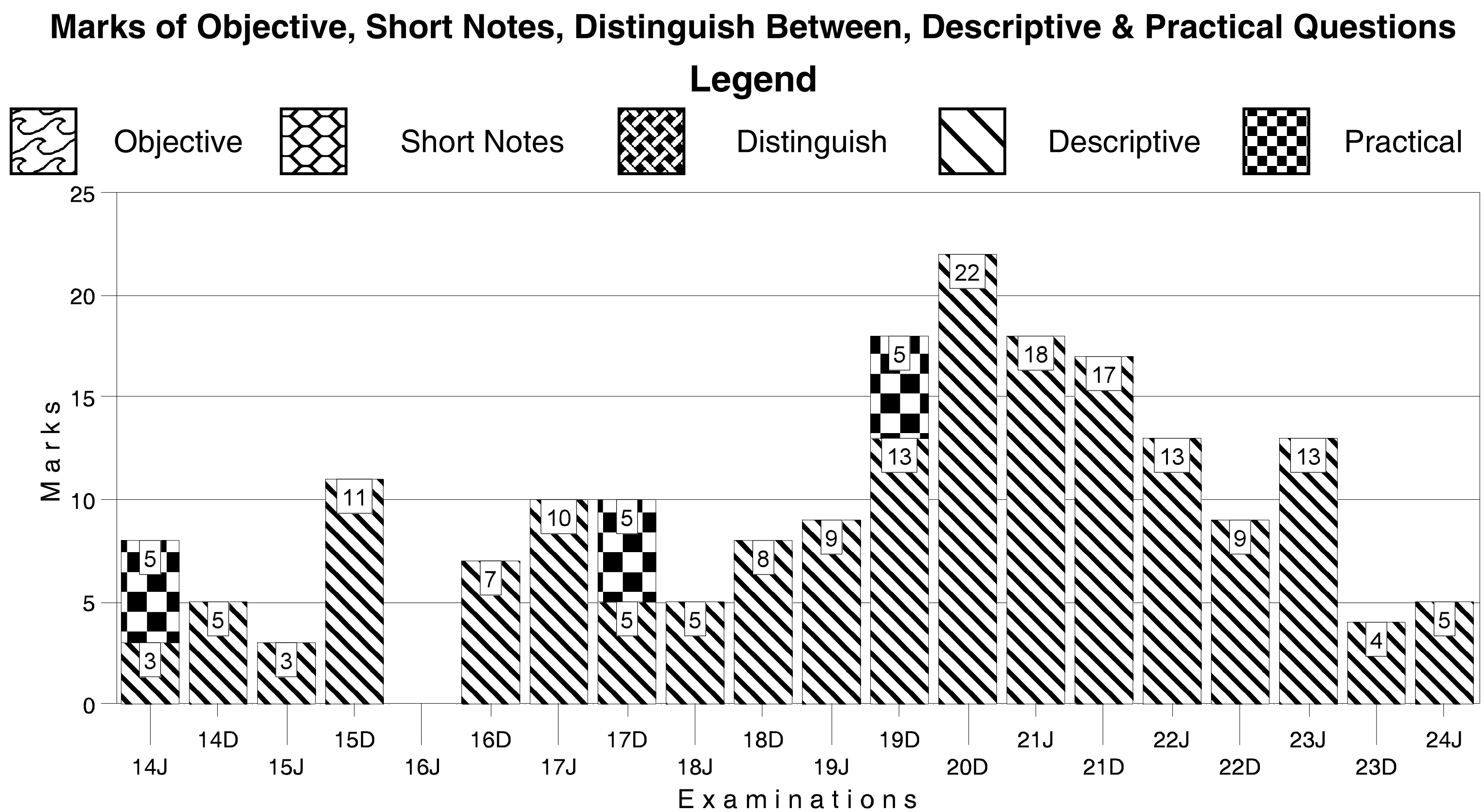
Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions
Legend
Objective
Short Notes
Distinguish
Descriptive
Practical
Marks
Examinations
14J
14D
15J
15D
16J
16D
17J
17D
18J
18D
19J
19D
20D
21J
21D
22J
22D
23J
23D
24J

