EBCL Part - A

Marathon Notes

Chapter 1: RBI Act, 1934 (Weightage: 5 marks)

4 Introduction:

The origin of the Reserve Bank of India can be traced back to the year 1926, when the Royal Commission on Indian Currency and Finance – also known as the Hilton-Young Commission – recommended the creation of a central bank for India to:

- separate the function of control of currency &
- credit from the Government and
- to augment banking facilities throughout the country.

The Reserve Bank of India was **established in 1934** and **started its operations in 1935**. However, the Reserve Bank was **nationalized in 1949**.

Origin of RBI:

1926	The Royal Commission on Indian Currency and Finance	
	recommended creation of a Central bank for India.	
1927	A bill to give effect to the above recommendation was introduced in	
	the Legislative Assembly, but was later withdrawn due to lack of	
	agreement among various sections of people.	
1933	A fresh bill was introduced in the Legislative Assembly on the	
	recommendations of The White Paper on Indian Constitutional	
	Reforms.	
1934	The Bill was passed & received the Governor General's Assent.	
1935	The RBI commenced its operations on April 1 as a private	
	shareholders bank with a paid-up capital of Rs. 5 crores.	
1949	The GOI nationalized the Reserve Bank under the Reserve Bank	
	(Transfer of Public Ownership) Act, 1948.	

Establishment & Incorporation of RBI:

- As per Section 3(1) of the RBI Act, 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.

- Section 3(2) further 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.

Organizational Structure & Management:

- Central Board of Directors
- Governor
- Deputy Governors
- Local Boards
- Executive Directors
- Principal Chief General Manager
- Chief General Managers
- General Managers
- Deputy General Managers
- Assistant General Managers
- Managers
- Assistant Managers
- Support Staff

Central Board of Directors:

- The Central Board of Directors is at the top of the Reserve Bank's organizational structure.
- The Central Board has the **primary authority and responsibility** for the oversight of the function of Reserve Bank.
- It delegates specific functions to the Local Boards and various committees.
- The CG nominates 14 directors on the Central Board, including one Director each from the four Local Boards.
- The other ten Directors represent different sectors of the economy, such as, agriculture, industry, trade, and professions.
- All these appointments are made for a period of **four years**.
- A Director nominated holds the office for a period of four years and thereafter until his successor is nominated.
- A retiring director shall be **eligible for re-nomination**.

Governor & Deputy Governor:

- The Governor is the **Reserve Bank's Chief Executive**.
- The Governor supervises and directs the affairs and business of RBI.
- The Governor and Deputy Governors devote their whole time to the affairs of the Bank, and receive such salaries and allowances as may be determined by the Central Board, with the approval of the Central Government.
- The Deputy Governor may attend any meeting of the Central Board but shall not be entitled to vote.
- The Governor and a Deputy Governor hold the office for such term not exceeding **five years** as the Central Government may fix when appointing them, and they are **eligible for re-appointment.**

Local Boards:

- 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 by the CG** for a term of four years and thereafter until his successor is appointed. They are **eligible for reappointment**.
- The members of the Local Board shall elect from amongst themselves one person to be the Chairman of the Board.
- They also perform other functions that the Central Board may delegate to them.

♣ Functions of RBI:

1. Banking Functions:

RBI may transact various businesses such as acceptance of deposits without good interest from Central Government and State Governments, purchase, sale and rediscount of Bills of Exchange, short term Loans and Advances to banks, purchase and sale of Government Securities, etc.

RBI may also perform management of the public debt of the Union.

2. Issue Function:

- Right to issue bank notes is one of the key central banking functions of the RBI.
- RBI has the sole right to issue bank notes in India.
- The RBI Act enables the RBI to recommend to CG denomination of bank notes, i.e. two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees, two thousand rupees, five thousand rupees and ten thousand rupees or other denominations not exceeding ten thousand rupees. [Legal tender of money]
- The **bank notes** that are being issued by RBI are exempt from payment of stamp **duty**.

3. Monetary Policy Function:

- The Central Government, in consultation with the RBI shall **determine the inflation target** in terms of the Consumer Price Index, once in every five years, which needs to be notified in the Official Gazette.
- The decision of the Monetary Policy Committee is binding on RBI.

4. Payment & Settlement Systems:

- As per The Payment and Settlement Systems Act, 2007 only payment systems authorized by the Reserve Bank can be operated in the country.
- 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.

5. Regulation & Supervision:

a. Regulation of Banks:

- RBI has the power to **issue license & also to cancel license** of banking companies.
- RBI has the power to **issue directions** to banking companies **in the public interest** or in the interest of banking policy or to prevent the affairs of any banking

company being conducted in a manner detrimental to the interests of the depositors.

b. Regulation of NBFCs:

- RBI Act mandates every NBFCs to obtain a **certificate of registration from RBI** and to maintain net owned fund as may be specified by the RBI in the Official Gazette, before commencing such non-banking financial business.
- As a part of the supervisory control over the NBFCs, the RBI has **powers to inspect** them.
- The RBI shall exercise all those powers in the **public interest** to prevent the affairs of any NBFCs being conducted in a manner detrimental to the interest of the depositors.

c. Regulation of Co-operative Banks:

- As a part of the regulatory and supervisory regime over co-operative banks, the RBI has been entrusted with the **powers to issue licenses and cancel licenses** of co-operative banks, supersede their boards, **inspect them** and also **issue directions** to them **in the public interest**, interest of banking policy, control over loans and advances, etc.

RBI as Banker's Bank:

- 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 interbank transactions through these accounts.
- As Banker to Banks, the Reserve Bank provides short-term loans and advances when necessary.
- The RBI 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.
- The Reserve Bank extends this facility to **protect the interest of the depositors** of the bank and to **prevent possible failure of a bank**.

Instruments of Monetary Policy:

- **1. Repo Rate:** Repo rate refers to the rate at which commercial banks borrow money by selling their securities to the Central bank i.e. RBI to maintain liquidity, in case of shortage of funds under the Liquidity Adjustment Facility (LAF).
- **2. Reverse Repo Rate:** Reverse repo rate is the rate at which the central bank i.e. RBI borrows money from commercial banks within the country. It is a monetary policy instrument which can be used to control the money supply in the country under the LAF.
- **3.** Liquidity Adjustment Facility (LAF): LAF is a tool used in monetary policy, primarily by the RBI that allows banks to borrow money through repurchase agreements (repos) or to make loans to the RBI through reverse repo agreements. LAFs can manage inflation in the economy by increasing & reducing the money supply.
- **4. Marginal Standing Facility (MSF):** It is a provision made by RBI through which scheduled commercial banks can obtain liquidity overnight from RBI, in the event when inter-bank liquidity completely dries up. It is a facility for emergencies, through which banks obtain liquidity support at the MSF rate, which is higher than the repo rate. It is a penal rate of interest at which the RBI offers funds to the banks under the MSF facility.
- **5.** Cash Reserve Ratio (CRR): 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 that the Reserve Bank may notify from time to time in the Gazette of India.
- **6. Statutory Liquidity Ratio (SLR):** SLR is a minimum percentage of deposits that a commercial bank has to maintain in the form of liquid cash, gold or other securities. It is basically the reserve requirement that banks are expected to keep before offering credit to customers.

7. Bank Rate:

It is the rate at which the Reserve Bank is ready to buy or rediscount bills of exchange or other commercial papers.

8. Open Market Operations (OMO):

It refers to buying and selling of bonds issued by the Government in the open market. It is one of the quantitative tools that RBI uses to smoothen the liquidity conditions & inflation.

When RBI buys a Govt bond in open market, it pays for it, thereby increasing the money supply.

Selling of a bond by RBI leads to reduction in the money supply.

9. Market Stabilization Scheme (MSS):

It is a monetary policy tool used by the RBI to manage money supply in the economy.

Under this, if there is an excess money supply in the economy, RBI intervenes by selling Govt securities like Treasury Bills, Cash Management Bills, etc. This helps to withdraw the excess liquidity from the system.

Note:

OMOs is buying and selling of Govt securities to manage money supply in the economy. Thus, it is used to both inject and withdraw liquidity. Moreover, these securities are a part of Government borrowing whereas MSS is only selling of Government securities to withdraw excess liquidity. The money raised through the selling of securities is kept in a separate account known as MSS account.

Constitution of Monetary Policy Committee:

- **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:
- the **Governor of the Bank** *Chairperson*, ex officio;
- **Deputy Governor of the Bank**, in charge of Monetary Policy *Member*, ex officio;
- one officer of the Bank to be nominated by the Central Board Member, ex officio;
 and
- **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.

4 Meetings of Monetary Policy Committee:

- **1.** The Bank shall organize **at least 4 meetings** of the Monetary Policy Committee in a year.
- **2.** The meeting schedule of the Monetary Policy Committee for a year shall be published by the Bank at least one week before the first meeting in that year.
- **3.** Any change in meeting schedule shall be published by the Bank as soon as practicable.
- **4.** The **quorum** for a meeting of the Monetary Policy Committee shall be **four Members**, at least one of whom shall be the Governor and in his absence, the Deputy Governor who is the Member of the Monetary Policy Committee.
- **5. Each Member** of the Monetary Policy Committee shall have **one vote**.
- **6.** All questions which come up before any meeting of the Monetary Policy Committee shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Governor shall have a second or casting vote.
- 7. The proceeding of the Monetary Policy Committee shall be confidential.

Monetary Policy Report:

The Act provides that the Bank shall **once in every 6 months**, publish a document to be called the Monetary Policy Report, explaining:

- the sources of inflation; and
- the forecasts of inflation.

The **form and contents** of the Monetary Policy Report shall be such as may be **specified by the Central Board**.

Penalties:

Offence	Penalty
If a person:	He shall be punishable with
 makes a false statement, 	imprisonment for a term which may
knowing it to be false;	extend to 3 years and shall also be liable
 willfully omits to make a material 	to fine.
statement	

If any person fails to: • produce any book, account or other document or to furnish any statement, under this Act or any order, regulation or direction made or given thereunder	He shall be punishable with fine which may extend to two thousand rupees in respect of each offence and if he persists in such failure or refusal, with further fine which may extend to one hundred rupees for every day, after the first during which the offence continues.
If any person contravenes the provisions of section 31 i.e. issue of demand bills & notes	He shall be punishable with fine, which may extend to the amount of the bill of exchange, hundi, promissory note or engagement for payment of money in respect whereof the offence is committed.
If a person discloses any credit information, the disclosure of which is prohibited	He shall be punishable with imprisonment for a term, which may extend to 6 months, or with fine, which may extend to one thousand rupees, or with both.
If a person commences NBFC business without obtaining Certificate of Registration from RBI & without having the required minimum net owned fund	He shall be punishable with imprisonment for a term which shall not be less than 1 year but which may extend to 5 years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
If any auditor fails to comply with any direction given or order made by the Bank	He shall be punishable with fine, which may extend to five thousand rupees.
If any person accepts deposits in contravention of this Act (where the deposit should not have been accepted)	He shall be punishable with imprisonment for a term which may extend to 2 years & shall also be liable to fine which may extend to twice the amount of deposit received by such person in contravention of that section, or two thousand rupees, whichever is more, or with both.
If any other provision of this Act is contravened or if any default is made in	Any person guilty of such contravention or default shall be punishable with fine which may extend

complying with any other requirement	to two thousand rupees and where a
of this Act.	contravention or default is a continuing
	one, with further fine which may
	extend to one hundred rupees for every
	day after the first, during which the
	contravention or default continues.

Chapter 10: NBFCs (Weightage: 8 - 10 marks)

Definition of NBFCs:

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 2013 (or any earlier enactments) engaged in the following business:

- loans and advances,
- acquisition of shares/stocks/bonds/debentures/securities,
- leasing,
- hire-purchase,
- insurance business,
- chit business.

But does not include any institution who has following principal business:

- agriculture activity,
- industrial activity,
- purchase or sale of any goods (other than securities), or
- providing any services and sale/purchase/construction of immovable property.

Residuary NBFCs:

- **1.** A Residuary NBFC is a company which has **principal business** of receiving deposits underany scheme or arrangement in one lump sum or in instalments by way of contributions or in any other manner, is also a non-banking financial company.
- **2.** A Residuary NBFC will also be considered as NBFC.

Meaning of Principal Business:

Financial activity will be treated as principal business if the following conditions are satisfied:

a. Company's financial assets constitute more than 50% of the total assets,

And

b. Income from financial assets constitute more than 50% of the gross income. A company which fulfils both these criteria will be registered as NBFC by RBI.

Note:

This test is popularly known as 50-50 test and is applied to determine whether or not a company is into financial business.

Difference between Banks and NBFCs:

Basis for	NBFCs	Banks
comparison		
Meaning	An NBFC is a company that provides banking services to people without holding a bank license.	Bank is a government authorized financial intermediary that aims at providing banking services to the general public.
Incorporated under	Companies Act, 2013 or any previous enactments.	Banking Regulation Act, 1949
Demand deposit	Not accepted	Accepted
Payment & Settlement system	Not a part of system and cannot issue cheques drawn on itself.	Integral part of system & can issue cheque book.
Maintenance of Reserve ratios	Not required	Compulsory

Exemptions from Registration with RBI:

Certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI –

- Venture Capital Fund/Merchant Banking companies/Stock broking companies registered with SEBI,
- Insurance Company holding a valid Certificate of Registration issued by IRDA,

- Nidhi companies as covered under Section 406 of Companies Act, 2013 & Nidhi Rules.
- Chit companies as defined in Section 2(b) of the Chit Funds Act, 1982,
- Housing Finance Companies regulated by National Housing Bank,
- Stock Exchange.

Registration Process of NBFCs:

A. Conditions to be fulfilled before getting Registration:

Before Granting registration to NBFC, RBI will check that the following conditions are fulfilled –

- **1.** NBFC is or shall be in a **position to pay** its present or future depositors in full as and when their **claims** accrue;
- **2. Affairs** of the NBFC are **not being** or are not likely to be conducted in a manner **detrimental to the interest** of its present or future depositors;
- **3. General character** of the management or the proposed management of the NBFC shall not be prejudicial to the **public interest** or the interests of its depositors;
- **4.** NBFC has **adequate capital structure** and earning prospects;
- 5. Such other conditions as the RBI thinks fit.

 If all the above conditions are satisfied then RBI will grant registration and provide license to an NBFC.

B. Registration Process with RBI:

- **a.** After incorporation of the company, the NBFC must **obtain certificate of registration**.
- **b.** For obtaining certificate of registration, NBFC should have **minimum net owned fund of 2 crore rupees.**
- **c.** NBFC should make an application to RBI for registration,
- **d.** Registration of NBFC is done under **section 45I-A of RBI Act, 1934**.

Cancellation of Certificate of registration (Sec 45- IA):

RBI may cancel a certificate of registration of NBFC if such NBFC -

- 1. ceases to carry on the business of a non-banking financial institution in India; or
- **2.** has failed to comply with any condition subject to which the certificate of registration had been issued to it; or
- **3. fails to comply with any direction issued by the Reserve Bank** of India under the provisions of Chapter III B of RBI Act; or
- 4. fails to maintain accounts as per direction or order of RBI; or
- **5. fails to submit** or offer for **inspection its books** of account and other relevant documents when so demanded by an inspecting authority of RBI; or
- 6. has been prohibited from accepting deposit by an order made by the RBI for minimum 3 months.

If any person is aggrieved by the order for cancellation of registration given by RBI, then such aggrieved person may file and appeal within 30 days to Central Government and decision of central government shall be final.

- **♣** Reserve Fund (Section 45- IC):
- **1.** Every NBFC shall create a reserve fund.
- 2. Amount to be deposited in reserve fund = 20% of net profit every year (Profit shall be as disclosed in the P&L Account and it should be before payment of any dividend. Reserve fund can only be used for such purpose as specified by RBI.
- **3.** Whenever NBFC will withdraw any amount from reserve fund, it shall **report to** the RBI within 21 days of withdrawal.
- **4.** Period of 21 days can be extended by RBI if there is sufficient cause.
- **5.** CG has the power to exempt any NBFC from the requirements of maintaining reserve fund. But such exemption should be given only on the recommendation of RBI.

Maintenance of Percentage of Assets (Section 45- IB):

- 1. Every NBFC shall invest and maintain of continuous basis minimum 5% and maximum 20% of the deposits outstanding at the close of business on the last working day of the second preceding quarter.
- **2.** Investment should be made in approved securities. "Approved securities" means securities of any State Government or of the Central Government or bonds which have full guarantee by CG or SG.
- **3.** If the amount invested by NBFC falls below the specified rate then such company shall be liable to pay RBI a **penal interest at a rate of 3**% **p.a.** above the bank rate for the shortfall.
- **4.** If the **shortfall continues** in the subsequent quarters, then **penal interest rate will be 5% p.a.** above the bank rate for the shortfall.
- 5. Penal interest should be paid within 14 days.
- Types of NBFCs:
- 1. Asset Finance Company:

The **principal business** of these companies is to **finance the assets** such as machines, automobiles, generators, material equipment's, industrial machines etc.

2. Investment Company:

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

3. Loan Company:

A financial institution whose **principal business is providing finance whether by making loans or advances** or otherwise. It does not include an Asset Finance Company.

4. Infrastructure Finance Company:

An NBFC will be termed as an Infrastructure Finance Company, if it complies all the following conditions:

a. It has Net Owned Fund of Rs. 300 Crore or more.

