the Central Government or the State Government concerned, as the case may be.

Entitlement/ exemptions available for SEZ Developer

For development, operation and maintenance of infrastructure facilities in SEZs, the developer shall be eligible for the following entitlements:-

- (a) Income tax exemption as per 80 IA of the Income Tax Act.
- (b) Import/procure goods without payment of Customs/Excise duty.
- (c) Exemption from Service tax.
- (d) Exemption from CST.

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CHAPTER

11

FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

Covering-

- Bare Act
- ABC Analysis
- Object of the Act
- Definitions
- Important Provisions
- Prohibition on Acceptance of Foreign Contribution by Certain Persons
- Receipt of Foreign Contribution Cultural, educational, and Social Organizations
- Prohibition to Transfer Foreign Contribution to Other Person
- Restrictions on Candidate for Election
- Restrictions on Acceptance of Foreign Hospitality
- Powers of the Central Government to Regulate the Acceptance and Utilization of Foreign Contribution and Foreign Hospitality
- Advance Your Knowledge
- Self Test Questions
 - > From Past CS Exam
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EXPECTED
MARKS COVERAGE
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From Bare Act..

रजिस्टी सं० डी॰ एल॰-33004/99

REGD. NO. D. L.-33004/99

THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

No. 42 or 2010

126th September, 2010.1

An Act to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

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

CHAPTERI

PRELIMINARY

1. (1) This Act may be called the Foreign Contribution (Regulation) Act, 2010.

Short title, extent.

(2) It extends to the whole of India, and it shall also apply to-

application and com-

(a) citizens of India outside India; and

- (b) associate branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

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

Definitions

- 2. (1) In this Act, unless the context otherwise requires,-
- (a) "association" means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organisation, by whatever name 21 of 1860.

(b) "authorised person in foreign exchange" means an authorised person referred to in clause (c) of section 2 of the Foreign Exchange Management Act, 1999;

42 of 1999

(c) "bank" means a banking company as referred to in clause (c) of section 5 of the Banking Regulation Act, 1949;

10 of 1949

- (d) "candidate for election" means a person who has been duly nominated as a candidate for election to any Legislature;
- (e) "certificate" means certificate of registration granted under sub-section (3) of section 12:
- (f) "company" shall have the meaning assigned to it under clause (17) of section 2 of the Income-tax Act, 1961;

43 of 1961

CHAPTER II

REGULATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY

3. (1) No foreign contribution shall be accepted by any-

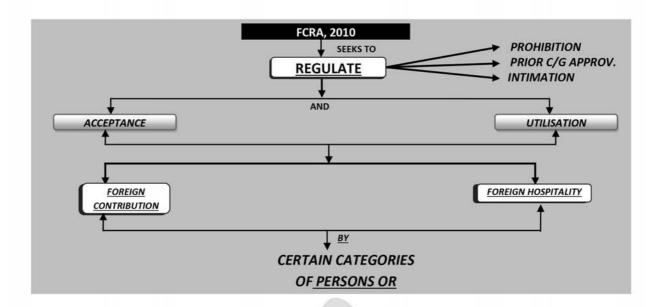
Prohibition to accept foreign contribution.

- (a) candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
 - (d) member of any Legislature;
 - (e) political party or office-bearer thereof;
- (f) organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government;

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FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

ABC Analysis



- 2. Prohibition on Acceptance of Foreign Contribution by Certain Persons.
- 3. Restrictions on Acceptance of Foreign Hospitality.

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- 4. Receipt of Foreign Contribution Cultural, educational, and Social Organizations
- 5. Prohibition to Transfer Foreign Contribution to Other Person

C

- 6. Restrictions on Candidate for Election
- Powers of the Central Government to Regulate the Acceptance and Utilization of Foreign Contribution and Foreign Hospitality



In view of widespread concerns about the unregulated receipt of funds from foreign agencies by individuals and agencies in the country, the Government enacted Foreign Contribution (Regulation) Act,2010 to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain categories of persons or associations.

OBJECT OF THE ACT

The purpose of the Act is

- (a) To regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and
- **(b)** To prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

DEFINITIONS

FOREIGN CONTRIBUTION

"Foreign Contribution" means the donation, delivery or transfer made by any foreign source:-

- (a) Of any article, not being an article given to a person as a gift for his personal use, if the market value of such gift, in India is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;
- (b) Of any currency,
- (c) Of any foreign security

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The **interest accrued** on the foreign contribution deposited in any bank or any **other income derived** from the foreign contribution or interest thereon shall also be deemed to be foreign contribution.

A donation, delivery or transfer of any article, currency or foreign security by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution.

EXCEPTIONS

Any amount received, by any person from any foreign source in India,:-

- (a) by way of fee (including fees charged by an educational institution in India from foreign student) or
- **(b)** towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or,
- (c) any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution.

FOREIGN COMPANY

"Foreign Company" means any company or association or body of individuals incorporated outside India and includes:—

- (a) a foreign company within the meaning of section 591 of the Companies Act, 1956;
- **(b)** a company which is a subsidiary of a foreign company;
- (c) the registered office or principal place of business of a foreign company
- (d) a multi-national corporation.

A corporation incorporated in a foreign country or territory shall be deemed to be a **multi-national corporation** if such corporation:—

- (a) has a subsidiary or a branch or a place of business in two or more countries or territories; or
- (b) carries on business, or otherwise operates, in two or more countries or territories;

FOREIGN HOSPITALITY

Foreign hospitality means any offer made by a foreign source for providing a person with the cost of travel to any foreign country or territory or with free board, lodging, transport, or medical treatment.