1 LAW RELATING FOREIGN EXCHANGE MANAGEMENT

THIS CHAPTER INCLUDES

1. Foreign Exchange
2. Foreign Securities
3. Current Account Transactions
4. Capital Account Transactions
5. Acquisition & Transfer of Immovable Property outside India
6. Realisation & Repatriation of Foreign Exchange
7. Adjudication
8. Compounding of Contra-ventions

CHAPTER AT A GLANCE

Adjudicating Authority Sec. 2(a)
"Adjudicating Authority" means an officer authorised under sub-Sec. (1) of Sec. 16
Appellate Tribunal Sec. 2(b)
"Appellate Tribunal" means the Appellate Tribunal referred to in Sec. 18; [As per Finance Act, 2017, w.e.f 26.5.2017]
Authorised person Sec. 2(c)
"Authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-Sec. (1) of Sec. 10 to deal in foreign exchange or foreign securities;

Capital Account Transaction Sec. 2(e)
"Capital Account Transaction" means a transaction, which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liability in India of persons resident outside India and includes transactions referred to in sub-Sec. (3) of Sec. 6;
Currency Sec. 2(h)
"Currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank RBI further notifies (through Notification No. FEMA IS/2000-RB), that Debit Cards, ATM Cards or any other instrument by whatever name called that can be used to create financial liability be known as currency.
Currency Notes Sec. 2(i)
"Currency Notes" means and includes cash in the form of coins and bank notes;
Current Account Transaction Sec. 2(j)
"Current Account Transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes: (i) payments due in connection with foreign trade, other current business, services and short-term banking and credit facilities in the ordinary course of business. (ii) payments due as interest on loans and as net income from investments. (iii) remittances for living expenses of parents, spouse and children residing abroad and (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

Foreign Exchange Sec. 2(n)

"Foreign Exchange" means foreign currency and includes:

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency.

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

Foreign Security Sec. 2(o)

"Foreign Security" means 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 dividends is payable in Indian currency;

Indian Currency Sec. 2(q)

"Indian Currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under Sec. 28A of the Reserve Bank of India Act, 1934;

Person Sec. 2(u)

"Person" includes:

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses and;

(vii) any agency, office or branch owned or controlled by such person;

Person resident in India Sec. 2(v)
"Person resident in India" means: (i) a person residing in India for more than one-hundred and eighty-two days during the course of the preceding financial year but does not include- (A) a person who has gone out of India or who stays outside India, in either case- (a) for or on taking up employment outside India, or (b) for carrying on outside India a business or vocation outside India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period; (B) a person who has come to or stays in India, in either case, otherwise than: (a) for or on taking up employment in India, or (b) for carrying on in India a business or vocation in India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period; (ii) any person or body corporate registered or incorporated in India, (iii) an office, branch or agency in India owned or controlled by a person resident outside India, (iv) an office, branch or agency outside India owned or controlled by a person resident in India;
Person Resident Outside India Sec. 2(w)
"Person Resident Outside India" means a person who is not resident of India;
Repatriate to India Sec. 2(y)
"Repatriate to India" means bringing into India the realised foreign exchange and (i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or

(ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank. It includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly;
Reserve Bank Sec. 2(z)
"Reserve Bank" means the Reserve Bank of India constituted under Sec. 3(1) of the Reserve Bank of India Act, 1934;
Special Director (Appeals) Sec. 2(zc)
"Special Director(Appeals)" means an officer appointed under Sec. 17; As per Finance Act, 2017, w.e.f 26.5.2017
Liberalised Remittance Scheme (LRS)
Liberalised Remittance Scheme (LRS) of USD 2,50,000 for resident individuals. Under the Liberalised Remittance Scheme, Authorised Dealers may freely allow remittances by resident individuals up to USD 2,50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both. The Scheme is not available to corporates, partnership firms, HUF, Trusts, etc.