- **b.** Deploys at least 75% of its total assets in infrastructure loans.
- c. Minimum credit rating of 'A 'or equivalent.
- d. CRAR (Capital to Risk Asset Ratio) of 15%.
- 5. Core Investment Company:

An NBFC will be termed as Core Investment Company, if it complies all the following conditions:

- **a.** Assets of NBFC are Rs. 100 crore and above.
- **b.** At least 90% of its assets are in the form of investment in shares or debt instruments or loans in group companies.
- **c.** Out of the 90%, 60% should be invested in equity shares or those instruments which can be compulsorily converted into equity shares in the next 10 years.
- d. Such companies do accept public funds.
- e. It is regulated by Core Investment Company (Reserve Bank) Directions, 2016.
- 6. Infrastructure Debt Fund: Non-Banking Financial Company:

An NBFC will be termed as an Infrastructure Debt Fund NBFC, if it complies all the following conditions:

- **a.** It is a company registered as NBFC to provide **debt into infrastructure projects**.
- **b.** Only Infrastructure Finance Companies (IFCs) can sponsor IDF-NBFCs.
- c. It is also a non-deposit taking NBFC with Net Owned Funds of 300 crore or more.

7. Micro Finance Institution NBFC:

MFI is an NBFC which has invested at least 85% of its assets in the form of microfinance, it is a non-deposit taking NBFC with Minimum Net Owned Funds of 5 crore.

For NBFCs registered in North Eastern States, minimum net owned funds shall stand at **Rs. 2 crores**.

8. NBFC Factors:

- **a.** NBFC-Factor is an NBFC engaged in the **principal business of factoring.**
- **b.** The **financial assets** in the factoring business should constitute **at least 50% of its total assets and** its income derived from factoring business should not be less than 50% of its gross income.

9. Mortgage Guarantee Companies:

A financial institution is treated as a Mortgage Guarantee Company if it undertakes mortgage guarantee business.

10. Non-Operative Financial Holding Company (NOFHC):

NOFHC is financial institution through which promoter/promoter groups will be permitted to set up a new bank.

11. NBFC Account Aggregator:

It collects & provides information about a customer's financial assets in a consolidated, organized & retrievable manner to the customers or others as specified by the customers.

12. NBFC Peer to Peer Lending Platform:

It provides an **online platform to bring lenders & borrowers together** to help in mobilising funds.

Powers & duties of Auditors of NBFCs:

- 1. It is the duty of the auditor of the NBFC to inquire whether or not the NBFC has submitted all the necessary information to the RBI.
- **2.** Auditor shall include the report made to RBI in his report made under Audit report prepared under Companies Act, 2013.
- **3. RBI also has the power to conduct special audit of NBFC** and the auditor conducting special audit shall submit report to the RBI. **Remuneration** of the auditor for special audit shall be **fixed by RBI** and shall be **borne by NBFC**.

♣ Rotation of partners of the Statutory Auditors Audit Firm:

All applicable NBFCs shall rotate the partners of the Chartered Accountant firm conducting the audit in every 3 years so that same partner shall not conduct audit of the company continuously for more than a period of 3 years.

The auditor may be appointed again after the expiry of 3 years (freezing period).

♣ Power to take action against Auditors (Section 45 - MAA):

Where any auditor fails to comply with any direction given or order made by the RBI then RBI may remove or debar the auditor from exercising the duties as auditor of any of the Reserve Bank regulated entities for a maximum period of three years, at a time.

♣ Returns to be submitted by NBFCs:

A. For Deposit taking NBFCs:

NBS 1: Quarterly Returns on deposits in First Schedule.

NBS 2: Quarterly return on Prudential Norms is required to be submitted by NBFCaccepting public deposits.

NBS 3: Quarterly return on Liquid Assets by deposit taking NBFC.

NBS 4: Annual return of critical parameters by a rejected company holding publicdeposits.

NBS 6: Monthly return on exposure to capital market by deposit taking NBFC withtotal assets of Rs. 100 crore and above.

B. For Systematically Important Core Investment Company NBFCs:

NBS 7: Quarterly statement of capital funds, risk weighted assets, risk asset ratio etc., for NBFC-ND-SI.

NBS- ALM 1: Statement of short- term dynamic liquidity in format ALM [NBS-ALM1], Monthly.

NBS- ALM 2: Statement of structural liquidity in format ALM [NBS-ALM2], Half yearly.

NBS- ALM 3: Statement of Interest Rate Sensitivity in format ALM [NBS-ALM3], Halfyearly.

♣ Power of RBI to remove directors from office (Sec 45- ID):

- **1.** If RBI thinks that it is necessary to remove director of any NBFC (other than government owned NBFC) in the **public interest** or in the interest of deposit holders or for any other reason than RBI may remove such director from the office.
- **2.** Before removing an **opportunity of being heard** should be given to such director.
- **3.** Where any order of removal is made in respect of a director of a company, he shall cease to be a director of NBFC.
- **4.** Once director is removed then he **shall not act as director for** any NBFC for such time which will be specified by NBFC but it cannot be **more than 5 years**.
- **5.** Director removed **cannot claim any compensation for the loss** or termination from office.

Appointment of director in place of removed director -

- 1. RBI may appoint a suitable person in place of director so removed.
- **2.** Such director will hold office for **maximum period of 3 years** or such further periods not exceeding three years at a time.

Supersession of Board of Directors of NBFCs (Sec 45- IE):

- **1.** If RBI thinks that it is necessary to supersede board of directors of any NBFC (other than government owned NBFC) in the **public interest** or in the interest of deposit holders or for any other reason then, RBI may supersede the BOD of such NBFC.
- 2. Maximum time for which BOD can be superseded = Maximum 5 years.
- 3. After supersession of the BOD, RBI may appoint a suitable person as the Administrator.
- **4.** Administrator will work as per the orders and directions of RBI.

- 5. Whenever RBI orders supersession of BOD of NBFC then the chairman, managing director and other directors should vacate their office and all the powers to manage NBFC gets transferred to RBI's Administrator.
- **♣** Power of RBI to Collect Information from NBFCs as to Deposits and to Give Directions (Section 45K):
- **1. RBI** has the power to direct anytime that every NBFC shall furnish to RBI statements information or details relating to the deposits received by the NBFCs.
- 2. The details to be called by RBI may include
 - **i.** The amount of deposit;
 - ii. Purpose of accepting deposit;
 - iii. Tenure of deposits;
 - iv. Rate of interest; etc.
- 3. RBI also has the power to issue directions to NBFCs for the matters relating to --
 - The amount of deposit;
 - Purpose of accepting deposit;
 - Tenure of deposits;
 - Rate of interest; etc.
- 4. If any NBFC fails to follow the order or directions of RBI then RBI may prohibit the acceptance of deposits by that NBFC.
- Resolution of NBFCs (Sec 45 MABA):
- **1.** If RBI thinks that it is necessary in the public interest or in the interest of deposit holders or for any other reason then, RBI will order –
- **a.** Amalgamation of two or more NBFCs
- **b.** reconstruction of the NBFCs
- **c. splitting** the NBFC in different units.
- **d.** RBI can also order for **establishment of Bridge institutions**.

"Bridge Institutions" mean temporary institutional arrangement made under the scheme to preserve the continuity of the activities of a NBFC that are critical to the functioning of the financial system.

2. RBI may also provide for -

- **a. reduction of the pay and allowances** of the chief executive officer, managing director, chairman or any officer in the senior management of the NBFC;
- **b. cancellation of all or some of the shares** of the non-banking financial company held by the chief executive officer, managing director, chairman or any officer in the senior management of the NBFCs or their relatives;
- c. sale of any of the assets of the NBFC.
- Power of Reserve Bank to file for Winding up Petition (Sec 45- MC):
- 1. If the RBI is satisfied that an NBFC -
- a. is unable to pay its debt; or
- **b.** has become **disqualified** to carry on the business of a nonbanking financial institution; or
- c. has been prohibited by the Reserve Bank from receiving deposit for minimum 3 months; or
- **d.** the continuance of the NBFC will be **against the public interest**.

Then RBI will file an application for winding up of such NBFC under Companies Act.

Note -

A NBFC will **deemed to be unable to pay its debt** if it has refused or has failed to meet **within five working days** any lawful demand made and the RBI certifies in writing that such company is unable to pay its debt.

Chapter 11: SEZ Act, 2005 (Weightage: 10 - 12 marks)

Meaning:

1. 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.

- **2.** In simple words, Special Economic Zone (SEZ) is an exclusive commercial area which is specifically **established for the promotion of foreign trade**. These are geographical regions in which the **economic laws are kept more liberalized** than laws applicable in other parts of the country with an intention to increase Foreign Investment.
- **3.** Since it is treated separate from the Domestic Tariff Area 'DTA' (rest of thecountry) **goods and services going into the SEZ area** from Domestic Tariff Area are treated as **exports** (from the point of view of DTA) the **goods coming from the SEZ area** into DTA are treated as **imports** (from the point of view of DTA).
- 4. Domestic Tariff Area means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones.
- **5. Example of SEZ:** Santa Cruz (Maharashtra), Cochin (Kerala), Kandla and Surat (Gujarat), Chennai (Tamil Nadu), Visakhapatnam (Andhra Pradesh), Falta (West Bengal), etc.

Features of the Special Economic Zone Act, 2005:

The salient features of the Act are as under and it provides for following:

- **1.** Matters relating to **establishment of Special Economic Zone** and for setting up of units therein.
- 2. Matters relating to requirements for setting up of off-shore banking units.
- **3.** The **fiscal** (**related to tax**) **regime** for developers of Special Economic Zones and units set up therein.
- 4. Single window clearance mechanism at the Zone level.
- **5. Establishment of an Authority** for each Special Economic Zone set up by the Central Government.
- **6. Designation of Special courts** and single enforcement agency to ensure speedy trial and investigation.

♣ Objects of the Special Economic Zone Act, 2005:

The main objectives of the SEZ Act are:

- 1. Generation of additional economic activity.
- **2.** Promotion of **exports** of goods and services.
- **3. Promotion of investment** from domestic and foreign sources.
- **4.** Creation of **employment opportunities**.
- **5.** Development of **infrastructure facilities**.
- Important Definitions:
- 1. <u>Export [Sec 2(m)]:</u>

"Export" means:

- Taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
- ii. Supplying goods, or providing services, from the Domestic Tariff Area to a Unit orDeveloper; or
- iii. Supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone.

Case Law: Burmah Shell Oil Co.

Fact: There was a sale of aviation turbine fuel to aircrafts parked at airports (i.e., outside the customs territory) and meant for flying abroad. Whether the same shall be treated as exports as the plane is going outside India.

Decision: The Supreme court explaining the concept of export held that while all exports involve a taking out of the country, all goods taken out of the country cannot be said to be exported. The test is that the goods must have a foreign destination where they can be said to be imported.

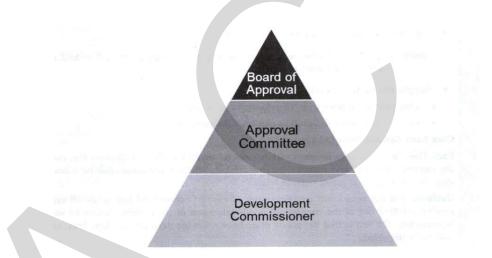
Based upon this fundamental concept, the court held that the sale of aviation turbine fuel does not have a foreign destination and hence is a local sale instead of a sale in the course of export.

2. **Import** [Sec 2(0)]:

"Import" means:

- i. Bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
- ii. Receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone.

Bodies and Authorities under the Act:



A. Board of Approval:

<u>Constitution of Board of Approval:</u> <u>Central Government</u> has constituted a Board of Approval by notification.

Power of the Board of Approval/ Board:

- 1. Approving, rejecting or modifying proposals for establishment of the SEZ.
- **2.** Approving authorized operations to be carried out in SEZ.

- 3. Approving foreign collaborations & Foreign Direct Investment in SEZ.
- **4.** Approving, rejecting or modifying proposal for infrastructure facilities in an SEZ.
- **5.** Granting, a license to an industrial undertaking, if such undertaking is established or proposed to be established, wholly or partly in an SEZ.
- **6.** Suspension of the letter of approval granted to a Developer. Appointment of Administrator.
- 7. Disposing of appeals.
- **8.** Performing such other functions as may be assigned to it by the Central Government.

Suspension of letter of approval:

- **1. Board can suspend the letter of approval** granted to the Developer for a whole or part of his area established as SEZ.
- **2.** Maximum period of suspension can be 1 year.
- **3. Board may appoint an Administrator** to discharge the functions of the developer during the period of suspension.
- **4.** Suspension may take place in following circumstances:
- **a.** Developer is **unable to discharge the functions** or perform the duties imposed on him;
- **b.** Has **persistently defaulted** in complying with any direction given by the Board;
- **c.** Violated the terms and conditions of the letter of approval;
- **d.** Whose **financial position** is such that he is unable to fully and efficiently discharge the duties and obligations.
- e. Suspension can be done only after serving a minimum 3 months' notice, in writing, stating the grounds of suspension.

B. Approval Committee:

<u>Constitution of Approval Committee:</u> Central Government to constitute Approval Committee for every SEZ by notification.

Powers & Functions of Approval Committee:

- **1. Approve the import** or procurement of goods from the DTA by a Developer in the SEZ.
- **2. Approve providing of services** by a service provider from outside India or from DTA in SEZ.
- 3. Approve, modify or reject proposals for setting up Units in SEZ.
- **4. Monitor and supervise compliance** of conditions on the basis of which above approvals are granted.
- **5. Perform any other functions** as may be entrusted to it by the Central Government or the State Government.

C. Development Commissioner:

<u>Appointment of Development Commissioner:</u> Central Government may appoint the Development Commissioner for one or more SEZ and such Officers and other employees as it considers necessary to assist every Development Commissioner.

Functions of Development Commissioner:

- 1. Guide the entrepreneurs for setting up of Units in SEZ.
- **2.** Take steps for **promotion of exports** from SEZ.
- **3.** Coordination with the Central Government or State Government Departments concerned or agencies for above purposes.
- **4. Monitor the performance of the Developer** and the Units in SEZ.Other functions as may be assigned to him by CG.
- **5.** Other functions as may be delegated to him by the Board of approval.

D. SEZ Authority:

Constitution of SEZ Authority:

- 1. Central Government to constitute SEZ Authority for every SEZ by notification.
- **2. CG can also supersede the Authority for a maximum period of 6 months** if the authority is unable to perform.
- 3. The directions given by CG are binding on the Authority.

Functions of SEZ Authority:

- 1. Development of infrastructure in the SEZ. Promoting exports from the SEZ.
- **2. Reviewing the functioning** and performance of the Special Economic Zone.
- **3.** Levy user or service charges or fees or rent for the use of properties belonging to the Authority.
- **4. Performing such other functions** as may be prescribed.

Returns & Reports by the Authority:

- **1.** Authority shall **furnish to the CG** such returns and statements and particulars as it may require from time to time.
- **2.** Every authority to submit to the CG **after** the end of each financial year a report giving a true and full account of its activities, policy and programmes during the previous financial year.
- **3.** The **copy of such report to be laid before each House of Parliament**, soon after its receipt.

Establishment of SEZ:

An SEZ can be set up by:

- **a.** Central Government;
- **b.** State Government;
- **c.** Central & State Government jointly;

- d. Foreign companies;
- e. Any other person.

Modes of applying for SEZ:

1. Proposal by a person:

Option 1 Proposal to SG:

- **a.** The person should first identify the area and then make proposal to State Government for setting up SEZ.
- **b.** SG will forward the proposal together with its recommendations to the Board of Approval within the specified time.
- c. The Board of Approval may, after receiving the proposal of SEZ may either:
 - i. Approve the proposal without modifications or
 - ii. Approve the proposal with modifications
 - **iii.** Reject the proposal.

Option 2 Proposal to Board:

- **a.** The person can make a proposal directly to the Board for the purpose of setting up Special Economic Zone.
- **b.** The Board of Approval may, after receiving the proposal of SEZ may either:
 - i. Approve the proposal without modifications or
 - ii. Approve the proposal with modifications
 - **iii.** Reject the proposal
- **c.** If Board grants approval, the person concerned, is required to obtain the concurrence of the State Government within prescribed time.

<u>If proposal accepted without modification:</u> If the Board approves the proposal without any modification, it shall communicate the same to the Central Government. Thereafter Central Government will issue a 'Letter of Approval' to the concerned person. Once the letter is issued the concerned person will be treated as a 'Co- Developer'.

<u>If proposal accepted with modification:</u> If the Board approves the proposal with modification, it shall communicate the same to the concerned person. If the concerned person accepts the modification, then the Board will communicate it to the Central Government. Thereafter Central Government will issue a 'Letter of

Approval' to the concerned person. Once the letter is issued, the concerned person will be treated as a 'Co-Developer'.

<u>If proposal is rejected:</u> The Board shall record the reasons in writing and shallcommunicate the same to the concerned person.

2. Proposal by State Government:

- **a.** State Government after identifying the area, forward the proposal directly to the Board of Approval for setting up of Special Economic Zone.
- **b.** The Board of Approval may, after receiving the proposal of SEZ may either:
 - i. Approve the proposal without modifications or
 - ii. Approve the proposal with modifications
 - iii. Reject the proposal.