Board, lodging, transport, and medical treatment at a concessional price would not be covered under the definition of foreign hospitality.

FOREIGN SOURCE

Foreign source includes :-

- (a) The Government of any foreign country or any agency of such Government;
- **(b)** Any international agency; not being the United Nations, the World Bank or such other agency as the Central Government may by notification in the official gazette specify in this behalf;
- (c) A foreign company
- (d) A corporation incorporated in a foreign country;
- (e) A multinational corporation;
- (f) A company within a meaning of Companies Act, 1956 if more than one-half of the nominal value of share capital is held either individually or aggregate by one or more of the following, namely:
 - a. Government of a foreign country;
 - b. Citizens of a foreign country;
 - c. Corporation incorporated in a foreign country; and
 - d. Trusts, societies or other associations of individuals formed or registered in a foreign country;
- (g) A trade union in any foreign country;
- (h) A foreign trust by whatever name called;
- (i) A society, club or other association of individuals formed or registered outside India;
- (j) A citizen of a foreign country



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The expression 'foreign source' does not include any foreign institution, which has been permitted by the Central Government, by notification in the official gazette to carry on its activities in India.

POLITICAL PARTY

"Political party" means an association or body of individual citizens of India—

- (a) Which is registered with the Election Commission of India
- **(b)** which has set up candidates for election to any Legislature, even if not so registered with the Election Commission of India

IMPORTANT PROVISIONS

PROHIBITION ON ACCEPTANCE OF FOREIGN CONTRIBUTION BY CERTAIN PERSONS

SECTION 3

As per Section 3, following persons are prohibited from accepting foreign contributions:-

- (a) candidate for election
- (b) member of any legislature,
- (c) political party or office-bearer thereof
- (d) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper,
- (e) judge, government servant or employee of any corporation owned or controlled by Government or a Government company,
- (f) organisation of a political nature as may be specified by the Central Government;
- (g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode

"Candidate for election" means a person who has been duly nominated as a candidate for election to any Legislature;

No person shall accept any foreign contribution on behalf of any political party, or any person, prohibited from accepting any foreign contribution.

No person shall deliver any foreign contribution to any political party or any person prohibited from accepting any foreign contribution.

ORGANISATION OF A POLITICAL NATURE

An *organisation of a political nature* means such organisation as the Central Government may specify by order published in the Official Gazette, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with the activities of any political party.

PROCEDURE TO NOTIFY AN ORGANIZATION OF A POLITICAL NATURE

Section 5(1) provides that the Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub-section (1) of section 3. Further, the Central Government may, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.



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EXEMPTIONS

SECTION 4

Section 4 contains exemptions to the prohibition on the acceptance of foreign contribution by any person specified in Section 3. Accordingly, Section 4 allows the acceptance of foreign contribution where such contribution is accepted by him:-

- (a) by way of salary, wages or other remuneration
- (b) by way of payment, in the course of international trade or commerce,
- (c) as an agent of a foreign source in relation to any transaction made by such foreign source with Government.
- (d) by way of a gift or presentation made to him as a member of any Indian delegation
- (e) from his relative when such foreign contribution has been received with the previous permission of the Central Government.
- (f) by way of remittance received under the provisions of FEMA.

RECEIPT OF FOREIGN CONTRIBUTION BY CULTURAL, EDUCATIONAL, AND SOCIAL ORGANIZATIONS

SECTION 11

FCRA permits receipt of foreign contribution by certain associations having a definite cultural, economic, educational, religious or social programme.

The associations are required to register themselves with the Central Government. An application by a person, for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

SUSPENSION AND CANCELLATION OF CERTIFICATE OF REGISTRATION SECTION 13

Under the FCRA, 2010 the Central Government is empowered to cancel the certificate of registration of any person on the following grounds:

- (i) If the holder of the certificate has provided incorrect or false information at the time of application for grant of registration.
- (ii) If the holder has violated the terms and conditions of the certificate.
- (iii) If it is necessary in the public interest to do so,
- (iv) If the holder of the certificate has violated any of the provisions of the Act.
- (v) If the holder of the certificate has not done any reasonable activity for the benefit of the society for two consecutive years.

When the certificate is cancelled, all the foreign contribution and the assets created out of the foreign contribution will vest with the prescribed authority and it will manage the activities till the registration is subsequently granted.

The prescribed authority will also have all the powers to dispose of the assets of the person created out of that foreign contribution if adequate funds are not available for managing the activities of the person.

PROHIBITION TO TRANSFER FOREIGN CONTRIBUTION TO OTHER PERSON

SECTION 7

No person who,

- (a) is registered and granted a certificate or has obtained prior permission under this Act; and
- (b) receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act.



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Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government.

RESTRICTIONS ON CANDIDATE FOR ELECTION SECTION 21

Every candidate for election, who had received any foreign contribution, at any time within 180 days immediately preceding the date on which he is duly nominated as such candidate, shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government or prescribed authority or both as to the amount of foreign contribution received by him, the source from which, and the manner in which, such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by him.

RESTRICTIONS ON ACCEPTANCE OF FOREIGN HOSPITALITY SECTION 6

No,

- (a) member of a Legislature,
- (b) office bearer of a political party,
- (c) Judge, Government servant or employee of a corporation

shall, while visiting any country or territory outside India accept, without the prior permission of the Central Government any foreign hospitality.

However, it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during the visit outside India.

But, where such hospitality has been received, the person receiving such hospitality is under obligation to intimate, within one month from the date of receipt of such hospitality, to the Central Government as to the receipt of such hospitality and the source from which and the manner in which such hospitality was received by him.