SHORT NOTES

2012 - June [1] {C} With reference to the relevant legal enactments, write short notes on the following:

(vii) Current account transactions. **(3 marks)**

Answer:

A current account transaction is one that is not a capital account transaction, as described in Section 2(j) of the Foreign Exchange Management Act of 1999 and includes:

1. Payments due in the usual course of business in connection with overseas trade, other current business, services, and short-term banking and credit facilities.

2. Payments due as loan interest and net investment income.
3. Remittances to cover the living expenditures of parents, spouse, and children living abroad.
4. Expenses for international travel, education, and medical care for parents, spouse, and children.

2013 - June [1] {C} With reference to the relevant legal enactments, write short notes on the following.

(v) Person of Indian origin **(3 marks)**

Answer:

Person of Indian Origin (PIO): PIO means a citizen of any country other than Bangladesh or Pakistan if.

1. he ever held an Indian passport;
2. he or either of his parents or any of his grandparents was a citizen of India under the Indian Constitution or the Citizenship Act, 1955;
3. the person is the spouse of an Indian citizen or a person referred to above.

2013 - Dec [1] Write notes on the following:

(a) 'Person' and 'authorised person' under the Foreign Exchange Management Act, 1999. **(5 marks)**

Answer:

A 'person' is includes an individual, a Hindu undivided family, a company, a firm, an association of persons or a body of individuals, whether incorporated or not, and every artificial legal person that does not fall under any of the foregoing sub-sections. It also includes any agency, office, or branch that such person owns or controls.

- 'Authorised person' means an authorised dealer, money changer, offshore banking unit, or any other person for the time being authorised under Section 10(a) of the Foreign Exchange Management Act, 1999.

DESCRIPTIVE QUESTIONS

2014 - June [2] (e) Write a brief note on 'capital account transaction'.
(3 marks)

Answer:

Section 2 (e) of the Foreign Exchange Management Act of 1999 defines capital account transaction.

- Any transaction that changes the assets or obligations, including contingent liabilities, of persons residing in India.
- Includes transactions described under Section 6 (3) of the FEMA, namely.
  - Investments in foreign securities.
  - Loans raised in the country in foreign security.
  - Transfer of immovable property outside India.
  - Remittance of capital assets outside of India.
  - Export or import of currency note.
  - The sale or purchase of foreign exchange derivatives in or outside of India, as well as commodities derivatives outside of India.
  - Loans and overdrafts made by a person resident in India to a person resident outside India..

Loans and overdrafts made by a person resident in India to a person residing outside India.

2014 - Dec [1] (d) Define 'current account transaction'. **(5 marks)**

Answer:

Please refer 2012 - June [1] {C} (vii) on page no. 18

2015 - June [2] (d) What is meant by 'person of Indian origin'? **(3 marks)**

Answer:

As per Foreign Direct Investment (FDI) Policy 'Person of Indian Origin' (PIO) means a citizen of any country other than Bangladesh or Pakistan, if

(i) he at any time held Indian Passport;

(ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955; or

(iii) the person is a spouse of an Indian citizen or a person referred to in sub clause (i) or (ii).

2015 - Dec [1] (a) Define the term 'authorised person' under the Foreign Exchange Management Act, 1999 and state the powers of the Reserve Bank of India to issue directions to an 'authorised person'. **(5 marks)**

Answer:

Authorized Person' refers to an authorized dealer, money changer, offshore banking unit, or any other person who is currently authorized to trade in foreign exchange or foreign securities under sub-section (a) of Section 10 of the FEMA.

According to Section 11 of the Foreign Exchange Management Act, the RBI has the authority to provide directives to the authorised person regarding any foreign exchange and securities activities, as well as to provide necessary information when he has transacted in any manner in forex and foreign securities. If these instructions are not followed, the RBI may impose a fine of up to ₹10,000/- and, in the case of continued infringement, an additional penalty of up to ₹2,000 for each day that such contravention continues.

2015 - Dec [2] (c) Alex, a foreign diplomat desires to buy immovable property in India. Is he permitted to do so? Give reasons in brief.

(3 marks)

Answer:

A Foreign Embassy/Diplomat/Consulate General may buy/sell immovable property in India other than agricultural land/farm house/plantation property if the following conditions are met:

(i) a clearance from the Government of India, Ministry of External Affairs is obtained; and

(ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through proper banking channels, entailing the information being routed

However, except with the prior authorization of the Reserve Bank of India, such a person shall not repatriate outside India the sale proceeds of any immovable property.