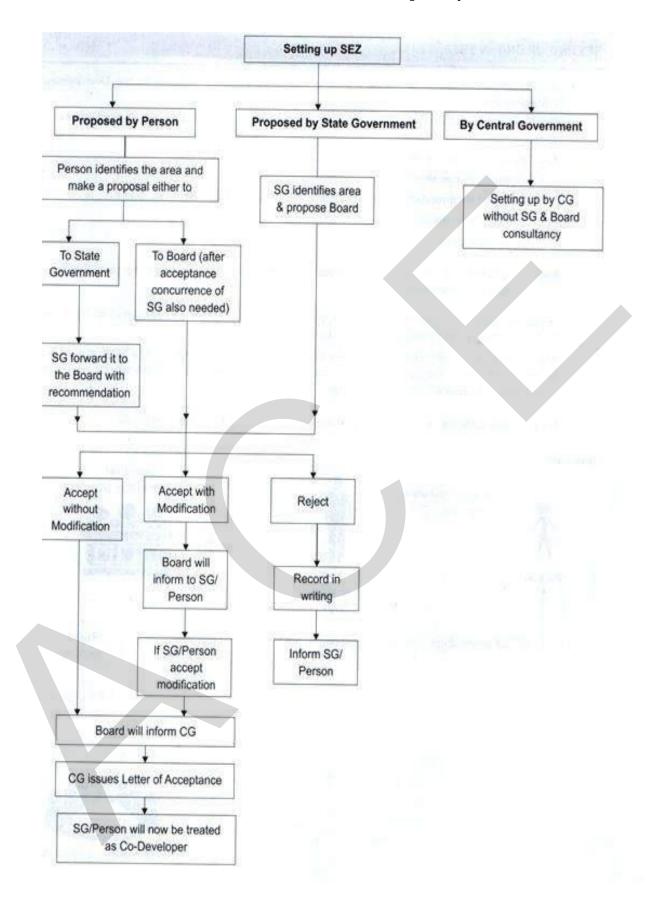
<u>If proposal accepted without modification</u>: If the Board approves the proposal without any modification, it shall communicate the same to the Central Government. Thereafter Central Government will issue a 'Letter of Approval' to the State Government. Once the letter is issued, SG will be treated as a 'Co-Developer'.

If proposal accepted with modification: If the Board approves the proposal with modification, it shall communicate the same to the State Government. If State Government accepts the modification, then the Board will communicate it to the Central Government. Thereafter Central Government will issue a 'Letter of Approval' to the State Government. Once the letter is issued, SG will be treated as a 'Co- Developer'.

<u>If proposal is rejected:</u> The Board shall record the reasons in writing and shall communicate the same to the State Government.

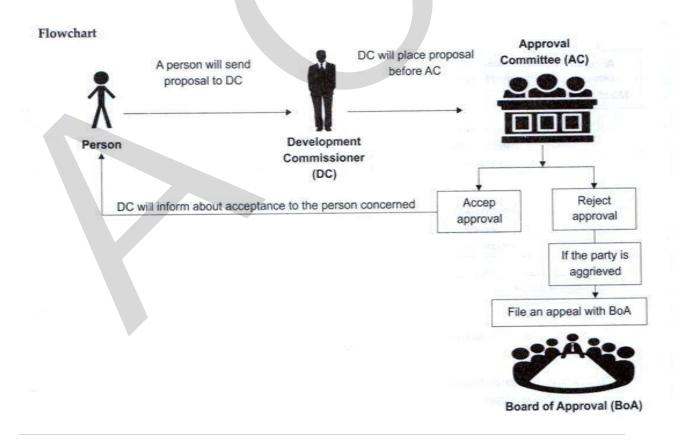
3. Setting up by Central Government:

- **1.** Central Government can set up and notify the Special Economic Zone without consultingthe State Government or without referring the proposal to the Board.
- **2.** The Central Government has been empowered to notify any additional area as a part of a Special Economic Zone.
- **3.** Demarcation as Processing and Non-Processing area in a particular SEZ is also decided by the Central Government.



Setting up a Unit in SEZ:

- **1.** Any person who intends to set up a unit in SEZ shall **submit a proposal to the Development Commissioner** concerned.
- **2.** The Development Commissioner will place the proposal before the Approval Committee for its approval.
- **3.** The Approval Committee may:
- Approve the proposal
- Approve the proposal subject to such terms and conditions, or
- Reject the same.
- **4.** A person aggrieved by an order of the Approval Committee may make an appeal to the Board of Approvals, within the prescribed time and specified manner.
- 5. The Development Commissioner may, after the approval of the proposal, grant a letter of approval to the person concerned to set up a Unit and undertake in the Unit such operations which the Development Commissioner may authorise.



Cancellation of letter of approval granted to entrepreneur:

- **1.** Approval Committee may cancel the letter of approval of an entrepreneur after reasonable **opportunity of being heard has been afforded to the entrepreneur.**
- **2. Grounds of cancellation:** If it has any reason to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligation subject to which the letter of approval was granted.
- **3. Withdrawal of Benefit:** Where the letter of approval has been cancelled, the Unit shall not, from the date of such cancellation, be entitled to any exemption, concession, benefit or deduction.
- **4.** Any person aggrieved from an order of the Approval Committee to make an appeal to the Board of Approval within the prescribed time.

Setting up & operation of Off-Shore Banking Unit:

- 1. "Offshore Banking Unit" means a **branch of a bank located in a Special Economic Zone** and which has obtained the permission under clause (a) of sub-section (1) of Section 23 of the Banking Regulation Act, 1949.
- **2.** An offshore Banking Unit can be set up at SEZ.
- **3. Application** for setting up offshore banking unit may be **made to the Reserve Bank of India.**

Setting up of International Financial Services Centre:

- **1.** "International Financial Services Centre" means an International Financial Services Centre which has been approved by the Central Government.
- **2. Central Government will approve** setting up of an International Financial Services Centre in an SEZ.
- 3. Central Government may approve only one International Financial Services Centre in an SEZ.

Facilities & Incentives to SEZ:

The incentives and facilities offered to the units in SEZs for attracting investments into the SEZs, including foreign investment include:

- **1. Duty free import/domestic procurement of goods** for development, operation and maintenance of SEZ units.
- 2. 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years and thereafter 50% of the ploughed back export profit for next 5 years. (Sunset Clause for Units will become effective from 01.04.2020)
- **3. Exemption from Minimum Alternate Tax (MAT)** under section 115JB of the Income Tax Act. (Withdrawn w.e.f. 1.4.2012)
- **4. Exemption from** Central Sales Tax, Exemption from Service Tax and Exemption from State Sales Tax. These have now subsumed into **GST** and supplies to SEZs are zero-rated under IGST Act 2017.
- **5.** Other levies as imposed by the respective State Governments.
- **6. Single window clearance** for Central and State level approvals.



Chapter 2: FEMA, 1999 (Weightage: 0 - 5 marks)

Introduction:

"Foreign Exchange Management Act, 1999 is an Act to facilitate external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India."

FEMA came into force w.e.f. 1st June 2000.

Accordingly, the Foreign Exchange Regulation Act (**FERA**) was repealed and replaced by the new Foreign Exchange Management Act (**FEMA**) with effect from June 2000.

4 Applicability:

FEMA extends to the whole of India.

The Act also applies 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.

The **Central Government** has been empowered to **suspend** operation of any or all provisions of FEMA in **public interest**, by issuing a notification.

The **Central Government** has also been empowered to **relax suspension** by issuing a notification.



Chapter 3: Foreign Exchange Transactions & Compliances (Weightage: 8 - 10 marks)

Definitions:

1. Capital Account Transaction [Section 2(e)]:

'Capital account transaction' has been defined to mean **any transaction which alters the assets or liabilities** including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of person resident outside India and includes the transactions specified in Sub-section (3) of Section 6 of the Act.

2. Current Account Transaction [Section 2(j)]:

The term current account transaction has been defined to mean a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business; payments due as interest on loan and as net income from investments; remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.

However, the **Central Government** has been vested with powers in consultation with Reserve Bank to impose reasonable restrictions on current account transactions.

3. Foreign Exchange [Section 2(n)]:

The term 'foreign exchange has been defined to mean **foreign currency** and includes **deposits**, **credits**, **balance payable in foreign currency**, **drafts**, **travelers' cheques**, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in any foreign currency. Any draft, travelers' cheque, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency has also been included in the definition of foreign exchange.

4. Foreign Security [Section 2(o)]:

The term Foreign Security has been defined to mean **any security**, **in the form of shares**, **stocks**, **bonds**, **debentures** or any other instrument denominated or expressed **in foreign currency** and includes securities expressed in foreign currency but where

redemption or any form of return such as interest or dividend is payable in Indian currency.

5. Person resident in India [Section 2(v)]:

1. The expression 'Person resident in India has been defined to mean a person residing in India for more than **182 days** during the course of the preceding financial year.

However, two categories of persons are excluded from the purview of definition:

The **first category** includes any person who has gone out of India or who stays outside India for or on taking up employment outside India, or for carrying on outside India a business or vocation.

The **second category** of persons which have been excluded from the definition of person resident in India include:

A person who has come to stay or stays in India, in either case otherwise than —

- -for or taking up employment in India; or
- -for carrying on in India a business or vocation in India; or
- -for any other 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 in India owned or controlled by a PROI.
- **4.** An office, branch or agency outside India owned or controlled by a PROI.

6. Authorized Person [Section 2(c)]:

The term authorized person is defined to include an authorized dealer, money changer, offshore banking unit or

any other person for the time being authorized to deal in foreign exchange or foreign securities.

- **Section 3** prohibits any person other than an authorized person from:
- dealing in or transferring any foreign exchange or foreign security to any person or

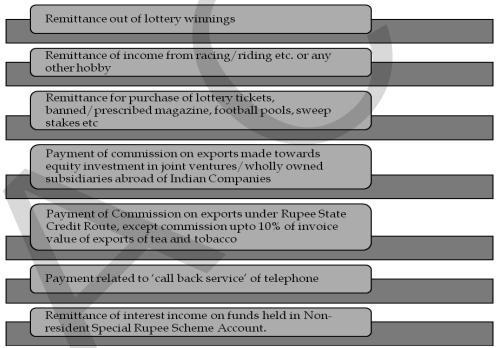
making any payment in any manner except as provided in the Act, rules or regulations made thereunder or with the general or special permission of the Reserve Bank of India.

Urrent Account Transactions (Section 5):

Section 5 of the Act allows any person to sell or draw foreign exchange to or from an authorized person if such sale or drawl is a current account transaction as defined under Section 2(j) of the Act. However, the Central Government may, in the public interest and in consultation with the Reserve Bank impose reasonable restrictions for current account transactions.

Prohibition on drawal of foreign exchange for certain transactions (Rule 3):

Rule 3 prohibits the drawal of foreign exchange for the purposes of transactions specified in the Schedule I or a travel to Nepal and/or Bhutan or a transaction with a person resident in Nepal or Bhutan. These are as follows:



♣ Prior approval of Central Government for certain transactions (Rule 4):

Rule 4 requires prior approval of the Government of India for the transactions as specified in **Schedule II**.

♣ Prior approval of RBI for certain transactions (Rule 5):



Facilities for individuals

A. 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 thereof requires prior approval of the Reserve Bank of India.

- a. Private visits to any country (except Nepal and Bhutan)
- **b.** Gift or donation
- c. Going abroad for employment
- d. Emigration
- e. Maintenance of close relatives abroad
- **f.** 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.
- **g.** Expenses in connection with medical treatment abroad
- h. Studies abroad
- i. Any other current account transaction

However, 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 250,000 (US Dollars Two Hundred and Fifty Thousand Only) by the amount so remitted.

Facilities for persons other than individual:

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

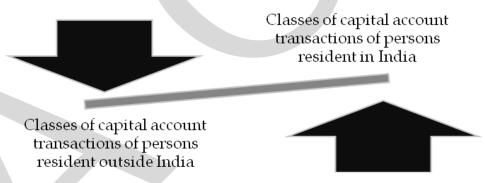
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- **1. Donations** exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for:
- creation of Chairs in reputed educational institutes,
- contribution to a technical institution or body.
- **2. 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.
- **3.** 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.
- **4.** Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of **reimbursement of pre-incorporation expenses**.

♣ Capital Account Transactions (Sec 6):

Section 6 of the FEMA allows capital account transactions subject however to certain conditions.

PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS:



Classes of Capital account transactions by persons resident in India:

- Investment by a person resident in India in foreign securities.
- Foreign currency loans raised in India & abroad by a person resident in India.
- Transfer of immoveable property outside India by person resident in India.
- Guarantees issued by a person resident in India in favour of a person resident outside India.

- **Export, import** & holding of currency/ currency notes.
- Taking out of insurance policy by a person resident in India from an insurance company outside India.
- Remittance outside India of **capital assets** of a person resident in India.
- Sale & purchase of foreign exchange derivatives in India and abroad.

Classes of Capital account transactions by persons resident outside India:

- Investment in India by a person resident outside India by issue of **security** by a body corporate in India.
- Acquisition & transfer of **immoveable property** in India by a person resident outside India.
- **Guarantees** by a person resident outside India in favour of, or on behalf of a person resident in India.
- Export & import of currency / currency notes from/into India by a person resident outside India.
- Deposits between a person resident in India & a person resident outside India.
- Remittance outside India of capital assets in India of a person resident outside India.

♣ Prohibited capital account transaction for a person resident outside India:

A person resident outside India is entitled to make investment in India, in any form, in any company or partnership firm or proprietary concern or any entity whether incorporated or not, which is engaged or proposed to engage in the business of:

- Chit funds, or
- Nidhi company, or
- Agricultural or plantation activities, or
- Real estate business or construction of farm houses, or
- Trading in Transferable Development Rights (TDRs).

Note:

TDRs means certificates issued by CG/ SG in respect of land which is surrendered by the owners to the Government. Government may acquire the land for public purpose without paying monetary compensation but instead issues a TDR certificate, which is wholly or partly transferable.

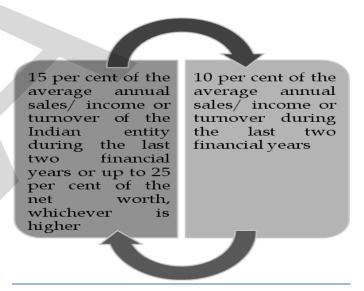
ACQUISITION & TRANSFER OF IMMOVEBALE PROPERTY:

A. OUTSIDE INDIA BY A PERSON RESIDENT IN INDIA:

- A person resident in India can hold, own, transfer or invest in any immovable property situated outside India if such property was acquired, held or owned by him/ her when he/ she was resident outside India or inherited from a person resident outside India.
- **2.** A resident can purchase immovable property outside India out of foreign exchange held in his/ her **Resident Foreign Currency (RFC) account**.
- **3.** A resident can **acquire** immovable property outside India **jointly with a relative** who is a person resident outside India, provided there is no outflow of funds from India.
- **4.** A resident individual can send remittances under the **Liberalised Remittance Scheme** for purchasing immovable property outside India.

B. COMPANIES HAVING OVERSEAS OFFICE:

A company incorporated in India having overseas offices, may acquire immoveable property outside India for its business & residential purposes of its staff, provided total remittances do not exceed the following limits prescribed for initial and recurring expenses respectively:



♣ REALISATION, REPATRIATION & SURRENDER OF FOREIGN CURRENCY:

Section 8 of the of Foreign Exchange Management Act, 1999 requires the person resident in India to make all reasonable efforts to realise and repatriate the foreign exchange due or accrued as per the directions of the Reserve Bank.

Meaning of Repatriation:

It means **bringing in to India** and selling to authorized person or holding in permissible account for discharge of debt or liability in foreign exchange.

Manner of Repatriation:

On realization of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and -

- a. sell it to an authorized person in India in exchange for rupees; or
- **b. retain** or hold it in account with an authorized dealer in India to the extent specified by the Reserve Bank; or
- **c. use it for discharge of a debt** or liability denominated in foreign exchange to the extent and in the manner specified by the Reserve Bank.

Duty of persons to realise foreign exchange due:

A person resident in India to whom any amount of foreign exchange is due or has accrued shall, take all reasonable steps to realise and repatriate to India such foreign exchange, and shall in no case do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing –

- **a.** that the receipt by him of the whole or part of that foreign exchange is **delayed**; or
- **b.** that the foreign exchange **ceases** in whole or in part to be receivable by him.

♣ Period for surrender of realised foreign exchange:

For person not being an individual resident:

- **1.** In case of **foreign exchange** due or accrued:
 - as remuneration for services rendered; or
 - in settlement of any lawful obligation, or
 - an income on assets held outside India, or
 - as inheritance, settlement or gift,

within 7 days from the date of its receipt.

- 2. In all other cases within a period of 90 days from the date of its receipt.
- **3.** Any **unused portion of forex** to be surrendered within a period of **60 days** from the date of its acquisition.
- **4.** Where foreign exchange is acquired for the purpose of **foreign travel**, then, the unspent balance of such foreign exchange shall be surrendered to an authorised person:
 - within 90 days from the date of return to India, when the unspent foreign exchange is in the form of currency notes and coins; and
 - within 90 days from the date of return to India, when the unspent foreign exchange is in the form of traveler's cheques.

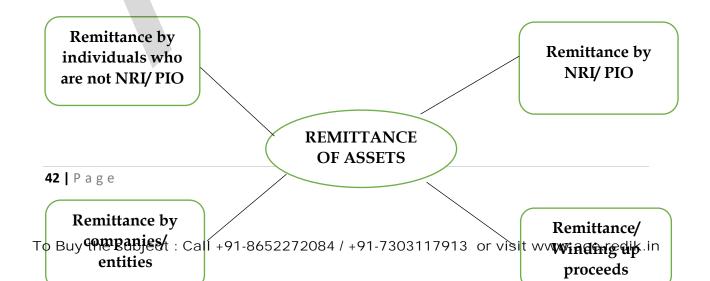
For person being an individual resident:

A person being an individual resident in India shall surrender the received/realised/unspent/unused foreign exchange whether in the form of currency notes, coins and travelers' cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realization/purchase/acquisition or date of his return to India, as the case may be.

Remittance of Assets:

'Remittance of assets' means remittance outside India of:

- funds in a deposit with a bank/ firm/ company,
- provident fund balance or superannuation benefits,
- amount of claim or maturity proceeds of insurance policy,
- sale proceeds of shares, securities,
- immovable property or any other asset held in India in accordance with the provisions of the FEMA, 1999.