POWERS OF THE CENTRAL GOVERNMENT TO REGULATE THE ACCEPTANCE AND UTILIZATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY

SECTION 21

Section 9 deals with the powers of Central Government to prohibit the receipt of foreign contribution, etc. in certain cases.

Accordingly, the Central Government has been empowered to:-

- (a) prohibit any association or any person from accepting any foreign contribution;
- **(b)** require any association or any person to obtain prior permission of the Central Government before accepting any foreign contribution;
- (c) require any person or any association, to furnish intimation as to the amount, the source and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;
- (d) require any person to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (e) require any person to furnish intimation, as to the receipt, the source and the manner in which such hospitality was received.

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ADVANCE YOUR KNOWLEDGE



Q.1. FOREIGN CONTRIBUTION (REGULATION) ACT, 2010?

- Ans. Procedure for renewal of certificate under FCRA
 - (1) Every person who has been granted a certificate under section 12 of the Foreign contribution (Regulation) Act, 2010 shall have such certificate renewed within six months before the expiry of the period of the certificate.
 - (2) The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.
 - (3) The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years:

- (4) In case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons thereof to the applicant.
- (5) The Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.

Q. 2. RECEIVE WHO CAN **FOREIGN** CONTRIBUTION?

Ans. An association having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration / prior permission from the Central Government.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



- State the persons who are prohibited from accepting foreign contributions under the Foreign Contribution (Regulation) Act, 2010.
- 2 Discuss the power of the Central Government to prohibit receipt of foreign contribution under the Foreign Contribution (Regulation) Act, 2010.
- 3 Define 'foreign contribution' under the Foreign Contribution (Regulation) Act, 2010.
- 4 Distinguish between of the following:
 - (i) 'Political party' and 'an organization of political nature'.
 - (ii) 'Foreign contribution' and 'foreign hospitality'.
- 5 Mention the provisions of the provisions of the Foreign Contribution (Regulation) Act, 2010 in respect of exemptions from accepting foreign contributions.

FROM ICSI MODULE



Answer the following:

- How does the FCRA, 2010 seeks to regulate the receipt of foreign contribution and foreign hospitality?
- 2. Define 'foreign contribution" and 'foreign source'.
- Discuss the provisions of FCRA relevant to exemptions from acceptance of foreign contribution.
- Explain the concept of 'organisation of a political nature' under the Foreign Contribution (Regulation) Act, 2010.
- Discuss the powers of Central Government under FCRA to prohibit receipt of foreign contribution.



Answers to be analysed in Classroom

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Answers to be analysed in Classroom

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CHAPTER COMPETITION ACT, 2002 - I**(12)** Covering-Bare Act **ABC** Analysis Salient Features of The Competition Act, 2002 Important Definitions Competition Commission of India Duties, Powers And Functions of CCI Director General Self Test Questions From Past CS Exam From ICSI Module **EXPECTED MARKS COVERAGE** (5 to 10)

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From Bare Act....

रज़िस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99

of India he Gazette

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 14th January, 2003/Pausa 24, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 13th January, 2003 and is hereby published for general information:—

THE COMPETITION ACT, 2002

No. 12 of 2003

[13th January, 2003.]

Short title, extent and

commencement

An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

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

CHAPTER I

- 1. (1) This Act may be called the Competition Act, 2002.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and

any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions

- 2. In this Act, unless the context otherwise requires,-
 - (a) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire-
 - (i) shares, voting rights or assets of any enterprise; or
 - (ii) control over management or control over assets of any enterprise;
- (b) "agreement" includes any arrangement or understanding or action in concert,-
 - (i) whether or not, such arrangement, understanding or action is formal or in writing; or
 - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
- (c) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of
- (d) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 8;

CHAPTER II

PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS

Prohibition of agreements

Anticompetitive

- 3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India
- (2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.
- (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-

NITESH KR. JAISWAL CS CLASSES

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COMPETITION ACT, 2002 – I

ABC Analysis



- 1. Competition Commission of India
- 2. Regulation of Combinations
- 3. Competition Appellate Tribunal

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- 4. Important Definitions
- 5. Predatory Pricing
- 6. Prohibition of Abuse of Dominant Position

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7. Director General



COMPETITION

Competition is "a situation in a market in which firms or sellers independently strive for the buyers' patronage in order to achieve a particular business objective, for example, profits, sales or market share."

Competition can be defined as a process of economic rivalry between market players to attract customers. These market players can be multinational or domestic companies, wholesalers, retailers, or even the neighbourhood shopkeeper.

In their pursuit to outdo rival enterprises, market players either adopt **fair means** (producing quality goods, being cost efficient, adopting appropriate technologies, etc.) Or indulge in **unfair measures** (carrying out restrictive business practices – such as predatory pricing, exclusive dealing, tied selling, collusion, cartelisation, abuse of dominant position, etc.).

Therefore, in the interest of consumers, and the economy as a whole, Competition Act, 2002 was passed to promote an environment that facilitates fair competitive outcomes in the market, curb anti-competitive behaviour and discourage market players from adopting unfair measures.

COMPETITION AND ECONOMIC EFFICIENCY/WHY DO WE NEED COMPETITION IN THE MARKET?

Competition is now universally acknowledged as the best means of ensuring that consumers have access to the broadest range of services at the most competitive prices. Market competition could force managers to speed up the adoption of new technologies; Intensive product market competition with incumbent firms engaged in step by step innovative activities could enhance each firms incentive to acquirer increase its technological lead over its rivals and, if labour markets are flexible, competition will induce skilled workers to move to opportunities employing best practices and technologies. Competition also reduces slack by providing more incentives for managers and workers to increase efforts and improve efficiency. Therefore, the product market competition disciplines firms into efficient operation.