The authorized dealer may also enable repatriation of the sale earnings beyond India if the property is sold by such a person located outside India who is a citizen of India or a person of Indian origin:

(i) The seller acquired the immovable property in accordance with the rules of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000.
(ii) Only the amount initially paid for the immovable property in foreign exchange received through conventional banking channels or out of money kept in a Foreign Currency Non-Resident Account or the foreign currency equivalent can be repatriated.
(iii) For residential property, only the proceeds from the sale of a maximum of two such properties may be repatriated. Section 5A.

As a result, Alex can acquire immovable property in India, but only under the conditions outlined above.

2015 - Dec [2A] (Or) (i) What are the classes of capital account transactions of persons resident in India? **(3 marks)**

Answer:

According to Foreign Exchange Management (Capital Account Transactions) Regulations. 2000 followings are the Classes of Capital Account Transactions of Persons Resident in India:

(i) investment by a person resident in India in foreign securities.
(ii) foreign currency loans raised in India and abroad by a person resident in India:
(iii) transfer of immovable property outside India by a person resident in India;
(v) guarantees issued by a person resident in India in favour of a person resident outside India;
(v) export import and holding of currency/currency notes;
(vi) loans and overdrafts by a person resident in India from a person resident outside;
(vii) maintenance of foreign currency accounts in India and outside India by a person resident in India;
(vi) taking out of insurance policy by a person resident in India from an insurance company outside India;
(ix) loans and overdrafts by a person resident in India to a person resident outside India;

(x) remittance outside India of capital assets of a person resident in India;
(xi) sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

2016 - Dec [4] (b) What is direct investment outside India? Discuss the regulations in respect of acquisition and transfer of immovable property outside India. **(7 marks)**

Answer:

Direct investments by residents in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) abroad are permitted under Section 6(3) of the FEMA, 1999.

Section 6(3) of the Foreign Exchange Management Act authorizes the Reserve Bank to prohibit, restrict, or regulate such transactions by issuing Regulations and establishing procedures.

The Reserve Bank issued the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2015, in exercise of the aforementioned powers, which have been revised from time to time.

It includes investments made by Indian entities in overseas joint ventures and completely owned subsidiaries, as well as investments made by an Indian resident in shares and securities issued outside of India.

A person residing in India is forbidden from acquiring or transferring immovable property outside of India until the RBI grants approval, whether general or specific. The following are exceptions to the aforementioned restrictions:

(i) Immovable property owned by a person residing in India who is a national of another country.
(ii) Property held before July 8, 1947, and still held by him.
(iii) Property obtained by a person resident in India by inheritance or gift from a person residing outside India.
(iv) Property purchased with foreign currency in an RFC, or Resident Foreign Currency Account.
(v) A company founded in India with an overseas office may be permitted to buy immovable property if certain conditions are met.

2017 - June [1] (a) Explain the procedure relating to establishment of Appellate Tribunal under Foreign Exchange Management Act, 1999.

(5 marks)

Answer:

As per Section 18 of the Foreign Exchange Management Act, 1999, 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).

Section 20 of the Act empowers the Central Government to appoint a Chairperson and as many members as it may deem fit to the Appellate Tribunal. The jurisdiction of the Appellate Tribunal may be exercised by benches. A bench may be constituted by the Chairperson with one or more member as the Chairperson deem fit. The Chairperson can also transfer member of one bench to another bench. The Appellate Tribunal shall sit ordinarily at New Delhi for hearing. The Central Government although may, in consultation with the Chairperson, notify the sitting of the Tribunal elsewhere as it may deem fit.

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 or is eligible to be a district judge shall be eligible for appointment as a member of Appellate Tribunal.