A. REMITTANCE BY INDIVIDUALS WHO ARE NOT NRI/PIO:

Authorised Dealer (AD) may allow remittance of assets by a foreign national where:

- the person has retired from employment in India;
- the person is a **non-resident widow/widower** and has inherited assets from her/his deceased spouse who was an Indian National resident in India;
 - Provided that the **remittance should not exceed USD one million** per financial year.
- the remittance is in respect of balances held in a bank account by a **foreign student** who has completed his/ her studies.
- These facilities are **not available for citizens of Nepal or Bhutan or a PIO**.

B. REMITTANCES BY NRI/PIO:

Authorised Dealers may allow NRIs/ PIOs, on submission of documentary evidence, to remit up to USD one million per financial year:

- **out of balances in their non-resident (NRO) accounts**/ sale proceeds of assets/ assets acquired in India by way of inheritance/ legacy;
- in respect of assets acquired under a **deed of settlement** made by either of his/ her parents or a relative as defined in Companies Act, 2013. The settlement should take effect **on the death of the settler**.

C. REMITTANCES BY COMPANIES/ENTITIES:

Authorised Dealers may allow remittances by Indian companies under liquidation on directions issued by a Court in India/ orders issued by official liquidator in case of voluntary winding up on submission of:

- Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
- Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act.

D. REMITTANCES/WINDING UP PROCEEDS OF BRANCH/OFFICE:

Authorised Dealers may permit remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office) on submission of the following documents:

- A copy of the Reserve Bank's permission for establishing the branch/ office in India.
- Auditor's certificate indicating the manner in which the remittable amount has been arrived and indicating the manner of disposal of assets.
- a confirmation from the applicant that no legal proceedings are pending in any Court in India and there is no legal impediment to the remittance.

Exemption from Realisation or Repatriation:

The provisions relating to holding of foreign currency and realisation and repatriation in certain circumstances:

Possession of foreign currency or coins	Without limit
by an Authorized Person	
Holding and operating foreign	Up to the limit specified by RBI
currency account	
Retention by a PRI of foreign exchange	Not exceeding US \$ 2,000 or its
acquired from: employment, services,	equivalent
honorarium, business, trade, vocation,	
gifts, inheritance	
Foreign exchange acquired or received	Exempt as per General or Special
before 8th July, 1947	permission of RBI

Authorised Persons:

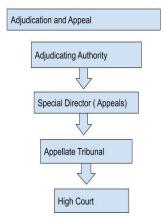
- 1. Under Section 10, any person who has made an application to the RBI may be authorised by it to act as an authorised person to deal in foreign exchange or in foreign securities as an authorised dealer, money changer or offshore banking unit or in any other manner as the RBI deem fit. This authorisation is in writing and subject to the conditions laid down by the RBI.
- **2.** Normally, **nationalised banks**, leading non nationalized banks and foreign banks are appointed as authorized persons.
- **3.** Reserve Bank of India has been empowered to **revoke the authorisation** granted to any person at any time in the public interest. It may revoke the authorisation **after giving an opportunity of being heard**.
- 4. Any person, other than an authorised person who has acquired or purchased foreign exchange or does not surrender it to authorised person within the specified period, or uses the foreign exchange for any other purpose, which is not permitted under the provisions of the Act, such person shall be deemed to have committed contravention of the provisions of the Act.

Power of the RBI to issue directions to authorised persons:

- 1. 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.
- **2.** If any authorised person contravenes any direction given by the RBI or fails to file the return as directed by RBI, he may be liable to a fine not exceeding Rs. 10,000 and in the case of continuing contravention, with an additional penalty which may extend to Rs. 2,000 for every day during which such contravention continues.
- **3.** 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.
- **4.** When an inspection is initiated by the Reserve Bank, it shall be the duty of every authorised person, to produce before the inspecting officer, such books, accounts and other documents in his custody and to furnish any statement or information

relating to the affairs of such authorised person within the time limit and the manner in which such inspecting officer may direct.

Adjudication & Appeal:



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.

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 Central Government has been empowered to appoint by notification Special Directors (Appeals) specifying their jurisdiction over matters and places.

The appeal against the order of Adjudicating Authority shall be made in the prescribed form along with requisite fee, within forty-five 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).

Under Section 19, the Central Government or any person aggrieved by an order made by an Adjudicating Authority or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal.

Under Section 20, the Central Government appoints a Chairperson and as many members as it may deem fit to the Appellate Tribunal.

A person who is or has been or is qualified to be a judge of a High Court shall be eligible for the appointment as chairperson of Appellate Tribunal.

A person who is or has been eligible to be a district judge shall be eligible for appointment as a member of Appellate Tribunal.

The Chairman & members will hold office for a period of 5 years from the date of assuming office. However, no chairperson or member shall hold office on attaining the age of 65 years and 62 years respectively.

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.

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.

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.

The Central Government has also been empowered to authorize Director, Additional Director, Special Director or Deputy Director to appoint officers of enforcement below the rank of Assistant Director of Enforcement to exercise the powers and discharge the duties conferred or imposed on him under the Act.

Contravention by companies:

Section 42 of the Act deals with contravention of the provisions of the Act by the Companies and provides that 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.

Compounding of contraventions:

- **1.** Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.
- **2.** It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention.
- **3.** Wilful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.

4. Authorities appointed for Compounding:

- If Contravention is punishable u/s 13 except contravention of Section 3(a): **RBI** shall be compounding authority.
- If Contravention is punishable u/s 3(a): Directorate of Enforcement shall be compounding authority.

Application for compounding:

- All applications for compounding may be submitted together with the prescribed fee by way of a demand draft drawn in favour of "Reserve Bank of India."

Pre- requisite for compounding process:

In respect of 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 the Compounding Rules, such contraventions would not be
compounded and relevant provisions of the FEMA, 1999 shall apply.

- 2. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.
- **3.** Contraventions relating to any transaction where proper approvals or permission from the Government or any statutory authority concerned, as the case may be, have not been obtained such contraventions would not be compounded unless the required approvals are obtained from the concerned authorities.
- **4.** Cases of contravention such as those having serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation or where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation.

Scope & procedure for compounding:

- On receipt of the application for compounding, the Reserve Bank shall examine the application based on the documents and submissions made in the application and assess whether contravention is quantifiable and, if so, the amount of contravention.
- 2. The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. In case the contravener fails to submit the additional information/ documents called for within the specified period, the application for compounding will be liable for rejection.
- **3.** The following factors, which are only indicative, may be taken into consideration for the purpose of passing compounding order and adjudging the quantum of sum on payment of which contravention shall be compounded:
- the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- the amount of loss caused to any authority/ agency/ exchequer as a result of the contravention;
- the **repetitive nature of the contravention**, the track record and/or history of non-compliance of the contravener;
- **any other factor** as considered relevant and appropriate.

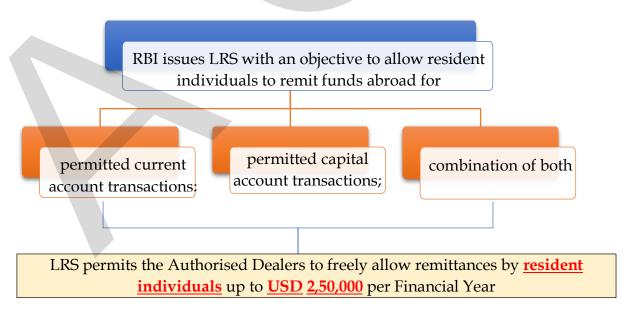
♣ Issue of the compounding order:

- **1.** The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and **not later than 180 days from the date of application**.
- **2.** The time limit for this purpose would be reckoned from the date of receipt of the completed application for compounding by the Reserve Bank.
- **3.** If the applicant opts for appearing for the personal hearing, the Reserve Bank would encourage the applicant to appear directly for it rather than being represented / accompanied by legal experts. If the authorized representative of the applicant is unavailable for the personal hearing, the Compounding Authority may pass the order based on available information / documents.
- 4. One copy of the compounding order issued shall be supplied to the applicant (the contravener) and also to the Adjudicating Authority.
- 5. To ensure more transparency & greater disclosure, it has been decided to **host the compounding orders** passed on the Reserve Bank's website (<u>www.rbi.org.in</u>).

Chapter 7: Liberalised Remittance Scheme (LRS)

(Weightage: 0 to 4 marks)

Remittance facilities to Resident Individuals:



1. The scheme is **available only to resident individuals**. It means scheme is not available to corporates, partnership firms, HUF, Trusts etc.

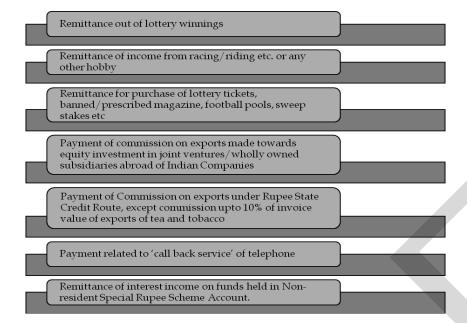
2. Form A2:

- Form A2 shall be filed by resident individual with AD.
- In case of remitter being a minor, the Form A2 must be signed by the minor's natural guardian.
- **3.** Remittances under the Scheme can be consolidated in respect of family members. Example, husband and wife aggregating their limit of 2,50,000 USD each may carry out any permitted transaction of amount up to 5,00,000 USD.
- 4. One resident cannot gift the limit of 2,50,000 USD to another resident.
- 5. Release of foreign exchange in excess of USD 2,50,000, requires prior permission from the Reserve Bank of India.
- **6.** Investor, who has remitted funds under LRS can retain, reinvest the income earned on the investments. At present, the resident individual is not required to repatriate the funds or income generated out of investments made under the Scheme.

♣ Permissible Capital Account Transactions:

- 1. Opening of foreign currency account abroad with a bank outside India.
- **2.** Purchase of property abroad.
- 3. Investments in shares, securities, mutual funds, etc. abroad.
- **4.** Setting up wholly owned subsidiaries (WOS) and Joint Venture (JV) abroad for bonafide business subject to stipulated terms and conditions.
- **5.** Acquisition of qualification shares.
- **6.** Extending loans in INR to NRIs who are relatives as defined in Companies Act, 2013.

Prohibited Transactions:



Permissible Current Account Transactions:

Type of transaction	Limit
Private visit (other than Nepal & 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. (Number of visits does not matter).
Gift or 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.
Going outside India for 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.
Emigration	A person wanting to emigrate can draw foreign exchange from AD Category I bank – Up to 2,50,000 USD or Amount prescribed by the country of emigration Whichever is higher.
Maintenance of close relatives abroad	A resident individual can remit up-to USD 2,50,000 per Financial Year towards maintenance of close relatives.
	For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD

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Business trip	2,50,000 in a Financial Year. (Number of visits does not matter).
	- Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 without any estimation from the doctor.
Medical treatment abroad	- In case of higher amount, authorised dealer may release amount after receiving estimation from doctor in India / foreign.
	- Amount up to USD 250,000 per financial year is allowed to attendant also.
Facilities available to students for pursuing their studies abroad	- AD may release foreign exchange up to USD 2,50,000 to resident individuals for studies abroad without any estimation from the Foreign University.
	- In case of higher amount, authorised dealer may release amount after receiving estimation from Foreign University.

♣ Facilities for persons other than individual:

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

- **1. 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:
- creation of Chairs in reputed educational institutes,
- contribution to a technical institution or body.
- **2. 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.
- 3. 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.
- 4. Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

5. Remittance towards payments of collected subscription to overseas TV media company –

AD may allow cable operators or collection agents in India of overseas TV media companies, to remit subscription collected from subscribers in India/advertisement charges collected from the advertisers who are eligible to advertise on overseas TV channels without any prior permission from the Reserve Bank.

6. Bids in foreign currency for projects to be executed in India

- Person resident in India is permitted to make or to receive payments in foreign exchange, in respect of global bids.
- Central Government should authorised such projects to be executed in India.
- AD may sell foreign exchange to the concerned resident Indian company which has been awarded the contract.

7. Sale of overseas telephone cards -

AD may allow agents in India of the overseas organisations issuing pre-paid telephone cards to remit the sale proceeds of such cards, by deducting their commission, to the issuers of the telephone cards.

8. <u>Liberalization of foreign technical collaboration agreements –</u>

AD Category-I banks may permit drawal of foreign exchange by persons for payment of royalty and lump-sum payment under technical collaboration agreements without the approval of Ministry of Commerce and Industry, Government of India.

9. <u>Drawal of foreign exchange for remittance for purchase of trademark or franchise in India –</u>

AD Category-I banks may permit drawal of foreign exchange by person for purchase of trademark or franchise in India without approval of the Reserve Bank.

10. Remittances for making tour arrangements by agents -

- Authorised Dealers may affect remittances at the request of agents in India who have tie-up arrangements with hotels/ agents etc., abroad.

- Remittances may be made for providing hotel accommodation or making other tour arrangements for travel from India.

Opening of foreign currency accounts -

Authorised Dealer may open foreign currency accounts in the name of agents in India who have tie up arrangements with hotels/ agents.

Credits to the account – collections made in foreign exchange from travelers'; and refunds received from outside India on account of cancellation of bookings/tour arrangements etc.

Debits to the account – for making payments towards hotel accommodation, tour arrangements etc., outside India.

Chapter 4: Foreign Contribution (Regulation) Act, 2010 (FCRA) (Weightage: 5 to 8 marks)

Introduction:

The object of the Foreign Contribution (Regulation) Act, 2010 is:

- 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.

The Foreign Contribution (Regulation) Act, 2010 has come into effect from May 1, 2011.

♣ Definitions [Section 2 (1) of Foreign Contribution (Regulation) Act, 2010]:

1. Association [Section 2(1)(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 called.

2. Foreign Company [Section 2(1)(g)]:

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

- i. a foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956);
- ii. a company which is a subsidiary of a foreign company;
- **iii.** the registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause (ii);
- iv. a multi-national corporation.

Explanation — For the purposes of sub-clause (iv), a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation,

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

3. Foreign Contribution [Section 2(1)(h)]:

"Foreign contribution" means the **donation**, **delivery** or **transfer** made by any foreign source, —

- (i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, 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;
- (ii) of any currency, whether Indian or foreign;
- (iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999.

Note: The sum as stated in point (i) above has been specified as **Rs. 25,000** vide the Foreign Contribution (Regulation) Amendment Rules, 2012.

Explanation to section 2(1)(h):

Explanation 1: A donation, delivery or transfer of any article, currency or foreign security referred to in this clause 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.

Explanation 2: 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.

Explanation 3: Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution.

4. Foreign Hospitality [Section 2(1)(i)]:

"Foreign hospitality" means any offer, not being a purely casual one,

- made in cash or kind by a foreign source
- for providing a person with the costs of travel to any foreign country or territory or
- with free boarding, lodging, transport or medical treatment.
- Example: Air tickets, hotel accommodation, etc.

5. Foreign Source [Section 2(1)(j)]:

"Foreign source" includes, —

- i. the Government of any foreign country or territory and any agency of such Government;
- **ii.** any international agency, not being the UN or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the CG may, by notification, specify in this behalf;

- **iii.** a foreign company;
- iv. a corporation, not being a foreign company, incorporated in a foreign country or territory;
- v. a multi-national corporation referred to in sub-clause (iv) of clause (g);
- vi. a company within the meaning of the Companies Act, 1956/2013 and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:
- the Government of a foreign country or territory;
- the citizens of a foreign country or territory;
- corporations incorporated in a foreign country or territory;
- trusts, societies or other associations of individuals formed or registered in a foreign country or territory;
- foreign company.
 - **vii.** a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
 - **viii.** a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;
 - ix. a society, club or other association of individuals formed or registered outside India;
 - **x.** a citizen of a foreign country.

6. Legislature [Section 2(1)(k)]:

"**Legislature**" means —

- i. either House of Parliament;
- **ii.** the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State;
- **iii.** Legislative Assembly of a Union territory constituted under the Government of Union Territories Act, 1963;
- iv. Legislative Assembly for the National Capital Territory of Delhi referred to in the Government of National Capital Territory of Delhi Act, 1991;

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v. Municipality as defined in clause (e) of article 243P of the Constitution;
District Councils and Regional Councils in the States of Assam, Meghalaya,
Tripura and Mizoram as provided in the Sixth Schedule to the Constitution.

7. Person [Section 2(1)(m)]:

"Person" includes –

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) an association;
- (iv) a company registered under section 25 of the Companies Act, 1956.

8. Political Party [Section 2(1)(n)]:

"Political party" means –

- i. an association or body of individual citizens of India
 - **a.** to be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or
 - **b.** which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;
- ii. a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India No.56/J&K/02, dated the 8th August, 2002, as in force for the time being.

♣ Prohibition to accept foreign contribution [Section 3]:

The following are the persons prohibited from accepting foreign contribution:

- 1. Candidate for election;
- **2.** Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registerednewspaper;
- **3.** Judge, government servant or employee of any entity controlled or owned by the Government;

- 4. Public Servant
- **5.** Member of any Legislature;
- **6.** Political party or office bearers;
- 7. Organisations of a political nature;
- **8.** Associations or companies engaged in the production or broadcast of audio news or audio-visualnews or current affairs programmes through any electronic mode.

♣ Persons to whom Section 3 does not apply [Section 4]:

Section 3 shall not apply to any foreign contribution accepted if such contribution is received –

- 1. by way of salary, wages or other remuneration from any foreign source;
- **2.** by way of payment for any import or export (ordinary course of international business);
- **3.** as an agent of a foreign source for any transaction made by such foreign source with the CG orSG;
- 4. by way of a gift received by him as a member of any Indian delegation;
- **5.** from his relative;
- **6.** any contribution received as per the FEMA, 1999;
- 7. by way of any scholarship, stipend or any other payment of similar nature.