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Strong competition is closely linked to dynamic and efficient markets. Competition is not just about prices but is typically multi-faceted, bringing new ways of doing business and leading to technological and other advances.

SALIENT FEATURES OF THE COMPETITION ACT, 2002

- With the enforcement of the Competition Act, 2002 the MRTP Act, 1969 shall stand repealed and the MRTP Commission shall be dissolved.
- The main purpose of the Act is to ensure free and fair competition in the market.
- The Competition Act, 2002 has been enacted to :-
 - (i) prevent practices having an appreciable adverse effect on competition,
 - (ii) to promote and sustain competition in the market and
 - (iii) to protect the interests of consumers and to ensure freedom of trade.
- The competition Act, 2002 seeks to achieve its objectives by:-
 - (i) prohibiting anti-competitive policy on competition,
 - (ii) creating awareness by imparting training on competition issues.
- The Competition Act, 2002 provides for the establishment of Competition Commission of India.
- > Act has been split into nine chapters

DEFERENCE BETWEEN MRTP ACT AND COMPETITION ACT

| MRTP ACT | COMPETION ACT |
|---|---|
| (a) Focus on Curbing Monopoly | (a) Focus on promoting Competition |
| (b) MRTP provides for compulsory registration of agreements relating to restrictive trade practice | (b) No such requirement |
| (c) Dominance of enterprise itself considered as bad | (c) Dominance of enterprise not considered as bar only abuse of dominance considered as bar considered as bad |
| (d) Combinations are not regulated | (d) Combination are regulated |
| (e) MRTP Commission | (e) Competition Commission of India |

IMPORTANT DEFINITIONS

AGREEMENT

Agreement includes any arrangement or understanding or action in concert -:-

- (a) Whether or not, such agreement, understanding or action is formal or in writing;
- **(b)** Whether or not, such agreement, understanding or action is intended to be enforceable by legal proceedings.

GOODS

Goods mean goods as defined in the Sale of Goods Act, 1930 and include the following:-

- (a) Products manufactured, processed or mined;
- (b) Debentures, shares and stocks after allotment;
- (c) In relation to "goods supplied", goods imported in India

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SERVICE

Service means service of any description which is made available to potential users and includes the provision of services in connection with business of any **industrial or commercial matters** such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, constructions, repair, conveying of news or information and advertisings.

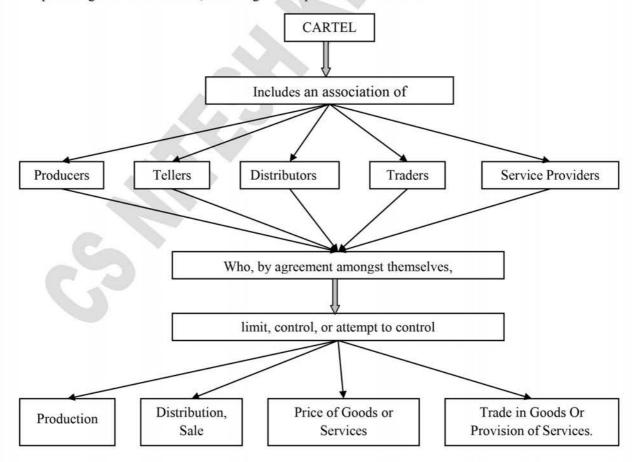
CONSUMER

Consumer means any person who:-

- (a) Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any person who uses those goods with the approval of the person buying those goods, whether such purchase of goods is for resale or for any commercial purpose or for personal use,
- **(b)** Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any person who is the beneficiary of those services with the approval of hirer or avail or of those services, whether such hiring or availing of services **is for any commercial purpose** or for personal use.

CARTEL

Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit, control, or attempt to control the production, distribution, sale or price of goods or services or, trade in goods or provision of services.



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An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country.

An import cartel comprises enterprises (including an association of enterprises) that get together for the purpose of imports into the country. An export cartel is made up of enterprises based in one country with an agreement to cartelize markets in other countries. In the Competition Act, cartels meant exclusively for exports have been excluded from the provisions relating to anti-competitive agreements. This is because such cartels do not adversely affect markets in India and are hence outside the purview of the Competition Act.

Some of the conditions that are conducive to cartelization are:

- (a) high concentration few competitors
- (b) high entry and exit barriers
- (c) homogeneity of the products (similar products)
- (d) similar production costs
- (e) excess capacity
- (f) high dependence of the consumers on the product
- (g) history of collusion

ENTERPRISE

Enterprise means a person or department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods or the provision of services of any kind.

RELEVANT MARKET

Relevant market means the market, which may be determined by the Commission with reference to 'relevant product market' or 'relevant geographic market' or with reference to both the markets.

RELEVANT GEOGRAPHIC MARKET

Relevant Geographic Market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from conditions prevailing in neighbouring areas.

| For determining the | (a) regulatory trade barriers; |
|------------------------|---|
| "relevant geographic | (b) local specification requirements; |
| market", the | (c) national procurement policies; |
| Commission shall | (d) adequate distribution facilities; |
| have due regard to all | (e) transport costs; |
| or any of the | (f) language; |
| following factors, | (g) consumer preferences; |
| namely;- | (h) need for secure, regular supplies or rapid after-sales service. |

RELEVANT PRODUCT MARKET

Relevant Product Market means a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reasons of characteristics of products or services, their prices and intended use.

| For determining the | (a) physical characteristics or end-use of goods; | |
|-----------------------------|---|--|
| 'relevant product market' | (b) price of goods or service; | |
| the Commission shall have | (c) consumer preferences; | |
| due regard to all or any of | (d) exclusion of in-house production; | |
| the following factors | (e) existence of specialized producers; | |
| namely; | (f) classification of industrial products. | |

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COMPETITION COMMISSION OF INDIA

Act empowers the Central Government to establish a Commission to be known as "Competition Commission of India." The Commission is a body corporate having perpetual succession and common seal. The Competition Commission has its head office at New Delhi.