2017 - June [1] (a) What are provisions relating to compounding of FEMA related offences by the Reserve Bank. **(5 marks)**

Answer:

Section 13 of FEMA 1999 authorizes RBI to compound any violations (save those listed in section 3(a)). The matrix of RBI officers authorized to compound against monetary involvement in the transaction is as follows:

Amount involved in contravention	**Compounding Authority**
< 10,00,000	Assistant General Manager -RBI
10,00,000 to 40,00,000	Deputy General Manager -RBI
40,00,000 to 100,00,000	General Manager -RBI
>100,00,000	Chief General Manager -RBI

2017 - Dec [1] (a) What is current account transaction under Foreign Exchange Management Act, 1999. **(5 marks)**

Answer:

Section 2(j) of the Foreign Exchange Management Act of 1999 defines a current account transaction as 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; and remittances for living expenses of parents, spouses, and children.

The Foreign Exchange Management Act of 1999 allows for the sale and drawing of foreign currency to or from an authorized individual in order to conduct current account operations. However, the Central Government has been given the authority to place reasonable restrictions on current account transactions in conjunction with the Reserve Bank. The Foreign Exchange Management (Current Account Transactions) Rules, 2000 were enacted by the Central Government to address several elements of current account transactions.

2018 - June [1] (b) What is meant by contravention and compounding of contravention? **(5 marks)**

Answer:

Contravention is a breach of the provisions of any Act and Rules/ Regulations/ Notification/ Orders/ Directions/ Circulars issued there under.

Compounding of contravention refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.

According to Section 13 of Foreign Exchange Management Act, 1999(FEMA), the Reserve Bank of India is empowered to compound any contraventions except the contravention under section 3(a) of the Act, for a specified sum after offering an opportunity of personal hearing to the contravener. It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the FEMA] by minimizing transaction costs. Willful, *malafide* and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank of India.

2018 - Dec [2] (c) Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 deals with limits on possession and retention of foreign currency or foreign coins. What is the limit of possession or retention of foreign currency or foreign coins under Regulation 3? **(4 marks)**

Answer:

As per Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, the Reserve Bank has specified following limits for possession or retention of foreign currency or foreign coins, namely:

(i) possession without limit of foreign currency and coins by an authorised person within the scope of his authority;

(ii) possession without limit of foreign coins by any person;

(iii) retention by a person resident in India of foreign currency notes, bank notes and foreign currency travelers cheques not exceeding US $ 2000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travelers cheques acquired during a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or from any person not resident in India and also who is on a visit to India, or as honorarium or gift or for services rendered or in settlement of any lawful obligation; or as a honorarium or gift while on a visit to any place outside India; or represents unspent amount of foreign exchange acquired from an authorised person for travel abroad.

2018 - Dec [2A] (Or) (iii) Who is an authorized person under Foreign Exchange Management Act, 1999 and what are his obligations? **(4 marks)**

Answer:

Section 2(c) of the Foreign Exchange Management Act of 1999 defines the term authorised person. Authorised person includes an authorised dealer, money changer, offshore banking unit, or any other person who is currently authorized to trade in foreign exchange or foreign securities under Section 10(1) of the Act.

Authorised persons must follow the Reserve Bank of India's instructions while trading in foreign exchange or receiving foreign securities with the RBI's prior approval.

An authorized person is not permitted to engage in any transaction involving foreign currency or foreign security that is not in accordance with the terms of his authorization.

Before engaging in any transaction on behalf of another person, an authorised person shall require that person to make such declaration and provide such information as will reasonably satisfy the authorised person that the transaction will not involve or be intended to violate or contravene any provisions of the Act, rules, notification, or directions.

If the person refuses to comply with such requirements or makes only inadequate compliances, the authorized person is required to decline to act on behalf of such person in such transaction in writing and to report the matter to the RBI.

2019 - June [1] (b) How a person resident in India can hold, own, transfer or invest in any immovable property situated outside India. Comment.

(5 marks)

Answer:

According to Section 6(4) of the Foreign Exchange Management Act, 1999, as amended by the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015, a person resident in India may hold, own, transfer, or invest in any immovable property located outside India if it was acquired, held, or owned by him/her while residing outside India or inherited from a person residing outside India.

A person resident in India may acquire immovable property outside India by gift or inheritance from another person resident in India who purchased such property in compliance with the foreign exchange regulations in effect at the time of acquisition.