♣ Procedure to notify an organisation of a political nature [Section 5]:

CG has the power to notify any organization as an organization of political nature if:

- the activities of the organisation or
- the ideology propagated by the organisation or
- the **programme** of the organization **islike a political party**.

♣ Restriction on acceptance of Foreign Hospitality [Section 6]:

- **1.** Following persons are not allowed to accept foreign hospitality while visiting any country or territory outside India:
 - i. Member of a Legislature or
 - ii. office-bearer of a political party or
 - iii. Judge or
 - **iv.** Government servant or employee of any corporation or any other body owned or controlled by the Government.
- **2.** However, foreign hospitality can be accepted after taking approval from CG.
- **3. Approval of CG** for receiving foreign hospitality shall **not be required** in case of **anymedical emergency** or sudden illness during visit to outside India.
- **4.** In this case, person receiving foreign hospitality shall give **intimation to CG** within 1 month from the date of receipt of such hospitality.

♣ Prohibition on transfer of foreign contribution to other person [Section 7]:

The transfer of foreign contribution is prohibited from one registered person to other person unless such other person is also registered and had been granted the certificate or has obtained prior permission under the Act.

In case of transfer to unregistered person, a prior permission from CG is required.

Utilization of foreign contribution [Section 8]:

- 1. Every registered person who has certificate of registration or who has permission to receive foreign contribution shall use such contribution only for the purpose allowed.
- **2.** Every registered person who has certificate of registration or who has permission to receive foreign contribution shall not defray **maximum 20%** of such contribution, received in a financialyear, **to meet administrative expenses**.
- **3.** Administrative expenses exceeding 20% of such contribution may be defrayed with priorapproval of the Central Government.
- **♣** Power of Central Government to prohibit receipt of foreign contribution [Section 9]:

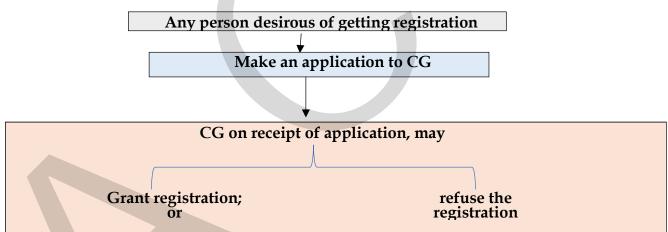
- 1. CG has the power to -
- prohibit any person or organisation, from accepting any foreign contribution who are not specified in section 3;
- Require any person to take registration for obtaining foreign contribution;
- Require any person to furnish returns and information as may be specified.

2. Prohibition to accept foreign contribution will be made if CG is satisfied that -

Acceptance of foreign contribution or the acceptance of foreign hospitality is likely to affect prejudicially the

- sovereignty and integrity of India; or
- public interest; or
- freedom or fairness of election to any Legislature; or
- friendly relations with any foreign State; or
- harmony between religious, racial, social, linguistic or regional groups, castes or communities.

Grant of certificate of registration [Section 12]:



- 1) Every person who makes an application for registration shall open an FCRA account.
- 2) Registration shall be normally granted within 90 days.
- 3) If registration is not granted within 90 days, then CG shall communicate the reason for not granting registration to the applicant
- 4) The CG may not give reasons for refusal where there is not compulsion under Right to Information Act, 2005.
- 5) Certificate granted shall be valid for 5 years.
- **6)** Prior permission shall be valid for the specific purpose.

Conditions for granting certificate of registration:

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- **A.** the person making an application for registration:
- is not fictitious or benami;
- has not been prosecuted or convicted for indulging in activities aimed at conversion throughinducement or force, from one religious' faith to another;
- has not been prosecuted or convicted for creating communal tension or disharmony in part of the country;
- has not been found guilty or diversion or mis-utilisation of its funds;
- is not engaged or likely to engage in propagation of sedition or advocate violent methods toachieve its ends;
- is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
- has not contravened any of the provisions of this Act;
- has not been prohibited from accepting foreign contribution;
- **B.** the acceptance of foreign contribution by the person should not be against:
- sovereignty and integrity of India; or public interest; or freedom or fairness of election to any Legislature; or
- friendly relations with any foreign State; or
- harmony between religious, racial, social, linguistic or regional groups, castes or communities; or
- shall not endanger the life or physical safety of any person.

Suspension of certificate [Section 13]:

- 1. CG shall have the power to suspend the certificate of registration.
- 2. Maximum period of suspension = 180 days.
- **3.** Every person whose certificate has been suspended shall not receive any foreign contribution during the period of suspension of certificate.
- **4.** Foreign contribution already received shall be utilized with the approval of CG.

Cancellation of certificate [Section 14]:

Certificate may be cancelled if:

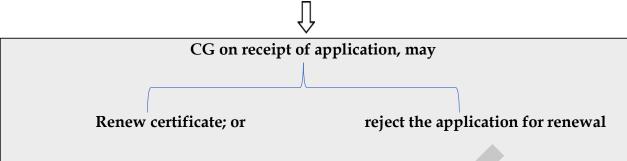
- **1.** The holder had made any statement which was false or incorrect at the time of making theapplication;
- **2.** The holder has **violated terms and conditions** of registration;
- 3. If CG thinks it is necessary to cancel the certificate in the public interest;
- **4.** The holder has violated the provisions of the Act;
- **5.** The holder of the certificate has not engaged in any activity in its chosen field for the benefit of thesociety for **2 consecutive years or has become defunct**.

Note -

- a. Opportunity of being heard should be given before cancellation;
- **b.** If certificate of any person has been cancelled then such person, shall not be eligible for registration for a period of **3 years** from date of cancellation of such certificate.
- Surrender of certificate [Section 14A]:
- **1.** CG may allow any person to surrender their certificate of registration if they wish to surrender.
- **2.** CG may only allow surrender if it is satisfied that the provisions of the Act has not been contravened.
- **♣** Renewal of certificate [Section 16]:

Every person who has been granted a certificate can renew such certificate within six months before the expiry of the period of the certificate.

Application for renewal should be made to CG



- 1. Renewal shall be normally granted within 90 days.
- **2.** If renewal is not granted within 90 days, then CG shall communicate the reason for notgranting registration to the applicant.
- 3. Renewal shall be valid for 5 years.

Accounts, Intimation, Audit and Disposal of Assets:

A. Foreign contribution through scheduled bank [Section 17]

- Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" which shall be opened by him in such branch of the State Bank of India at New Delhi.
- **2.** Such person may also open another "FCRA Account" in any of the scheduled bank of hischoice for the purpose of keeping or utilising the foreign contribution which has been received from his "FCRA Account' in specified branch of State Bank of India at New Delhi.
- **3.** No funds other than foreign contribution shall be received or deposited in any such account.

B. Intimation [Section 18]

Every person who has been granted a certificate or given prior permission to receive foreign contribution shall notify CG following:

- **a.** Amount received;
- **b.** Source from where foreign contribution is received;
- **c.** How foreign contribution was received;
- **d.** Purpose for which it was received.

C. Order for Audit of accounts [Section 20]

1. Where any person who has been granted a certificate or given prior permission fails to give any intimation or gives false intimation and CG has the reason to

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believe that provisions of this Act is contravened then CG may order audit of accounts or any other books of such person.

2. Audit shall be done by gazetted officer, holding a Group A post under the Central Government or any other officer as CG may think fit.

D. Intimation by candidate for election [Section 21]

Every candidate for election, who had received any foreign contribution, at any time **within one hundred and eighty days** immediately preceding the date on which he is duly nominated as such candidate, shall give an intimation about the details of foreign contribution to the Central Government.

Inspection [Section 23]

- **1.** If CG thinks that any provisions of the Act has been contravened by any person then it may order inspection of any account or records maintained by such person.
- **2.** Inspection should be done by gazetted officer, holding a Group A post under the CentralGovernment or any other officer as CG may think fit.
- **3.** Inspector will have the power to enter in any premises **at any reasonable hour, before sunsetand after sunrise**, for the purpose of inspection.

♣ Seizure of accounts or records [Section 24]

- 1. If after inspection, officer has any reasonable cause to believe that any person has contravened the provisions of the Act then inspecting officer may seize such account or record.
- **2.** The authorised officer shall return such account or record to the person from whom it wasseized if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record.

♣ Appeal [Section 31]

- 1. Any person aggrieved by any order made under section 29 may prefer an appeal.
- **2.** Appeal should be made within 1 month.

- **3.** Extension of 1 month for filing further appeal may be granted.
- **4.** Where the order is made by Court of Session, appeal should be made to High Court.
- **5.** Where the order is made by any officer, appeal should be made to Court of Session.

Chapter 9: Foreign Trade Policy (FTP)
(Weightage: 4 to 8 marks)

Introduction:

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 ForeignTrade Policy, 2015-20 came into force with effect from 01st April, 2015 and shall remain in force up to 31st March, 2020 unless otherwise specified.

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.

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



To provide a stable and sustainable policy environment for foreign trade in merchandise and services

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

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

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

To provide a mechanism for regular appraisal in order to rationalise imports and reduce the trade imbalance

Importer Exporter Code (IEC) Number:

- 1. Any person who does not possess an IEC Number cannot carry out any import or export, unless specifically exempted.
- **2.** Therefore, it is necessary for all importers and exporters to obtain IEC number before starting their any business.
- **3.** *Director General of Foreign Trade (DGFT)* issues IEC numbers to the importers and exporters.
- **4.** IEC is a **10-digit number** allotted to a person that is mandatory for any types of export/import activities.
- **5.** 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 2 format for grant of e-IEC**. Those who have digital signatures can sign and submit the application online along with the requisite documents.
- **6.** In case of any deficiency in the application form, it can be corrected by re-logging onto "Online IEC application" on DGFT website and filling the form again by paying the requisite application processing charges.

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- 7. When an e-IEC is approved by the Authority, applicant is informed through e-mail or applicant shall also take print out from the website.
- 8. Only one IEC is permitted against on Permanent Account Number (PAN). If any PAN card holder has more than one IEC, the extra IECs shall be disabled.
- 9. Documents for IEC:
- (1) Documents of Legal Entity (Business Entity):
- (a) PAN of the business entity in whose name Import/Export would be done,
- **(b)** Address Proof of the applicant entity,
- (c) Registration Certification Number (like LLPIN/CIN),
- **(d)** Bank account details of the entity,
- (e) Cancelled Cheque bearing entity's pre-printed name, or
- **(f)** Bank certificate in prescribed format ANF 2A(I).
- **(2)** Documents of Proprietor/Partners/Directors/Secretary or Chief Executive of the Society/Managing Trustee of the entity:
- (a) PAN (for all categories),
- **(b)** DIN/DPIN (in case of Company/LLP firm).
- (3) Details of the signatory applicant:
- (a) Identity proof,
- **(b)** PAN,
- (c) Digital photograph.

10. Exempted Categories from IEC:

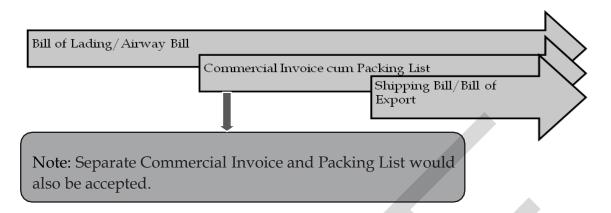
Following categories of importers and exporters have been exempted:

- (a) Ministries or Department of Central or State Government.
- **(b)** Persons importing or exporting goods for personal use.
- (c) Persons importing or exporting goods from/to Nepal provided the CIF value of a single consignment does not exceed Indian 25,000 rupees.
- (d) Persons importing or exporting goods from/to Myanmar provided the CIF value of a single consignment does not exceed Indian 25,000 rupees.

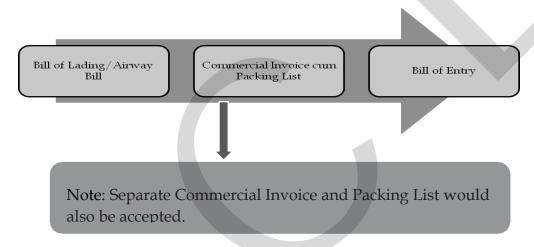
Note: In case of Nathula port, the applicable value ceiling will be Rs. 1,00,000.

Mandatory documents for Export/ Import from/in to India:

(a) Mandatory documents required for export of goods from India:

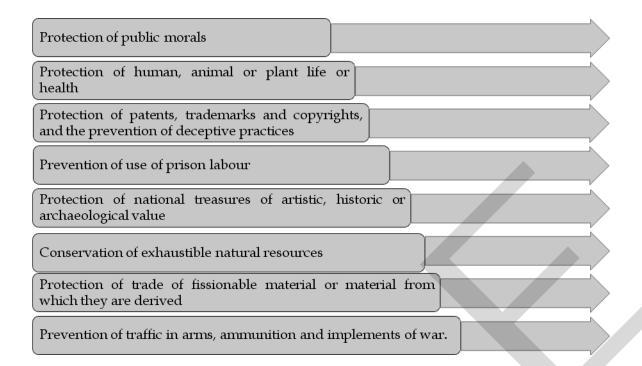


(b) Mandatory documents required for import of goods into India:



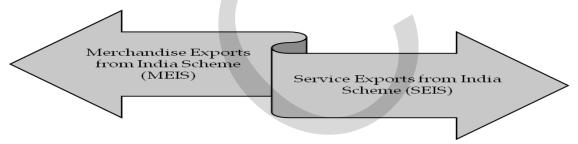
♣ Principles of Restriction:

DGFT may impose restrictions on export and import basis on the following reasons:



♣ Exports from India schemes:

There shall be following two schemes for exports of Merchandise and Services respectively:



Govt. of India grants duty credit scrips under MEIS and SEIS. Duty Credit Scrips is freely transferable.

The Duty Credit Scrips can be used for:

- 1. Payment of Customs Duties for import of inputs or goods, except excluded items.
- **2.** Payment of excise duties on domestic procurement of inputs or goods, including capital goods.
- **3.** Payment of service tax on procurement of services.
- **4.** Payment of Customs Duty and fee as per Foreign Trade Policy.

Note: Duty credit scrip is a pass that allows the holder to import commodities by not paying a specified amount in import duties.

Merchandise Exports from India Scheme (MEIS):

- 1. Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are manufactured in India.
- Calculation of reward under MEIS would be on realised FOB value of exports, or on FOB value of exports as given in the Shipping Bills, whichever is less, unless otherwise specified.
- **3.** Export of goods through courier via e-Commerce: Eligibility conditions for export via e-commerce:

Value up to Rs. 25,000: Exports of goods through courier or foreign post office via e-commerce, of FOB value up to Rs. 25,000 per consignment shall be entitled for rewards under MEIS.

Value above Rs. 25,000: If the value of exports using e-commerce platform is more than Rs. 25,000 per consignment, then MEIS reward would be limited to FOB value of Rs. 25,000 only.

- **4. Place of Export:** Goods can be exported in manual mode through Foreign Post Offices at New Delhi, Mumbai and Chennai.
- **5. Ineligible categories under MEIS:** The following exports categories shall be ineligible for Duty Credit Scrip entitlement:
- **a.** EOUs/EHTPs/BTPs/STPs who are availing direct tax benefits/exemption.
- **b.** Supplies made from DTA units to SEZ units.
- **c.** Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India.
- d. Deemed Exports.
- e. Service Export.
- **f.** Diamond, Gold, Silver, Platinum, other precious metal in any form including plain and studded jewelry and other precious and semi-precious stones.
- **g.** Ores and concentrates of all types and in all formations.
- **h.** Cereals of all types.
- i. Sugar of all types and all forms.
- **j.** Crude/petroleum oil and crude/primary and base products of all types and all formulations.
- **k.** Export of milk and milk products.
- 1. Export of Meat and Meat Products.

Services Exports from India Scheme (SEIS):

- **1.** Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.
- **2.** Following services shall be eligible:
 - Supply of a 'service' from India to any other country;
 - Supply of a 'service' from India to service consumer(s) of any other country.
- **3.** 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, such minimum net free foreign exchange earnings criteria would be US \$ 10,000 in preceding financial year.
- **4.** Net Foreign Exchange = Gross Earnings of Foreign Exchange minus Total expenses/ payment/remittances of Foreign Exchange by the IEC holder, relating to service sector in the financial year.
- **5.** 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.
- **6. Ineligible categories under SEIS:** The following exports categories shall be ineligible for Duty Credit Scrip entitlement:
- **a.** Foreign Exchange remittances relating to Financial Services Sector in relation to:
 - Raising of all types of foreign currency Loans;
 - Export proceeds realization of clients;
 - Issuance of Foreign Equity through ADRs/GDRs or other similar instruments;
 - Issuance of foreign currency Bonds;
 - Sale of securities and other financial instruments.
- **b.** Payments for services received from EEFC Account;
- **c.** Foreign exchange turnover by Healthcare Institutions like equity participation, donations etc.
- **d.** Foreign exchange turnover by Educational Institutions like equity participation, donations etc.
- **e.** Export turnover relating to services of units operating under SEZ/EOU/EHTP/STPI/BTP Schemes or supplies of services made to such units;
- **f.** Exports of Goods.
- **g.** Service providers in Telecom Sector.

Status Holder:

- **1.** Govt. of India gives Star (as symbol) for those export goods, services and technology beyond a threshold limit. Status holder gets many benefits from Govt. of India in terms of Duty Credit Scrip.
- **2.** In other words, Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade.
- **3.** The following points to be noted:
- (a) All exporters of goods, services and technology having an IEC number, shall be eligible for recognition as a status holder.
- (b) Status recognition depends upon export performance.
- (c) An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years, as indicated in FTP.
- (d) For granting status, export performance is necessary in at least two out of three years.

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	

(e) Grant of double weightage:

The exports by IEC holders under the following categories shall be granted double weightage for calculation of export performance for grant of status:

- Micro, Small & Medium Enterprises (MSMEs) as defined in Micro, Small & Medium Enterprises Development (MSMED) Act, 2006.
- Manufacturing units having International Organisation for Standardisation (ISO) / Bureau of Indian Standards (BIS).