COMPOSITION OF CCI

The Commission shall consist of a Chairman and other members, which shall not be less than 2 and more than 6. The Chairman and all the members shall be appointed by the Central Government.

QUALIFICATIONS

Following are the qualifications of Chairman and the members:-

- 1. They shall be a person of ability, integrity and standing; and
- 2. They has been or is qualified to be a Judge of a High Court or he has special knowledge and professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accountancy, management, etc.

The term of office of **Chairman** and members shall be **5 years** or up to the age of **65** years, whichever is earlier. However, they shall be eligible for reappointment.

REMOVAL

The Chairperson or a Member of CCI may be removed from the office by the Central Government in the following cases:-

- (a) Where he is adjudged as an insolvent;
- (b) Where he has been engaged in any paid employment;
- (c) Where he has been convicted of an offence which involved moral turpitude;
- (d) Where he has acquired such financial or other interest as is likely to affect prejudicially his functions;
- (e) Where he has abused his position; and
- (f) Where he has become physically or mentally incapable.

DUTIES, POWERS AND FUNCTIONS OF CCI

| | (a) to eliminate practices having adverse effect on competition; |
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| | (b) to promote and sustain competition; |
| | (c) to protect interests of consumers and |
| | (d) to ensure freedom of trade carried on by other participants, in markets in India. |

| | (a) | To determine whether an agreement has an appreciable adverse effect on competition; |
|---------------------------|-----|--|
| | (b) | To inquire into anti-competitive agreements and abuse of dominant position; |
| Following are the powers/ | (c) | Enquire whether a combination has cause or likely to cause an appreciable adverse affect on competition; |
| functions of | (d) | To award compensation; |
| CCI:- | (e) | To grant such interim relief as would be necessary in a particular case; |
| | (f) | To impose fines; |
| | (g) | To order demerger; |
| | (h) | To order cost for frivolous complaints. |

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Power of Commission to regulate its own procedure

The Competition Commission of India has been empowered to lay down its own procedure and regulations. It is not bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall have to observe the principles of natural justice and subject to the provisions of the Act.

The Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying the suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning any public record or document or copy of such record or document from any office;

The Commission may call upon such experts, from the field of economics, commerce, accountancy, international trade or from any discipline as it deems necessary to assist the Commission in the conduct of any enquiry by it.

DIRECTOR GENERAL

Act empowers the Central Government to appoint a Director General and such number of additional, joint, deputy or assistant Director Generals or other advisers, consultants or offices.

DG shall be appointed from amongst the persons of integrity and outstanding ability and who have experience in investigation and knowledge of accountancy, management, business, public administration, international trade, economics, law etc.

Duties of Director General

The Act provides that the Director General when so directed by the Commission, is to assist the Commission in investigation into any contravention of the provisions of this Act. The Director General is bound to comply with such a direction to render requisite assistance to the Commission.

The Director General, in order to effectively discharge his functions, has been given the same powers as are conferred upon the Commission under section 36(2).

Under section 36(2) the Commission is having same powers as are vested in Civil Court under the Code of Civil Procedure (1908) while trying a <u>suit</u>, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- **(b)** requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

SELF TEST QUESTIONS

FROM PAST CS EXAMS



- With reference to the relevant legal enactment, write short notes on the following.
 - (i) Conditions conducive to cartelization
 - (ii) Competition advocacy
 - (iii) Resale price maintenance
 - (iv) Objectives of the Competition Act, 2002.
 - (v) 'Regulation of combinations' under the Competition Act, 2002.
- Write notes on 'Cartel' under the Competition Act, 2002
- 3. Distinguish between the following:
 - (i) 'Relevant geographic market' and 'relevant product market'.
 - (ii) 'Competition Commission' and 'Competition Appellate Tribunal'
- 4. What are the factors which the Competition Commission of India will take into consideration in determining whether an agreement has an appreciable adverse effect on competition?
- 5. State the duties of Director General under the Competition Act, 2002.
- 6. What is an 'anticompetitive agreement' under the Competition Act, 2002? Mention any five such agreements.
- 7. Explain in brief 'anti-competitive agreements' under the Competition Act, 2002.
- **8.** Do the following amount to anti-competitive agreements? Give reasons in support of your answer:
 - (i) An agreement requiring a distributor not to sell the goods of the manufacturer in the States other than Gujarat and Maharashtra.
 - (ii) A stipulation in an agreement that the dealer shall not sell the goods below the stipulated price.
 - (iii) An agreement containing a clause that there will be discontinuation in the supply of goods if the dealer is also dealing in the products of supplier's competitors.
 - (iv) An agreement stipulating the source of raw material for ensuring the quality of goods to be exported.

FROM ICSI MODULE



Answer the following

- Define and discuss the Relevant Market, Relevant Geographic Market, and Relevant Product Market.
- What are anti-competitive agreements. Discuss the procedure for enquiry into anti-competitive agreements.
- Discuss the composition and functions of Competition Commission of India.
- The Competition Act does not prohibit dominance, but the abuse of dominant position. Explain.
- 5. Write short notes on:
 - (i) Combinations.
 - (ii) Competition Advocacy.