A person residing in India can use foreign exchange kept in his or her Resident Foreign Currency (RFC) account to purchase immovable property outside of India.

A person residing in India may acquire immovable property outside of India in collaboration with a relative who resides outside of India, provided that there is no outflow of funds from India. A place to jot down crucial points.

2019 - June [2] (a) Explain the permissible capital account transactions by an individual under the liberalised remittance scheme. **(4 marks)**

Answer:

Individual capital account transactions are permitted under the Liberalised Remittance Scheme. Opening a foreign currency account with a bank in another country. Purchase of property in another country.

Investing abroad--acquiring and holding shares in both listed and unlisted foreign companies or debt instruments.

Acquisition of qualification shares in a foreign company in exchange for holding the position of Director, acquisition of shares in a foreign company in exchange for professional services given or in lieu of Director's salary.

Investments in mutual fund units, venture capital fund units, unrated debt securities, and promissory notes. Establishing totally owned subsidiaries and joint ventures outside of India for legitimate business under the terms and conditions specified.

Extending loans, including loans in Indian rupees, to Non-Resident Indians (NRIs) who are family under the Companies Act.

2019 - Dec [1] (a) Explain the powers of the Reserve Bank of India to issue directions to an authorised person under the Foreign Exchange Management Act, 1999. **(5 marks)**

Answer:

Section 11 of the Foreign Exchange Management Act establishes the RBI's authority to provide instructions to Authorised Persons.

– The RBI has the authority to issue instructions to Authorised Persons in order to ensure compliance with the Act and the rules and regulations enacted under the Act.
– **Directions can be provided to Authorised Persons in the following areas:**
    1. Regarding payment or the doing or refraining from doing any act pertaining to foreign exchange or foreign security.

2. Providing such information, in such manner, as it thinks fit.
   - If the Authorised Person contravenes any directive made by the Reserve Bank under this Act or fails to file any return as instructed by RBI, penal provisions which can be invoked by RBI are: Penalty of up to ₹ 10,000

Additional penalty: ₹ 2,000 per day of violation.

– Section 12 of the Act specifies the RBI's authority to inspect authorized persons.

2019 - Dec [2] (d) Point out the prohibited transactions under the Liberalised Remittance Scheme. **(4 marks)**

Answer:

The following transactions are prohibited under the Liberalised Remittance Scheme:

- Payment from lottery prizes.
- Remittance of earnings from racing, riding, or any other pastime.
- Remittance for the purchase of lottery tickets, banned/prohibited magazines, football pools, sweepstakes, and other similar items.
- Payment of export commissions for equity investment in Indian enterprises' joint ventures or wholly owned subsidiaries abroad.
- Remittance of dividends by any corporation subject to the dividend balance obligation.
- Payment of commission on exports via the Rupee State Credit Route, with the exception of commissions up to 10% of the invoice value of tea and tobacco exports.
- Payment for "Call Back Services" on telephones.
- Interest income on funds held in the Non-Resident Special Rupee (Account) Scheme is remitted.

2019 - Dec [2A] (Or) (i) Discuss the establishment and jurisdiction of Appellate Tribunal constituted under the Foreign Exchange Management Act, 1999. **(4 marks)**

Answer:

Section 18 of the Foreign Exchange Management Act, 1999 empowers the Central Government to establish an Appellate Tribunal, to hear appeals against the certain orders of Adjudication Authorities and the orders of the Special Director (Appeals).

The Central Government or any person aggrieved by the orders of Adjudicating Authority or Special Director (Appeals) may prefer an appeal to the Appellate Tribunal under Section 19 of the Act.

The procedure, powers, time period for disposal of the Appeals by the Appellate Tribunal etc. are specified under Section 19 and Section 28 of the Act.

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within the stipulated time on any question of law arising out of such order.

2020 - Dec [1] (c) Name any five permissible current account transactions made by an individual under Liberalized Remittance Scheme (LRS).

(5 marks)

Answer:

Individuals are permitted to do the following current account transactions under LRS:

Individuals may conduct the following current account transactions under the Liberalised Remittance Scheme (LRS):

(i) A resident individual can get foreign exchange up to a total of USD 2,50,000 for private visits to any nation (excluding Nepal and Bhutan).