- Units located in North Eastern States including Sikkim and Jammu & Kashmir.
- Units located in Agri Export Zones.
- Double weightage shall be available for grant of One Star Export House Status category only.
- A shipment can get double weightage only once in any one of above categories.
- (f) **Privileges for Status Holders:** A Status Holder shall be eligible for privileges as under:
- **1.** Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;
- **2.** Input-Output norms may be fixed on priority within 60 days by the Norms Committee;
- **3.** Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP;
- **4.** Exemption from compulsory negotiation of documents through banks Remittance/ receipts;
- **5.** 2 Star and above Export Houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines;
- **6.** The Status Holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

↓ Duty Exemption/ Remission Schemes:

- (a) Duty Exemption Schemes: The Duty Exemption schemes consist of the following:
 - (i) Advance Authorisation (AA).
 - (ii) Duty Free Import Authorisation (DFIA).
- **(b) Duty Remission Scheme:** It consist of:
 - (i) Duty Drawback (DBK) Scheme, administered by Department of Revenue.

Advance Authorisation (AA):

1. Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product.

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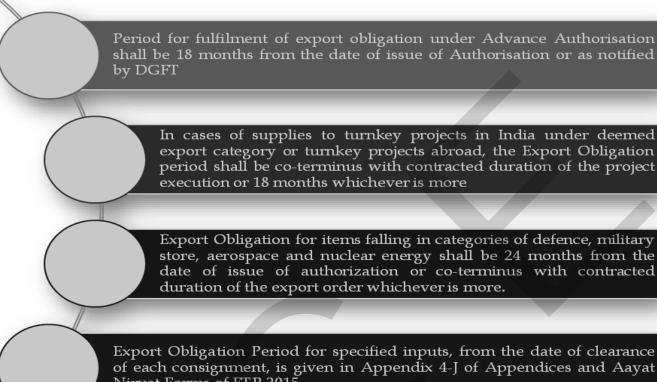
- **2.** Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:
 - As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);
 - On the basis of self- declaration as per Handbook of Procedures.
- **3.** Authorisation shall not be available for simply cleaning, grading, re-packing etc.
- **4.** Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.
- **5.** Minimum value addition required to be achieved under Advance Authorisation is 15%.
- **6.** In case of Tea, minimum value addition shall be 50%.
- 7. Validity period for import of Advance Authorisation shall be 12 months from the date of issue of Authorisation.

Duty Free Import Authorisation Scheme (DFIA):

- **1.** DFIA is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product.
- **2.** Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty.
- **3.** DFIA shall be issued on post export basis for products for which Standard Input Output Norms have been notified.
- **4.** Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation.
- **5.** Minimum value addition of 20% shall be required to be achieved.
- **6.** An applicant shall file online application to Regional Authority concerned before starting export under DFIA.
- 7. Export shall be completed within 12 months from the date of online filing of application and generation of file number.
- 8. Regional Authority shall issue transferable DFIA with a validity of 12 months from

the date of issue.

Export Obligations:



of each consignment, is given in Appendix 4-J of Appendices and Aayat Niryat Forms of FTP 2015.

Schemes for Exporters of Gems & Jewellery:

- **1. Import of Input:** Under this scheme, Exporters of gems and jewellery can import duty free input for manufacture of export product.
- **2. Items of Export:** Following items, if exported, would be eligible:
 - Gold jewellery, including partly processed jewellery and articles including medallions and coins (excluding legal tender coins), whether plain or studded, containing gold of 8 carats and above;
 - Silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% silver by weight;

- Platinum jewellery including partly processed jewellery and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% platinum by weight.

3. Schemes:

- a. Advance Procurement of Precious Metals from Nominated Agencies;
- b. Replenishment Authorisation for Gems;
- c. Replenishment Authorisation for Consumables;
- d. Advance Authorisation for Precious Metals.
- **4.** DFIA shall not be available for Gems and Jewellery sector.
- **Export Promotion Capital Goods (EPCG) Scheme:**
- **1.** EPCG Scheme is to facilitate import of capital goods for producing quality goods and services to enhance India's export competitiveness.
- **2.** Capital goods for the purpose of the EPCG scheme shall include:
 - Capital goods including in Completely Knocked Down (CKD)/Semi-Knocked Down (SKD) condition thereof;
 - Computer software systems;
 - Spares, moulds, dies, jigs, fixtures, tools and refractories for initial lining and spare refractories; and
 - Catalysts for initial charge plus one subsequent charge.
- **3.** Authorisation shall be valid for import for 18 months from the date of issue of Authorisation.
- **4.** Revalidation of EPCG Authorisation shall not be permitted.
- **5.** Second hand capital goods shall not be permitted to be imported under EPCG Scheme.
- **6.** Authorisation under EPCG Scheme shall not be issued for import of any capital goods (including Captive plants and Power Generator Sets of any kind) for:
 - Export of electrical energy (power),

- Supply of electrical energy (power) under deemed exports,
- Use of power (energy) in their own unit, and
- Supply/export of electricity transmission services.
- **Export** Oriented Units (EOUs), Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Techno Parks (BTPs):
- **1.** These units export their entire production of goods and services (except permissible sales in DTA).
- **2.** They can import inputs & capital goods without payment of customs duty.
- **3.** Scheme for manufacture of goods, including repair, re-making, rendering of services, development of software, agriculture.
- **4.** However, trading units are not covered under these schemes.
- **5. Objectives of these schemes** are to promote exports, enhance foreign exchange earnings and attract investment for export production and employment generation.
- 6. EOU/ EHTP/ STP/ BTP unit must have a positive net foreign exchange earnings.
- 7. Only projects having a minimum investment of Rs. 1 crore in plant & machinery shall be considered for establishment as EOUs.
 - However, this shall not apply to units in EHTP/ STP/ BTP, EOUs in Handicrafts, agriculture, floriculture, aquaculture, animal husbandry, information technology services and jewellery sectors.
- **8.** Board of Approval may allow establishment of EOUs with a lower investment criterion.
- **9.** Such units shall be allowed to retain 100% of its export earnings in the Exchange Earners Foreign Currency (EEFC) account.
- **10.** With approval of Development Commissioner, an EOU may opt out of scheme. Such exit shall be subject to payment of Excise and Customs duties and industrial policy in force.
- **11.** If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

12. Export through Exhibitions/ Export Promotion Tours/ Showrooms Abroad/ Duty Free Shops: EOU/EHTP/STP/BTP are permitted to:

- Exports of goods for participating in exhibitions abroad with permission of Development Commissioner.
- Personal carriage of gold/silver/platinum jewellery, precious stones, etc.
- Export goods for display.
- Set-up showrooms/retails outlets at international Airports.

Quality Complaints and Trade Disputes:

The following type of complaints may be considered:

Complaints received from foreign buyers in respect of poor quality of the products supplied by exporters from India

Complaints of importers against foreign suppliers in respect of quality of the products supplied

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.

Mechanism for handling complaints/ disputes:

1. Committee on Quality complaints and Trade Disputes (CQCTD):

To deal effectively with the increasing number of complaints and disputes, a 'Committee on Quality Complaints and Trade Disputes' (CQCTD) will be

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constituted in the 22 offices of the Regional Authority of DGFT.

2. Constitution of CQCTD:

The CQCTD would be constituted under the Chairpersonship of the Head of Office. The CQCTD may comprise of the following members:

- **1.** Additional DGFT/Joint DGFT/ (H.O.O): Chairperson.
- 2. Representative of Bureau of India Standard (BIS): Member
- **3.** Representative of Agricultural and Processed Food Products Export Development Authority: Member
- 4. Representative of the Branch Manager of the concerned Bank: Member
- **5.** Representative of Federation of Indian Exporter Organisation/and OR Export Promotion Council: Member
- **6.** Representative of Export Inspection Agency: Member
- 7. Nominee of Director of Industries of State Government: Member
- 8. Nominee of Development Commissioner of MSME: Member
- 9. Officer as nominated by Chairperson: Member Secretary
- **10.** Any other agency, as co-opted by Chairperson: Member.

3. Functions of CQCTD:

- **a.** The Committee (CQCTD) will be responsible for enquiring and investigating into all Quality related complaints and other trade related complaints falling under the jurisdiction of the respective Regional Authorities.
- **b.** It will take prompt and effective steps to redress and resolve the grievances of the importers, exporters and overseas buyers, preferably within three months of receipt of the complaint.
- c. CQCTD proceedings are only reconciliatory in nature and the aggrieved party, whether the foreign buyer or the Indian importer, is free to pursue any legal recourse against the other erring party.
- **d.** Director General of Foreign Trade would appoint an officer, not below the rank of Joint Director General, in the Headquarters, to function as the 'Nodal Officer' for coordinating with various Regional Authorities of DGFT.

Overseas Direct Investment (ODI)

(Weightage: 0 to 4 marks)

Meaning of ODI:

ODI means Investments made in the overseas entities -

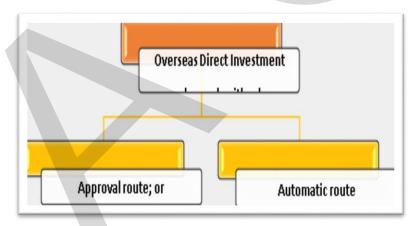
- by way of contribution to their capital or
- subscription to the Memorandum of Association of a foreign entity or
- by way of purchase of existing shares of a foreign entity through market purchase
- by way of purchase of shares of a foreign entity through private placement.

Note: Where FDI denotes investment in India from a country outside India, ODI refers to investment made from India to a country outside India.

Advantages of ODI:

- 1. Economic and business co-operation between India and other countries,
- 2. Transfer of technology and skill,
- 3. Sharing of results of R&D,
- 4. Access to wider global market,
- **5.** Promotion of brand image,
- **6.** Generation of employment &
- 7. Foreign exchange earnings.

ODI Routes:



Important Definitions:

- **1.** <u>Financial Commitment:</u> "Financial Commitment" means the amount of direct investment by way of contribution to –
- equity,

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- loan,
- 100% of the amount of corporate guarantees,
- 50% of the performance guarantees

issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary (WOS).

- **2.** <u>"Joint Venture"</u> means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian Party makes a direct investment.
- 3. <u>"Wholly Owned Subsidiary"</u> means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian Party.
- 4. "Indian Party" means -
- 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), registered under the Limited Liability Partnership Act, 2008.

♣ Investment in JV/WOS:

An **Indian Party** has been permitted to make investment / undertake financial commitment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS).

The total financial commitment of the Indian Party in all the Joint Ventures / Wholly Owned Subsidiaries shall comprise of the following -

- 100% of the amount of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS);
- 100% of the amount of other preference shares;
- 100% of the amount of loan;
- 100% of the amount of guarantee issued by the Indian Party;
- 50% of the amount of performance guarantee issued by the Indian Party.

Permissible sources for funding ODI:

Funding for ODI 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 shares of an overseas JV/WOS by way of exchange of the shares of the Indian party);
- 3. Capitalization of exports;
- **4.** Proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCB);
- 5. American Deposit Receipts (ADRs) and Global Deposit Receipts (GDRs);
- **6.** Balances held in Exchange Earners Foreign Currency account of Indian Party maintained with AD.
- **↓** Indian company making investment in a JV/WOS abroad in financial services sector:

Only an Indian company engaged in financial services sector activities can make investment in a JV/WOS

abroad in the financial services sector.

Before making investment, it should fulfill the following conditions -

- it has earned net profit during the preceding 3 financial years from the financial services activities;
- it is registered with the appropriate regulatory authority in India for conducting financial services activities;
- it has obtained approval from regulatory authority in India and abroad;
- it has fulfilled the capital adequacy norms prescribed by regulatory authority.

ODI by Proprietorship concerns & unregistered Partnership firms:

Conditions for making investment:

- 1. Investment should be made under approval route;
- **2.** The proprietorship concern / unregistered partnership firm in India is classified as 'Status Holder' as per the Foreign Trade Policy;
- **3.** The proprietorship concern / unregistered partnership firm in India has a proven track record Proven track record means, the export outstanding does not exceed 10% of the average export realisation of preceding three years and a consistently high export performance;
- **4.** KYC guidelines should be followed;

- **5.** The proprietorship concern / unregistered partnership firm in India has not come under the adverse notice of any Government agency like the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc.
- **6.** The proprietorship concern / unregistered partnership firm in India does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India;
- 7. The amount of proposed investment outside India does not exceed 10% of the average of last three years' export realisation or 200% of the net owned funds of the proprietorship concern/ unregistered partnership firm in India, whichever is lower.

Lesson : Conditions for Overseas Investments by Trust:

- 1. Investment should be made under approval route;
- 2. The Trust should be registered under the Indian Trust Act, 1882;
- 3. The Trust deed permits the proposed investment overseas;
- **4.** The proposed investment should be approved by the trustee/s;
- 5. The AD Category I bank is satisfied that the Trust is KYC (Know Your Customer);
- **6.** The Trust has been in existence at least for a period of **3 years**;
- 7. 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.

Note -

Application should be made in form ODI to AD Category-1 bank who shall forward the application to Chief General Manager, RBI for approval.

Use of the Conditions for Overseas Investments by Societies:

- 1. The Society should be registered under the Societies Registration Act, 1860.
- **2.** The Memorandum of Association and rules and regulations permit the Society to make the proposed investment;
- **3.** The AD Category I bank is satisfied that the Society is KYC (Know Your Customer)
- **4.** The Society has been in existence at least for a period of 3 years;
- **5.** The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.

Note -

Application should be made in form ODI to AD Category-1 bank who shall forward the application to Chief General Manager, RBI for approval.

♣ Acquisition/Sale of Foreign Securities by Resident Individual in India:

Resident individuals can acquire/sell foreign securities without prior approval in the following cases –

- 1. As a gift from a person resident outside India;
- **2.** By way of ESOPs issued by a company incorporated outside India under Cashless Employees Stock Option Scheme which does not involve any remittance from India;
- 3. As inheritance from a person whether resident in or outside India;
- **4.** By purchase of foreign securities out of funds held in the Resident Foreign Currency Account;
- **5.** By way of bonus/rights shares on the foreign securities already held by them.

4 Resident individual acquiring shares of a foreign company in the capacity as Director:

Reserve Bank has given **general permission** to a resident individual to acquire foreign securities to the extent of the minimum number of qualification shares required to be held for holding the post of Director.

♣ Indian Mutual Funds for investment abroad:

Indian Mutual Funds registered with SEBI are permitted to invest within the overall cap of **USD 7 billion** in –

- ADRs / GDRs of the Indian and foreign companies;
- Equity of overseas companies listed on overseas stock exchanges;
- Foreign debt securities with fully convertible currencies;
- Money market investments;
- Government securities;
- Derivatives traded on overseas stock exchanges;
- Short term deposits with overseas banks;
- Units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators.

Obligations of Indian party which has made ODI:

An Indian Party which has made ODI is required to comply with the following -

- 1. Receive share certificates or any other documentary evidence of investment in the foreign JV/ WOS as evidence of investment and submit the same to the designated AD within 6 months;
- **2. Repatriate to India**, all dues receivable from the foreign JV / WOS, like dividend, royalty, technical fees etc.;
- **3.** Submit to the Reserve Bank through the designated Authorized Dealer, every year, an **Annual Performance Report** in Part II of Form ODI.

Chapter 5: Foreign Direct Investment (FDI)

♣ Who can invest under FDI? (Eligible Investors Under FDI)

A) A non-resident entity -

- 1) A non-resident entity can invest in India as per FDI Policy
- 2) Non-resident entity cannot invest in those sectors/activities which are prohibited.
- 3) An entity or any citizen who are from the country which shares border with India caninvest under government route only.
- **4)** A citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route. Further they cannot invest in defence, space, atomic energy and prohibited sectors.

Note -

If there is transfer of ownership of any FDI from one person to another person falling in the above restrictions then they will also need government approval.

B) NRIs resident in Nepal and Bhutan -

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

C) A company, trust and partnership firm incorporated outside India -

A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special exemption as available to NRIs under the FDI Policy.

D) FII and FPI -

Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) may invest in the capital of an Indian company under the Portfolio Investment Scheme.

- Limits of the individual holding of an FII/FPI should be below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company
- This aggregate limit of 24% can be increased to the sectoral cap, as applicable, by the Indiancompany by passing board resolution, special resolution and RBI approval.

E) FVCI registered with SEBI -

- A SEBI registered Foreign Venture Capital Investor (FVCI) may contribute up to 100% of the capital of an Indian company engaged in any activity mentioned in the notification issued by RBI.
- The investment can be made in equities or equity linked instruments or debt instrumentsissued by the company

F) A Non-Resident Indian -

A Non- Resident Indian may subscribe to National Pension System governed and administered by **Pension Fund Regulatory and Development Authority (PFRDA)**, provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act.

Eligible investee under FDI –

1. Indian Company -

Indian companies can issue capital against FDI.

2. Partnership Firm/Proprietary Concern -

a. Investment by NRI in partnership firm/proprietary concern can be made:

- Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks.
- An NRI is not allowed to invest in afirm or proprietorship concern engaged in any agricultural / plantation activity or real estate business or print media
- Amount invested shall not be eligible for repatriation outside India.
- ✓ NRE accounts = Non-Resident External account
- ✓ FCNR accounts = Foreign Currency Non-Resident account
- ✓ NRO = Non-Resident Ordinary Account

b. Investment by non-residents other than NRIs -

A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment in the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

3. Trusts -

FDI is not permitted in Trusts other than VCF registered with SEBI.

4. Limited Liability Partnerships (LLPs) -

FDI in LLPs is permitted subject to the following conditions –

- FDI is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/activities where 100% FDI is allowed through the automatic route.
- FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.