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CHAPTER COMPETITION ACT, 2002 – II **(13)** Covering-Important Provisions Procedure for inquiry into certain agreements and dominant positions of enterprise by CCI **Predatory Pricing** Bid rigging Prohibition of Abuse of Dominant Position Regulation of Combinations Competition Appellate Tribunal Competition Advocacy Advance Your Knowledge Self Test Questions From Past CS Exam From ICSI Module

EXPECTED
MARKS COVERAGE
(5 to 10)

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REGD. NO. D. L.-33004/99

The Gazette of India

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 14th January, 2003/Pausa 24, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 13th January, 2003 and is hereby published for general information:—

THE COMPETITION ACT, 2002

No. 12 of 2003

[13th January, 2003.]

An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

- 1. (1) This Act may be called the Competition Act, 2002.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

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

In this Act, unless the context otherwise requires,—

- (a) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire-
 - (i) shares, voting rights or assets of any enterprise; or
 - (ii) control over management or control over assets of any enterprise;
- (b) "agreement" includes any arrangement or understanding or action in concert,—
 - (i) whether or not, such arrangement, understanding or action is formal or in writing; or
 - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
- (c) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services:
- (d) "Chairperson" means the Chairperson of the Commission appointed under sub-section (I) of section 8;

CHAPTER II

PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS

Prohibition of agreements

Anticompetitive

Definitions

- 3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.
- (2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.
- (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

Short title, extent and commencement.



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COMPETITION ACT, 2002 – II

IMPORTANT PROVISIONS

> ANTI COMPETITIVE AGREEMENTS

Section 3 of the Competition Act provides that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition.

ANTI-COMPETITIVE AGREEMENTS INCLUDE, BUT ARE NOT LIMITED TO:-

- (a) agreement to limit production and/or supply;
- (b) agreement to allocate markets;
- (c) agreement to fix price;
- (d) bid rigging or collusive bidding;
- (e) conditional purchase/ sale (tie-in arrangement);
- (f) exclusive supply / distribution arrangement;
- (g) resale price maintenance; and
- (h) refusal to deal.

It further declares that any anti competitive agreement shall be void.

Section 3(3) provides that **following kinds of agreements** entered shall be **presumed** to have an appreciable **adverse effect** on the competition:-

- (a) <u>Tie- in arrangement</u>, an agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods.
- **(b)** Exclusive supply agreement, an agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.
- (c) <u>Refusal to deal</u>, an agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought.
- (d) <u>Resale price maintenance</u>- an agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

PROCEDURE FOR INQUIRY INTO CERTAIN AGREEMENTS AND DOMINANT POSITION OF ENTERPRISE BY CCI

The Commission may inquire into any alleged contravention of Section 3 or 4 on its own motion or on;

- (a) receipt of any information in such manner and accompanied by such fee, from any person, consumer or consumer association or trade association; or
- **(b)** a reference made to it by the Central Government or State Government or a statutory authority.

If the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter. The Director General shall investigate into the matter and submit a report of its findings within the period as may be specified by the Commission. It is, however, not binding on the Commission to accept the report of the Director General.

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Section 26(9) provides that the Commission on receipt of recommendation of Director General that there is contravention of any of the provisions of the Act, and a further inquiry is called for, shall inquire into such contravention in accordance with the provisions of the Act.

Upon receipt of a report from the Director General, the Commission shall forward a copy thereof to (a) the parties concerned or (b) Central Government or (c) State Government or (d) statutory authority as the case may be.

Orders by Commission after inquiry into agreements or abuse of dominant position

| Section 27 envisages that the Commission after any inquiry may pass all or any of the following orders, namely;- | (i) direct that such agreement, or abuse of dominant position shall be discontinued | |
|--|--|--|
| | (ii) the Commission may impose penalty not exceeding ten percent of the average turnover of last three preceding financial years or a penalty up to three times of its profits for each year of the continuance of such agreement whichever is higher. | |
| | (iii) The Commission may direct that the agreements shall stand modified to the extent and in the manner as specified in the order. | |
| | (iv) The Commission may direct the enterprises concerned to comply with such other orders and directions, including payment of cost, if any, as it deems fit. | |
| | (v) to pass such order or issue such directions as it may deem fit. | |

Execution of Orders of the Commission Imposing Monetary penalty

Section 39 provides that if a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations.

In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under the Act in accordance with the provisions of the **Income-tax Act**, 1961, it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.

(a) extent of barriers to entry into the market; For the purpose of (b) level of combination in the market; determining whether (c) extent of effective competition likely to sustain in a market; an agreement had (d) extent to which substitutes are available or are likely to be available in the adverse effect on market: competition or (e) size and importance of the competitors; enterprise enjoys dominant position or (f) dependence of consumers on the enterprise not the Commission (g) monopoly or dominant position whether acquired as a result of any statute shall have due regard or by virtue of being a Government company or a public sector undertaking to all or any of the or otherwise: following factors, (h) any other factor which the Commission may consider relevant for the namely inquiry.

PREDATORY PRICING

The term "predatory price" has been defined as the sale of goods or provision of services, at a price which is below the cost of production of goods or provision of services, with a view to reduce competition or eliminate the competitors.

Thus, the two conditions precedent to bring a case with the ambit of predatory pricing are:-

- (a) selling goods or provision of service at a price which is below its cost of production and
- (b) that practice is resorted to eliminate the competitors or to reduce competition.