(ii) Any resident individual may remit up to USD 2,50,000 as a gift or donation to a person or organization residing outside India, as the case may be.

(iii) A person moving overseas for work can withdraw up to USD 2,50,000 in foreign currency.

(iv) A person can get foreign exchange worth up to USD 2,50,000 for the purpose of emigration.

(v) A resident individual may remit up to USD 2,50,000 for the support of close relatives.

(vi) Withdrawal of up to USD 2,50,000 for business travel or attendance at an international conference, seminar, specialized training, or apprentice training, etc.

(vii) Expenses related to medical treatment in another country (foreign exchange up to USD 2,50,000 without requiring an estimate from the hospital doctor, and remittances in excess of USD 2,50,000 based on the estimate received from the hospital/doctor).

(viii) Study Abroad (Foreign Exchange up to USD 2,50,000 without requiring an estimate from a foreign university and remittances in excess of USD 2,50,000 based on an estimate received from a foreign institution).

2020 - Dec [1] (d) Discuss the provisions relating to mode of acquiring immovable property outside India by a person resident in India under the Foreign Exchange Management Act, 1999 (FEMA) and Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015. **(5 marks)**

Answer:

- **Investment resident can acquire immovable property outside India by virtue of gift or inheritance from:**

  A person residing in India may possess, own, transfer, or invest in any immovable property located outside India if such property was acquired, held, or owned by him/her while residing outside India or inherited from a person residing outside India.

  Person residing in India who acquired such property on or before July 8, 1947 and continued to hold it with the Reserve Bank's consent.

  Person residing in India who bought such property in compliance with the applicable foreign currency provisions at the time of acquisition.

- Foreign exchange stored in a Resident Foreign Currency (RFC) account can be used to purchase immovable property.

  Property can be acquired jointly with a relative who lives outside of India, as long as there is no outflow of funds from India.

2020 - Dec [2] (c) State the obligations of an Indian person who has made direct investment outside India, under the provisions of the Foreign Exchange Management Act, 1999. **(4 marks)**

Answer:

The following are the requirements in terms of ODI:

- Receive the share certificate/documentary evidence of investment within 6 months.
  - Submit APR (Annual Performance Report) - Part III through designated AD every year.
  - Submit APR-Part II by June 30^{th}.
- Provide the shareholding pattern in the case of creating step down subsidiaries/diversification of activities within 30 days of approval.
- Ensure repatriation of sale proceeds within 90 days of disinvestment.
- Ensure the repatriation of dividends, royalties, technical fees, and any other dues owed to the JV/WOS.

2020 - Dec [2A] (Or) (i) Explain briefly scope and procedure for compounding of contravention under Foreign Exchange Management Act, 1999. **(4 marks)**

Answer:

Scope for Compounding of contravention under Foreign Exchange Management Act, 1999 are as under:

Any person who contravenes any provision of the FEMA, 1999 except section 3(a) or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank.

Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement. Wilful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.

Procedure for Compounding of contravention under Foreign Exchange Management Act, 1999 are as under:

1. 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 quantifiable 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;
   - economic benefits accruing to the contravener from delayed compliance or compliance avoided;
   - the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
   - contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and any other factor as considered relevant and appropriate.

2020 - Dec [2A] (Or) (iv) Discuss the transactions which are prohibited under "Liberalised Remittance Scheme". **(4 marks)**

Answer:

The following transactions are prohibited under the Liberalised Remittance Scheme:

- Remittance from lottery wins.
- Remittance of earnings from racing, riding, or any other hobby.
- Remittance for the purchase of lottery tickets, banned/prohibited magazines, football pools, sweepstakes, and other similar items.
- Payment of export commissions for equity investment in Indian enterprises' joint ventures or wholly owned subsidiaries abroad.
- Remittance of dividends by any corporation subject to the dividend balance obligation.

- Payment of commission on exports via the Rupee State Credit Route, with the exception of commissions up to 10% of the invoice value of tea and tobacco exports.
- Payment for "Call Back Services" on telephones.
- Interest income on funds held in the Non-Resident Special Rupee (Account) Scheme is remitted.