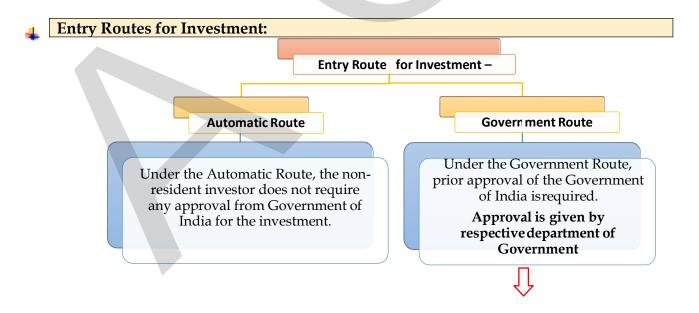
5. Investment Vehicle -

'Investment vehicle' registered and regulated under relevant regulations of SEBI such as Real Estate Investment Trusts, Infrastructure Investment Trusts, Alternative Investment Funds is permitted to receive foreign investment from a person resident outside India as per the provisions of FEMA Rules.

6. FDI in Startup Companies -

- Start-ups can issue equity or equity linked instruments or debt instruments to FVCI againstreceipt of foreign remittance, as per the FEMA Regulation.
- Start-ups can issue convertible notes to person resident outside India subject to the conditions as may be laid down under FEMA.

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



Competent Authority -

Sr. No.	Activity/ sector	Administrative Ministry/ Department	
1)	Mining	Ministry of Mines	
2)	Defence -	TVIIIISH Y ST TVIII ES	
<i></i>)	a) Items requiring Industrial Licence under	Department of Defence	
	the Industries (Development &	Production, Ministry of	
	Regulation) Act, 1951,	Defence	
	and/or Arms Act, 1959 for which the		
	powers have been delegated by Ministry of		
	Home Affairs to DIPP		
	b) Manufacturing of Small Arms and	Ministry of Home Affairs	
	Ammunitionscovered under Arms Act		
	1959		
3)	Broadcasting and Print Media/ Digital Media	Ministry of	
		Information &	
		Broadcasting	
4)	Civil Aviation	Ministry of Civil Aviation	
5)	Satellites	Department of Space	
6)	Telecommunication	Department of	
		Telecommunications	
7)	Private Security Agencies	Ministry of Home Affairs	
8)	Trading (Multi brand retail trading and Food	Department for Promotion	
->	Product retailtrading)	of Industry and Internal Trade	
9)	Financial services activity which are not	Department of Economic Affairs	
	regulated by any Financial Sector Regulator or		
	where only part of the financial services activity		
	is regulated or where there is doubt regarding		
10)	the regulatory oversight	D	
10)	Banking (Public and Private)	Department of Financial Services	
11)	Pharmaceuticals	Department of Pharmaceuticals	
		_	
	V		

Note -

- **a.** In case of **doubt** about the Administrative Ministry/Department concerned then in those cases **DPIIT shall identify** the Administrative Ministry/Department where the application will be processed.
- **b.** In case of proposals involving total foreign equity inflow of **more than Rs**. **5000 crore**, Competent Authority shall place the same for consideration of Cabinet Committee on Economic Affairs (CCEA).
- **c.** Every time a company who is under approval route receives foreign investment; it should takefresh approval of concerned department of Government.

CASES WHICH DO NOT REQUIRE FRESH APPROVAL -

Companies may not require fresh approval of the Government for bringing in additional foreigninvestment into the same entity, in the following cases –

- 1) Sectors which were under approval route but now they are in automatic route;
- 2) Companies operating in approval route sectors where sectoral cap was there but now, they are in automatic route. However, investment should not exceed sectoral cap.
- 3) Additional foreign investment up to cumulative amount of Rs 5,000 crore into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary.

Prohibited Sectors:

FDI is prohibited in -

- 1. Gambling and Betting
- **2.** Lottery business (including government/ private lottery, online lotteries etc.)
- 3. Activities / sectors not open to Private sector investment (e.g. atomic energy / railways)
- 4. Chit fund
- 5. Nidhi company
- 6. Real estate business or construction of farm houses
- **7.** Trading in transferable development rights (TDRs)
- 8. Manufacturing of tobacco, cigars, cheroots, cigarillos, cigarettes and other tobacco substitutes
- **9.** Foreign technology collaboration in any form including licensing for franchise, trademark, brandname, management contract for lottery business, Gambling and Betting activities.

Note: Real estate business shall not include development of townships, construction of residential /commercialpremises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

Permitted Sectors:

1) AGRICULTURE & ANIMAL HUSBANDRY -

Sector/Activity	% of FDI Cap	Entry Route
Floriculture, Horticulture, and Cultivation of Vegetables &	100%	Automatic
Mushroomsunder controlled conditions;		
Development and Production of seeds and planting material;		
Animal Husbandry (including breeding of dogs),		
Pisciculture, Aquaculture, Apiculture; and		
Services related to agro and allied sectors		
Note -		
Besides the above, FDI is not allowed in any other agricultural		
sector/activity		

2) PLANTATION SECTOR -

Sector/Activity	% of FDI Cap	Entry Route
ector including tea plantations	100%	Automatic
e plantations	·	
er plantations		
amom plantations		
oil tree plantations		
oil tree plantations		
Note: Besides the above, FDI is not allowed in any other		
plantation sector/activity		

3) MINING -

Sector/Activity	% of FDI Cap	Entry Route
Mining and Exploration of metal and non-metal ores including	-	Automatic
diamond, gold, silver and precious ores but excluding titanium		
bearing minerals and		
its ores; subject to the Mines and Minerals (Development &		
Regulation) Act, 1957.		
Coal & Lignite mining for captive consumption by power	100%	Automatic
projects, iron & steel and cement units and other eligible activities		
permitted under and subject to the provisions of Coal Mines		
(Nationalization) Act, 1973.		
Setting up coal processing plants like washeries subject to the		
condition that the company shall not do coal mining and shall		
not sell washed coal or sized coal from its coal processing plants		
in the open market and shall supply the washed or sized coal to		
those parties who are supplying raw coal to coal processing		
plants for washing or sizing.		
For sale of coal, coal mining activities including associated		

processing infrastructure subject to the provisions of Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957		
Mining and Mineral Separation of titanium bearing minerals and	100%	Automatic
ores, its value addition and integrated activities		

4) PETROLEUM & NATURAL GAS -

Sector/Activity	% of FDI	Entry
, ,	Cap	Route
Exploration activities of oil and natural gas fields, infrastructure	100%	Automatic
related to marketing of petroleum products and natural gas,		
marketing of natural gas and petroleum products, petroleum		
product pipelines, natural gas/pipelines, LNG Regasification		
infrastructure, market study and formulation and Petroleum		
refining in the private sector, subject to the existing sectoral policy		
and regulatory framework in the oil marketing sector and the		
policy of the Government on private participation in exploration of		
oil and the discovered fields of national oil companies.		
Petroleum refining by the Public Sector Undertakings (PSU), without	49%	Automatic
any disinvestment or dilution of domestic equity in the existing		
PSUs.		

5) MANUFACTURING -

- a) Foreign investment in 'manufacturing' sector is under automatic route.
- **b)** However, terms and conditions of FDI policy should be followed.

6) DEFENCE -

Sector/Activity	% of FDI Cap	Entry Route
Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959	100%	Automatic up to 74%. Beyond 74%, Govt approval is required to result in access to modern technology.

Conditions:

- ✓ Licence applications will be considered by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.
- ✓ Security clearance from Ministry of Home Affairs should be obtained for FDI in defence sector.
- ✓ FDI in Defence Sector shall be subject to scrutiny on the grounds of National Security.

7) BROADCASTING CARRIAGE SERVICES -

Sector/Activity	% of FDI	Entry
	Cap	Route
Teleports (setting up of up linking HUBs/Teleports);	100%	Automat
Direct to Home (DTH);		ic Route
Cable Networks (Multi System operators (MSOs) operating at		
National or State or District level and undertaking		
upgradation of networks towards digitalization and		
addressability);		
Mobile TV;		
Headend-in-the Sky Broadcasting Service (HITS)		

8) BROADCASTING CONTENT SERVICES -

Sector/Activity	% of FDI Cap	Entry Route
Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by	49%	Governmen t
Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations		
Up-linking of 'News & Current Affairs' TV Channels	49%	Governmen t
 Uploading/Streaming of News & Current Affairs through Digital Media 	26%	Governmen t
• Up-linking of Non- 'News & Current Affairs' TV Channels/ Down-linking of TV Channels	100%	Automatic



Conditions:

- FDI will be subject to terms and conditions specified by Ministry of Information and Broadcasting.
- The majority of Directors on the Board of the Company shall be Indian citizens.
- The CEO, Chief Officer in-charge of technical network operations and Chief Security Officer should be resident Indian citizens.

9) PRINT MEDIA -

) IIIIIII MEETI		
Sector/Activity	% of FDI	Entry Route
	Cap	
• Publishing of newspaper and periodicals dealing with news	26%	Government
and		
current affairs		
Publication of Indian editions of foreign magazines dealing	26%	Government
with newsand current affairs		

•	Publishing/printing of scientific and technical	100%	Government
	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.		
•	Publication of facsimile edition of foreign newspapers	100%	Government

10) CONSTRUCTION DEVELOPMENT: TOWNSHIPS, HOUSING, BUILT-UP INFRASTRUCTURE

Sector/Activity	% of FDI	Entry
	Cap	Route
Construction-development projects (which would include	100%	Automatic
development of townships, construction of residential/commercial		
premises, roads or bridges, hotels, resorts, hospitals, educational		
institutions, recreational facilities, city and regional level		
infrastructure, townships)		

11) BANKING- PRIVATE SECTOR -

Sector/Activity	% of FDI Cap	Entry Route
Banking-Private Sector	74%*	Automatic up to 49% Government route beyond 49% and up to 74%.

^{*} At all times at least 26% of the paid-up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.

12) BANKING-PUBLIC SECTOR -

Sector/Activity	% of FDI Cap	Entry Route
Banking- Private Sector	20%	Government

13) E-COMMERCE ACTIVITIES -

Sector/Activity	% of FDI Cap	Entry Route
E -Commerce Activities*	100%	Automatic

^{*} FDI is only allowed in B2B e-commerce and not in B2C e-commerce.

14) SINGLE BRAND PRODUCT RETAIL TRADING -

Sector/Activity	% of FDI Cap	Entry Route
Single Brand Product Retail Trading	100%	Automatic

15) MULTI BRAND RETAIL TRADING -

Sector/Activity	% of FDI Cap	Entry Route
Single Brand Product Retail Trading	51%	Government

16) DUTY FREE SHOPS -

Sector/Activity	% of FDI Cap	Entry Route
Duty Free Shop	100%	Automatic

♣ FDI in E-commerce Activities:

A) Meaning of E-commerce -

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

B) Meaning of E-commerce entity -

E-commerce entity means a company or an office, branch or agency owned or controlled by aperson resident outside India and conducting the e-commerce business.

C) Inventory based model -

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.

D) Marketplace based model -

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

100% FDI is allowed under Automatic route

Conditions for Investment:

- 1. E-commerce entities engage only in B2B e-commerce will be eligible for FDI.
- 2. E-commerce entities engaged in B2C e-commerce will not be eligible for FDI.
- 3. 100% FDI under automatic route is permitted in marketplace model of e-commerce.
- **4.** FDI is not permitted in inventory-based model of e-commerce.
- **5.** E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection & other services.
- **6.** Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of theseller.
- 7. Any warrantee/ guarantee of goods and services sold will be responsibility of the seller.
- **8.** E-commerce marketplace entity will not make it mandatory for any seller to sell any product exclusively on its platform only.

FDI in Single Brand Product Retail Trading:

100% FDI is allowed under Automatic route

Conditions for Investment -

- 1. Products to be sold should be of a 'Single Brand' only.
- **2.** Products should be sold under the same brand internationally (This condition is not applicable on Indian brands)
- **3.** 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.
- **4.** There should be a legally tenable agreement with the brand owner for undertaking singlebrand product retail trading (This condition is not applicable on Indian brands).
- **5.** A single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.
- **6.** In respect of proposals involving foreign investment beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India.

FDI in Multi Brand Retail Trading:

In Multi Brand Retail Trading, 51% FDI allowed under Government route.

Conditions for Investment -

- **1.** Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.
- 2. Minimum amount as FDI by the foreign investor would be US \$ 100 million.
- **3.** At least 50% of total FDI brought in the first tranche of US \$ 100 million, shall be invested in back-end infrastructure within 3 years.
- **4.** At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US \$ 2.00 million.
- **5.** Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census and may cover an area of 10 kms.
- **6.** Government will have the first right to procurement of agricultural products.
- 7. Retail trading by e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading.
- 8. State / Union Territory government have freedom to formulate their own policies.

Note - List of States/Union Territories who have already formulated their policies -

- 1. Andhra Pradesh
- 2. Assam
- 3. Delhi
- **4.** Haryana
- 5. Himachal Pradesh

- 6. Jammu & Kashmir
- 7. Karnataka
- 8. Maharashtra
- 9. Manipur
- **10.** Rajasthan
- 11. Uttarakhand
- 12. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

♣ Types of Instruments that can be used under FDI:

1. Equity shares, fully, compulsorily and mandatorily convertible debentures/preference shares -

Indian companies can issue Equity shares, fully, compulsorily and mandatorily convertible debentures / preference shares subject to following conditions –

- The price/conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments as per FEMA and SEBI guidelines (if the company islisted).
- o Minimum **lock-in period of 1 year** from the date of allotment.
- Shares / Debentures / Preference shares can be sold after the lock-in period subject to FDI guidelines.

2. Non-convertible, optionally convertible or partially convertible preference shares/debentures –

- Non-convertible, optionally convertible or partially convertible for issue of which funds have been received on or after May 1, 2007 are considered as debt.
- Since it is considered as debt, interest should be paid and interest should be based on LIBOR and ECB guidelines.

3. DRs and FCCBs -

The inward remittance received by the Indian company vide issuance of DRs and FCCBs are treated as FDI and counted towards FDI.

4. Acquisition of Warrants and Partly Paid Shares -

An Indian Company may issue warrants and partly paid shares to a person resident outside Indiasubject to terms and conditions as stipulated by the RBI.

Sponsored ADR/GDR issue -

An Indian Company can also sponsor an issue of ADR/GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs/GDRs can be issued abroad.

The proceeds of the ADR/GDR issue are remitted back to India and distributed among the resident investors who had offered their Rupee denominated shares for conversion.

Issue of Shares:

A) Issue of capital instruments -

- 1) The capital instruments should be issued within 60 days from the date of receipt of the inwardremittance.
- 2) In case, the capital instruments are not issued within 60 from the date of receipt of the inward remittance then the amount of consideration received shall be refunded within next 15 days.

Note -

Time allowed by RBI is 180 days and time allowed by MCA is 60 days. In a nutshell, the timelimit to issue/allot the shares comes down to 60 days as per the MCA.

B) Price at which share are to be issued -

Price of shares issued to PROI under the FDI Policy, shall not be less than -

- **1.** If the company is listed, then as per SEBI guidelines.
- 2. If the company is unlisted, then as per the valuation done by:
 - a. registered Merchant Banker or a Chartered Accountant
 - **b.** as per any internationally accepted pricing methodology
 - c. on arm's length basis.

Transfer of shares and convertible debentures:

- 1. Non-resident investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders.
- **2.** General permission has been granted to non-residents/NRIs for acquisition of shares by way oftransfer subject to the following conditions –

3. Approval / Automatic -

Government approval is not required for transfer of shares in the investee company from one non-resident to another non-resident in sectors which are under automatic route. However, Approval of Government will be required for transfer of stake from one non-resident to another non-resident in sectors which are under Government approval route.

- **4.** 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.
- **5.** The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee resident in India.

↓ Issue of Rights/Bonus Shares:

- 1) FEMA provisions allow Indian companies to freely issue Rights/Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any.
- 2) Necessary SEBI regulations should also be complied.
- 3) The offer on right basis to the person's resident outside India shall be
 - a) In case of listed company –at a price as determined by the company.
 - b) In case of unlisted company -

at a price which is not less than the price at which the offer on right basis is made toresident shareholders.

♣ Acquisition of Shares Under Scheme of 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 –

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

↓ Issue of Employees Stock Option Scheme (ESOPs) / Sweat Equity:

An Indian company may issue "employees' stock option" and/or "sweat equity shares" to its -

- employees/ directors or
- employees/directors of its holding company or
- employees/directors of joint venture or
- employees/directors of wholly owned overseas subsidiary,

who are resident outside India Following conditions should be fulfilled -

- Scheme is in compliance with the provisions of SEBI and Companies Act, 2013.
- Issue of ESOPs / Sweat Equity are in compliance with the sectoral cap applicable to the company.
- The issuing company shall furnish to the RBI within 30 days from the date of issue of employees' stock option or sweat equity shares, a return as per the Form-ESOP.

Remittance and Repatriation:

Remittance of sale proceeds –

- Sale proceeds of shares and securities and their remittance is 'remittance of asset' governed by The Foreign Exchange Management (Remittance of Assets) Regulations under FEMA.
- AD Category-I bank can allow the remittance of sale proceeds of a security to the seller of shares resident outside India, provided –
- a) the security has been held on repatriation basis,
- b) the sale of security has been made in accordance with the prescribed guidelines and
- c) NOC/tax clearance certificate from the Income Tax Department has been produced.

Remittance on Winding Up/Liquidation of Companies —

- AD Category-I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation.
- AD Category-I banks shall allow the remittance provided the applicant submits -
- **a)** No objection or Tax clearance certificate from Income Tax Department for theremittance
- **b)** Auditor's certificate confirming that all liabilities in India have been either fully paid oradequately provided for.
- c) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, as applicable.
- **d)** In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceeding spending in any court in India against the applicant or the company under liquidation and there is no legal difficulties in permitting theremittance.