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BID RIGGING

According to section 3 of the Competition Act, 2002, 'bid rigging' means any agreement, between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on by any association including cartels, engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

| Some of the most | (a) agreements to submit identical bids |
|----------------------|--|
| commonly adopted | (b) agreements as to who shall submit the lowest bid |
| ways in which | (c) agreements not to bid against each other, |
| collusive bidding or | (d) agreements to squeeze out outside bidders |
| bid rigging may | (e) agreements designating bid winners in advance on a rotational basis, or on a |
| occur are: | geographical or customer allocation basis. |

> PROHIBITION OF ABUSE OF DOMINANT POSITION

Section 4 of the Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position, meaning thereby a position of strength, enjoyed by an enterprise or group, in the relevant market, in India, which enables it to:—

- (a) operate independently of competitive forces prevailing in the relevant market; or
- (b) affect its competitors or consumers or the relevant market in its favour".

| | (a) imposing unfair conditions or price, |
|--------------------|---|
| | (b) predatory pricing, |
| Abuse of dominant | (c) limiting production/market or technical development, |
| position includes: | (d) creating barriers to entry, |
| position includes: | (e) denying market access, and |
| | (f) using dominant position in one market to gain advantages in another market. |

DIVISION OF ENTERPRISE ENJOYING DOMINANT POSITION

The Commission may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise or group does not abuse its dominant position.

The order of the Commission referred to above may provide for all or any of the following matters, namely:-

- (a) the transfer or vesting of property, rights, liabilities or obligations;
- (b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
- (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
- (d) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;

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> REGULATION OF COMBINATIONS

COMBINATIONS- MEANING

Section 5 of the Competition Act, 2002 provides that acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises which are <u>above</u> the certain prescribed size in terms of <u>assets</u> or turnover as provided under section 5.

The above thresholds are presented in the form of a table below;-

| | TH | RESHOLDS FOR FILING | NOTIO | CE |
|-------------------|--------------------------------|---|-------|--|
| ï | | Assets | | Turnover |
| Б | India | >2000 INR crore | OR | >6000 INR crore |
| Level | Level Worldwide with India leg | >USD 1 bn with at least >1000 INR crore in India | | >USD 3 bn with at least >3000 INR crore in India |
| | | OR | | |
| Group Level Wo | India | >8000 INR crore | - | >24000 INR crore |
| | Worldwide with India leg | >USD 4 bn with at least >1000 INR crore in India | OR | >USD 12 bn with at least >3000 INR crore in India |

INCREASE IN THRESHOLDS OF DE MINIMIS EXEMPTION:

Pursuant to Notification No. S.O. 674 (E) dated March 4, 2016, acquisitions where enterprises whose control, shares, voting rights or assets are being acquired have assets of not more than Rs. 350 crore in India or turnover of not more than Rs. 1000 crore in India, are exempt from Section 5 of the Act for a period of 5 years. Accordingly, the revised threshold for availing of the De Minimis exemption for acquisitions are:

| THRESHOLDS FOR AVAILING OF DE MINIMIS EXEMPTION FOR ACQUISITIONS | | | |
|--|----------|-----------------|--------------------|
| | | Assets | Turnover |
| Target Enterprise | In India | < 350 INR crore | OR< 1000 INR crore |

REGULATIONOF COMBINATIONS

Section 6 of the Competition Act prohibits any person or enterprise from entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed, it shall be void.

Section 6 provides that any person or enterprise, who or which proposes to enter into any combination, shall give a notice to the Commission disclosing details of the proposed combination, in the form, prescribed and submit the form together with the fee prescribed by regulations.

Such intimation should be submitted within 30 days of:-

- (a) approval of the proposal relating to merger or amalgamation, referred to in Section 5(c), by the board of directors of the enterprise concerned with such merger or amalgamation, as the case may be;
- **(b)** execution of any agreement or other document for acquisition referred to in Section 5(a) or acquiring of control referred to in Section 5(b).
- (c) no combination shall come into effect until 210 days have passed from the day of notice or the Commission has passed orders, whichever is earlier.

The provisions of Section 6 do not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.



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PROCEDURE FOR INVESTIGATION OF COMBINATION

The procedure for investigation by the Commission has been stipulated under Section 29 of the Act. It involves following stages -

- (i) The Commission first has to form a prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India. Further, when the Commission has come to such a conclusion then it shall proceed to issue a notice to the parties to the combination, calling upon them to show cause why an investigation in respect of such combination should not be conducted;
- (ii) After receipt of the response of the parties to the combination Commission may call for the report of the Director General.
- (iii) When pursuant to response of parties or on receipt of report of the Director General whichever is later, the Commission prima-facie is of the opinion that the Combination is likely to cause an appreciable adverse effect on competition in relevant market, it shall, within seven days direct the parties to the combination to publish within ten working days, the details of the combination, in such manner as it thinks appropriate so as, to bring to the information of public and persons likely to be affected by such combination.
- (iv) The Commission may invite any person affected or likely to be affected by the said combination, to file his written objections within fifteen working days of the publishing of the public notice, with the Commission for its consideration.
- (v) The Commission may, within fifteen working days of the filing of written objections, call for such additional or other information as it deem fit from the parties to the said combination and the information shall be furnished by the parties above referred within fifteen days from the expiry of the period notified by the Commission.
- (vi) After receipt of all the information and within forty-five days from expiry of period for filing further information, the Commission shall proceed to deal with the case, in accordance with provisions contained in Section 31 of the Act.

ACTS TAKING PLACE OUTSIDE INDIA BUT HAVING AN EFFECT ON COMPETITION IN INDIA/ EXTRA-TERRITORIAL JURISDICTION

Section 32 extends the jurisdiction of Competition Commission of India to inquire and pass orders in accordance with the provisions of the Act into an agreement or dominant position or combination, which is likely to have, an appreciable adverse effect on competition in relevant market in India, notwithstanding that,

- (a) an agreement referred to in Section 3 has been entered into outside India; or
- (b) any party to such agreement is outside India; or
- (c) any enterprise abusing the dominant position is outside India; or
- (d) a combination has taken place outside India; or
- (e) any party to combination is outside India; or
- (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

APPEARANCE BEFORE COMMISSION

As per Section 35 of the Act, following persons are entitled to appear before the Commission:-

- (i) a complainant; or
- (ii) a defendant; or
- (iii) the Director General



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They may either appear in person or authorise any of the following:

- (a) a chartered accountant as defined in Section 2(1)(b) of Chartered Accountants Act, 1949 (38 of 1949) who has obtained a certificate of practice; or
- **(b)** a company secretary as defined in Section 2(1)(c) of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice;
- (c) a cost accountant as defined in Section 2(1)(b) of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice;
- (d) a legal practitioner that is an advocate, vakil or an attorney of any High Court including a leader in practice.

PENALTIES

The Competition Act prescribes penalties for contravention of orders of the Commission. As per Section 42,the Commission may cause an inquiry to be made into compliance of its orders or directions and:

- (a) if any person, without any reasonable cause, fails to comply with any order of the Commission, or condition or restriction subject to which any approval, sanction, direction or exemption in relation tony matter has been accorded, given, made or granted under this Act; or
- (b) if any person fails to pay the penalty imposed under the Act,
- (c) he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to rupees twenty five crores or with both, as the Chief Metropolitan Magistrate may deem fit.

COMPETITION APPELLATE TRIBUNAL

Section 53A empowers the Central Government to establish, by notification, an Appellate Tribunal to <u>be</u> known as Competition Appellate Tribunal –

- (a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission
- **(b)** to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal and pass orders for the recovery of compensation

APPEAL TO APPELLATE TRIBUNAL

Any person, aggrieved by any direction, decision or order of CCI may prefer an appeal to the Appellate Tribunal. Every appeal shall be filed within a period of **sixty days** from the date on which a copy of the direction or decision or order made by the Commission is received However, the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal 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 direction, decision or order appealed against. The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal. The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

Appeal to Supreme Court

The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal mayflies an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them. The Supreme court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

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POWER OF CENTRAL GOVERNMENT TO SUPERSEDE COMMISSION

It is stipulated under section 56 of the Act that if at any time the Central Government is of the opinion, -

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

> COMPETITION ADVOCACY

Under Section 49 the Central Government/State Government may seek the opinion of the CCI on the possible effects of the policy on competition or any other matter.

Section 49 provides that while formulating a policy on the competition, the Government may make a reference to the Commission for its opinion on possible effect of such a policy on the competition, or any other matter.

On receipt of such a reference, the Commission shall, give its opinion on it to the Central

Government/State Government, within sixty days of making such a reference and the latter may formulate the policy as it deems fit.

The role of the Commission is advisory and the opinion given by the Commission shall not be binding upon the Central Government/State Government in formulating such a policy.

he Commission is also empowered to take suitable measures for the:-

- (a) promotion of competition advocacy;
- (b) creating awareness about the competition; and
- (c) imparting training about competition issues.

CONSTITUTION OF COMPETITION FUND

The Act provides for the constitution of a fund called the "Competition Fund" for meeting the establishment and other expenses of the Competition Commission in connection with the discharge of its functions and for the purposes of this Act.

The following shall be credited to the "Competition Fund", -

- (a) all government grants received by the commission;
- (b) Omitted
- (c) the fees received under the Act;
- (d) the interest on the amounts accrued on the monies referred under clauses (a) to (c).

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SELF TEST QUESTIONS

FROM PAST CS EXAMS



- With reference to the relevant legal enactment, write short notes on the following.
 - (i) Conditions conducive to cartelization
 - (ii) Competition advocacy
 - (iii) Resale price maintenance
 - (iv) Objectives of the Competition Act, 2002.
 - (v) 'Regulation of combinations' under the Competition Act, 2002.
- 2. Write notes on 'Cartel' under the Competition Act, 2002
- 3. Distinguish between the following:
 - (i) 'Relevant geographic market' and 'relevant product market'.
 - (ii) 'Competition Commission' and 'Competition Appellate Tribunal'
- 4. What are the factors which the Competition Commission of India will take into consideration in determining whether an agreement has an appreciable adverse effect on competition?
- 5. State the duties of Director General under the Competition Act, 2002.
- What is an 'anticompetitive agreement' under the Competition Act, 2002? Mention any five such agreements.
- 7. Explain in brief 'anti-competitive agreements' under the Competition Act, 2002.
- 8. Do the following amount to anti-competitive agreements? Give reasons in support of your answer:
 - (i) An agreement requiring a distributor not to sell the goods of the manufacturer in the States other than Gujarat and Maharashtra.
 - (ii) A stipulation in an agreement that the dealer shall not sell the goods below the stipulated price.
 - (iii) An agreement containing a clause that there will be discontinuation in the supply of goods if the dealer is also dealing in the products of supplier's competitors.
 - (iv) An agreement stipulating the source of raw material for ensuring the quality of goods to be exported.

FROM ICSI MODULE



Answer the following

- Define and discuss the Relevant Market, Relevant Geographic Market, and Relevant Product Market.
- What are anti-competitive agreements. Discuss the procedure for enquiry into anti-competitive agreements.
- Discuss the composition and functions of Competition Commission of India.
- The Competition Act does not prohibit dominance, but the abuse of dominant position. Explain.
- 5. Write short notes on:
 - (i) Combinations.
 - (ii) Competition Advocacy.



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