♣ Repatriation of Dividend **-**

- Dividends are freely repatriable without any restrictions.
- The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Repatriation of Interest –

- Interest on fully, mandatorily & compulsorily convertible debentures is also freely repatriable without any restrictions.
- The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Modes of Payment allowed for receiving FDI in an Indian Company:

An Indian company issuing shares/ convertible debentures to a person resident outside India shallreceive the amount of consideration by –

- inward remittance through normal banking channels;
- 2. debit to NRE/ FCNR account of a person concerned maintained with an AD Category I bank;
- **3.** debit to non-interest-bearing escrow account in Indian Rupees in India which is opened with the approval from AD Category I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration;
- **4.** conversion of royalty/ lump sum/ technical know-how fee due for payment or conversion of ECB;
- **5.** conversion of pre-incorporation/ pre-operative expenses incurred by a non-resident entity up to a limit of five percent of its capital or USD 500,000 whichever is less;
- **6.** conversion of import payables/ pre incorporation expenses/ can be treated as consideration for issue of shares with the approval of FIPB; and
- 7. Swap of capital instruments, provided where the Indian investee company is engaged in aGovernment route sector, prior Government approval shall be required.

Reporting of FDI:

A) Reporting of Inflow -

- 1) 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 within 30 days from the date of receipt in the Advance Reporting Form.
- **2)** Indian companies are required to report the details of the receipt of the amount of consideration through an AD Category-I bank.
- 3) The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.
- **4)** An Indian company issuing partly paid equity shares, shall furnish a report not later than 30 days from the date of receipt of each call payment.

B) Reporting of issue of shares -

- Indian company has to file **Form FC-GPR**, within 30 days from the date of issue of shares.
- Form FC-GPR should be signed by Managing Director/Director/Secretary of the Company and submitted to the Authorized Dealer of the company who will forward it to the RBI.
- Following documents have to be submitted along with Form FC-GPR
 - a. A certificate from the Company Secretary of the company certifying that -
 - all the requirements of the Companies Act have been complied with;
 - terms and conditions of the Government of India approval have been complied with;
 - the company is eligible to issue shares; and
 - the company has all original certificates issued by authorized dealers in Indiaevidencing receipt of amount of consideration.

Note - Companies which are not required to appoint CS may get the above certificate from aPCS.

- **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.
- **d.** Annual return on Foreign Liabilities and Assets should be filed on an annual basis by the Indian company, directly with the Reserve Bank.

C) Reporting of transfer of shares -

- Reporting of transfer of shares between residents and non-residents and vice- versa is to be done in Form FC-TRS.
- 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 Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.

Adjudication and Appeals:

- For the purpose of adjudication of any contravention of FEMA, MoF appoints officers of the Central Government as the Adjudicating Authorities.
- Before imposing penalty and opportunity of being heard should be given.
- CG may also appoint an Appellate Authority/ Appellate Tribunal to hear appeals against theorders of the adjudicating authority.

Lesson Compounding Proceedings:

- ✓ Central Government may appoint 'Compounding Authority' who will be an officer either from Enforcement Directorate or Reserve Bank of India.
- ✓ The Compounding Authorities are authorized to compound the amount involved in the contravention to the Act made by the person
- ✓ Any second or subsequent contravention committed after the expiry of a period of 3 years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.
- ✓ The Compounding Authority shall pass an order of compounding within 180 days from the date of application made to the Compounding Authority.



Chapter 5 Foreign Direct Investment (FDI), Part 2

♣ Establishment of Branch Office (Bo)/ Liaison Office (Lo)/ Project Office (Po) in India:

Meaning of Branch Office:

- 1) A branch office is a location, other than the main office, where a business is conducted.
- 2) Normally, the branch office should be engaged in the activity in which the parent company is engaged.
- 3) Permitted activities for a branchoffice in India of a person resident outside India -
- Export/import of goods.
- Rendering professional or consultancy services.
- Carrying out research work in which the parent company is engaged.
- Promoting technical or financial collaborations between Indian companies and parent or overseas groupcompany.
- Representing the parent company in India and acting as buying / selling agent in India.
- Rendering services in Information Technology and development of software in India.
- Rendering technical support to the products supplied by parent/group companies.

Meaning of Liaison Office:

- 1) Liaison office does not undertakeany commercial /trading/ industrial activity.
- 2) It is a place of business to act as achannel of communication between the principal place of business or Head Office and entities in India.
- 3) Permitted activities for a liaisonoffice in India of a person resident outside India –
- Representing the parent company / group companies in India.
- Promoting export / importfrom / to India.
- Promoting technical/ financial collaborations between parent / group companies and companies inIndia.
- Acting as a communication channel between the parent company and Indian companies.

Meaning of Project Office:

- 1) Project office means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.
- 2) Following conditions (both condition 1 and 2) should be atisfied
 - a) Condition 1 -
 - A foreign company may open project office/s in India provided it has secured from an Indian company, a contract to execute a project in India.

- b) Condition 2 Any one of the following conditions should be satisfied -
- Project should be fundedfrom abroad; or
- Loan should be taken from PFI; or
- the project has been cleared by an appropriate authority; or
- the project is funded by a bilateral or multilateral International Financing Agency.

Note: Establishment of branch office, liaison office or project office shall be governed by the Foreign ExchangeManagement (Establishment in India of a branch office or a liaison office or a project office or any otherplace of business) Regulations, 2016.

- Procedure for establishment of BO/LO/PO:
- 1) The application may be submitted by the non-resident entity in **form FNC**.
- 2) Application should be made to AD Category I bank.
- 3) Application should be accompanied by following documents
 - Copy of the Certificate of Incorporation
 - Copy of MOA attested by the Notary Public in the country of registration
 - Copy of AOA attested by the Notary Public in the country of registration
 - Audited Balance sheet of the applicant company for the last 3 years in case of BO and 5 years in case of LO.

Note – If provisions of audit are not applicable in the applicant's home country, then an Account Statement certified by a CPA or any Registered Accounts Practitioner shall be submitted.

- 4) After receipt of application, AD Category-I bank shall forward a copy of the Form FNC with all the details to the General Manager, RBI, New Delhi, for allotment of Unique Identification Number (UIN) to each BO/LO.
- 5) After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approvalletter to the non-resident entity for establishing BO/LO in India.
- **6)** Validity of approval granted by the AD Category I bank shall be maximum 6 months and after 6 months approval shall lapse. However, extension of 6 months may be granted on showing sufficient cause.
- 7) Validity period of approval letter: For LO – Generally, 3 years but for NBFCs and entities engaged in construction and

developments ectors, validity is 2 years. For project office, validity is for the tenure of the project.

Opening of bank account by BO/LO/PO:

A) In case of LO -

- 1) An LO may approach the designated AD Category I Bank in India to open an account.
- 2) LO shall not maintain more than one bank account at any given time without the prior permission of Reserve Bank of India.

3) Credits -

- **a)** Funds received from Head Office through normal banking channels for meeting theexpenses of the office.
- **b)** Refund of security deposits paid from LO's account or directly by the Head Officethrough normal banking channels
- c) Refund of taxes, duties etc., received from tax authorities, paid from LO's bank account.
- d) Sale proceeds of assets of the LO.
- **4) Debits -** Only for meeting the local expenses of the office.

B) In case of BO -

1) A BO may approach any AD Category-I Bank in India to open an account for its operations in India.

2) Credits -

- **a)** Funds received from Head Office through normal banking channels for meeting theexpenses of the office
- **b)** Any legitimate receivables arising in the process of its business operations.
- 3) Debits for the expenses incurred by the BO and towards remittance of profit/winding up proceeds.

C) In case of PO -

- a) Any foreign entity who has been awarded a contract for a project by the Government authority/Public Sector Undertakings or are permitted by the AD to operate in India may open a bank account without any prior approval of the Reserve Bank.
- b) However, an entity from Pakistan shall need prior approval of Reserve Bank of India

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to opena bank account for its project office in India.

Application for additional offices and activities:

- 1. Application shall be made to AD Category-I bank in a fresh FNC form.
- **2.** However, the documents mentioned in form FNC need not be resubmitted, if there are nochanges to the documents already submitted earlier.
- **3.** If the number of offices exceeds 4 in one zone, then prior RBI approval is required.
- **4.** The applicant may identify one of its offices in India as the Nodal Office, which will coordinate the activities of all of its offices in India.
- **5.** Whenever the existing BO/LO is shifting to another city in India, prior approval from the ADCategory-I bank is required.
- **6.** No permission is required if the LO/BO is shifted to another place in the same city subject to the condition that the new address is intimated to the designated AD Category-I bank.

♣ Transfer of assets of BO/LO/PO:

Proposals for transfer of assets may be considered by the AD Category-I bank only from BOs/LOs/POs who are adhering to the operational guidelines such as submission of Annual Activity Certificates (up to the current financialyear) at regular annual intervals.

Conditions for transfer:

- 1. Transfer of assets by way of sale to the JV/WOS be allowed by AD Category-I bank only when thenon-resident entity intends to close their BO/LO/PO operations in India.
- **2.** A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred.
- **3.** The assets should have been acquired by the BO/LO/PO from inward remittances and no intangible assets such as good will, pre-operative expenses should be included.

- **4.** AD Category-I bank must ensure payment of all applicable taxes while permitting transfer of assets.
- **5.** Donation by BO/LO/PO of old furniture, vehicles, computers and other office items etc. to NGOs or other not-for-profit organisations may be permitted by the AD category-I banks after satisfying itself about the bonafide of the transaction.

Remittance of profit/surplus:

- **A. In case of BO:** Permission of AD category-1 bank should be obtained by submitting following documents:
- A certified copy of the audited Balance Sheet and P&L account for therelevant year; &
- A Chartered Accountant's certificate.
- **B.** In case of PO: AD category-1 can permit intermittent remittances provided they satisfy the following conditions:
- Submits an Auditors/ Chartered Accountants' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax etc.; &
- An undertaking from the PO that the remittance will not, in any way, affect the completion of the project in India and thatany shortfall of funds for meeting any liability in India will be met by inward remittance from abroad.

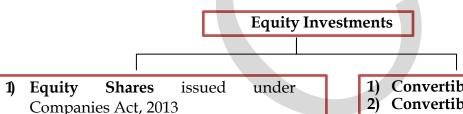
Closure of BO/LO/PO:

- 1) Requests for closure of the BO / LO/ PO may be submitted to the designated AD Category Ibank.
- 2) Application shall be accompanied by following documents
 - Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the BO/LO/PO.
 - Auditor's certificate -
 - a) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant and indicating themanner of disposal of assets;
 - b) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for;

and

- c) confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.
- Confirmation from the applicant that no legal proceedings in any Court in India are pendingagainst the BO / LO/ PO
- A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013.
- The designated AD Category I banks has to ensure that the BO / LO/ PO had filed their respective AACs.
- Any other document/s, specified by Reserve Bank of India/AD Category-I bank whilegranting approval.
- Foreign Exchange Management (Non-Debt Instruments) Rules, 2019:

What are Non-Debt Instruments?



- 2) Partly paid-up shares but it shall be fully paid-up within 12 months and 25%
 - time the of issue consideration was paid.
- 1) Convertible Debentures
- 2) Convertible Preference shares
- 3) Share warrants as per regulations (25% consideration should be paid upfront and maximum tenure 18 months)
- ♣ Purchase or sale of equity instruments of an Indian company by a person resident outside India:
 - A) In case of listed companies -
 - 1) Indian company may issue equity instruments to PROI according to Foreign ExchangeManagement (Non-debt Instruments) Rules, 2019.
 - 2) PROI should purchase shares through stock market.
 - 3) If SEBI (SAST) Regulations, 2011 is applicable then it should also be followed.
 - 4) All the consideration and dividend payments to be made to PROI should be made as

per RBIguidelines.

B) Expenses -

A WOS set up by foreign entity may issue:

Up to 5% of authorized capital; or 5,00,000 USD

whichever is less

♣ Investment by a person resident outside India in a Limited Liability Partnership (LLP):

- 1) A person resident outside India may invest in LLP in India.
- 2) Citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan cannot invest in LLP in India
- 3) Foreign Portfolio Investor (FPI) or a Foreign Venture Capital Investor (FVCI) cannot invest in LLP in India.

Terms and conditions -

- a) LLP should be incorporated as per LLP Act, 2008
- b) LLP should be in sector where 100% FDI is allowed under automatic route.
- c) Mode of Investment -
 - 1) By way of capital contribution; or
 - 2) By way of transfer of share in profit by reinvesting of profit; or
- **d)** Conversion of Indian Entity into LLP and vice-versa An Indian company with foreign investments can be converted into LLP if 100% FDI is allowed in automatic route.
- e) Valuation of Investments Investments should be valued as per
 - a) Fair market price;
 - b) Internationally accepted principles;
 - c) Valuation should be done by registered valuers or PCA/PCMA
- f) The mode of payment and other conditions for remittance of sale or maturity proceeds shallbe specified by the Reserve Bank.

Transfer of Equity Instrument by Pledge:

A. By promoter of Indian Company: Promoter holding shares of Indian company may pledge his shares for raising ECB.

Conditions -

- Loan shall be utilized for permittedend use activities of the company
- Tenure of the pledge should be equal to the tenure of ECB

- Statutory auditor should certify that loan has been utilized for the permitted end-use only
- NOC should be obtained from authorized dealer bank.
- In case of invocation of pledge, transfer shall be made as per the directions issued by the Reserve Bank.
- **B.** By PROI holding shares in Indian Company: PROI may pledge his shares for raising loan which should be utilized for company only.

Conditions:

- 1. Shares may be pledged with:
 - Indian Bank;
 - Overseas Bank;
 - NBFC
- **2.** In case of invocation of pledge, transfer shall be made as per the directions issued by the Reserve Bank.
- **↓** Investment by Foreign Portfolio Investor (FPI):

Limits of Investment by FPI -

Investment		Limits
Individual	Limit	Less than 10% of total paid-up equity capital on a fully diluted
(single FPI)		basis; or
		Less than 10% of the paid-up value of each series of debentures or
		preference shares or share warrants
Aggregate	Limit	Maximum 24% of total paid-up equity capital on a fully diluted
(All FPI)		basis; or Maximum 24% of the paid-up value of each series of
		debentures or
		preference shares or share warrants



Can the above limit be increased?

- Yes, above limits can be increased <u>subject to overall limits of sectoral cap</u>

What are the conditions to increase the limits?

- Pass board resolution
- Pass Special resolution



Can the above limit be decreased?

Yes, above limits can be decreased.

What are the conditions to decrease the limits?

- Pass board resolution
- Pass Special resolution

Note - Once the limits are increased, it cannot be decreased.



Breach of investment limits by FPI -

In case FPI breaches the above limits the FPI has 2 options:

Option 1 - To divest excess holding within 5 days.

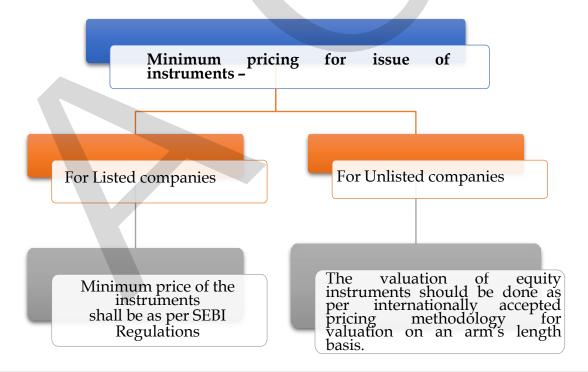
Option 2 - If does not divest the excess holding then subject to sectoral limits



Entire shareholding shall be treated as FDI and FPI shall not make any further investments.

Notice of Breach: FPI shall disclose the breach of limits through its custodian to the Depository Bank within 7 days of settlement of trade due to which breach was caused.

Pricing Guidelines:



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Downstream Investment:

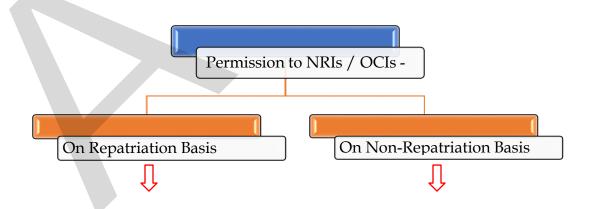
Downstream investment is investment made by an Indian entity which has total foreign investment in it or an Investment Vehicle in the capital instruments or the capital of another Indian entity.

Conditions for downstream investments -

- 1) Approval of BOD and shareholders should be obtained.
- 2) Funds should be brought from outside India and should not be borrowed from domestic markets.
- 3) Funds can be arranged through internal accruals lying in reserve account after taxes.
- **4)** All the compliances shall be the responsibility of the first level Indian company making downstream investments.
- 5) First level Indian company shall obtain certificate regarding compliances from statutory auditoron annual basis.

↓ Foreign Exchange Management (Debt Instruments)Regulations, 2019:

Purchase and Sale of Debt Instruments by a PROI:



NRI / OCI may purchase the following debt instruments without any limit -

- Government dated securities
- Treasury bills
- Units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50% in equity;
- Bonds issued by a Public Sector Undertaking (PSU) in India;
- Bonds issued by Infrastructure DebtFunds;
- Listed non-convertible/ redeemable preference shares or debentures.

Note: NRI may subscribe to National Pension Systemunder PFRDA

NRI / OCI may purchase the following debt instruments without any limit -

- Government dated securities
- Treasury bills
- Units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50% in equity;
- National Plan/ Savings Certificates.
- non-convertible/ Listed redeemable preference shares or debentures
- Chit funds