2021 - June [1] (b) State the pre-requisites for compounding process in respect of contravention committed, under the Foreign Exchange Management (FEMA) Act, 1999. **(5 marks)**

Answer:

- A contravention is a violation of the provisions of FEMA 1999 and the rules promulgated thereunder.
- Compounding is the process of freely admitting the violation.
- RBI is empowered to compound any contravention as defined in Section 13 of FEMA, 1999, except the contravention under Section 3(a), for a specified sum after providing the contravener with an opportunity for a personal hearing.
- It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. By lowering transaction costs, it provides comfort to anyone who violates any provision of FEMA, 1999 [except section 3(a) of the Act].
- Fraudulent transaction that the Reserve Bank will not compound.

The following are the prerequisites for compounding:

Any contravention committed by any individual within three years of the date on which a similar contravention committed by him was compounded would not be compounded, and relevant provisions of the FEMA, 1999 would apply.

Contraventions connected to any transaction requiring proper permits or consent from the Government or any statutory authority involved will not be compounded unless the necessary approvals are acquired from the concerned authorities.

Contravention suspected of money laundering, terror funding, or endangering the nation's sovereignty and integrity, or where the contravener fails to pay the sum for which the violation was compounded within the prescribed period in terms with the compounding order shall be referred to the Directorate of Enforcement for further investigation and appropriate action under FEMA, 1999, or to the authority established for the execution of the Prevention of Money Laundering Act 2002, or to any other agencies, as judged relevant.

2021 - June [1] (d) Upto what limit an authorised dealer may release foreign exchange for business trip and medical treatment abroad, under Liberalised Remittance Scheme. **(5 marks)**

Answer:

The licensed dealer may transfer foreign exchange for business trips and medical treatment up to the following restrictions under the Liberalised Remittance Scheme (LRS):

(i) **Business trip:** Individuals who travel to attend an international conference, seminar, specialized training, apprentice training, or similar event are considered to be on a business trip.

Residents can obtain foreign exchange up to USD 2,50,000 in a fiscal year for business trips to foreign countries, regardless of the number of visits made throughout the year.

However, if an employee is deputed by an entity for any of the above and the expenses are borne by the latter, such expenses are to be treated as residual current account transactions outside LRS and may be permitted without limitation by the AD, subject to verification of the transaction's bona fides.

(ii) **Medical treatment abroad:** Authorised Dealers (AD) may distribute foreign exchange up to USD 2,50,000 or its equivalent every fiscal year without requiring a hospital/doctor estimate.

Authorised Dealers may provide foreign exchange in excess of the aforesaid limit based on an estimate from a doctor in India or a hospital/doctor overseas.

A person who becomes ill after traveling abroad may be granted foreign exchange by an Authorized Dealer for medical care outside of India. In addition to the foregoing, a person may be reimbursed up to USD 2,50,000 each fiscal year for accompanying a patient abroad for medical treatment/check-up.

2021 - June [2] (d) Enumerate the situations in which the drawal of foreign exchange is prohibited under the Foreign Exchange Management (Current Account Transactions) Rules, 2000. **(4 marks)**

Answer:

- Rule 3 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits drawal of foreign exchange for certain transactions.
- The prohibition applies to the transactions listed in Schedule I.
- The following are the transactions listed in Schedule I:
  - Remittance out of lottery prizes.
  - Remittance out of racing/riding/other hobby earnings.
  - Remittance out of interest income received on monies maintained in a Non-Resident Special Rupee Scheme Account.
- Payment for lottery tickets or forbidden magazines.
  - Payment of commission on exports made towards equity investment in joint ventures/Wholly Owned Subsidiaries (WOS) aborad of Indian companies.
  - Payment of commission on exports made under the Rupee State Credit Route. (Except for commissions of up to 10% of the invoice value tea and tobacco exports)
  - Payment for call-back service of telephone.

2021 - June [2A] (Or) (ii) Describe the remittances by persons other than the individuals which require prior approval of the Reserve Bank of India. **(4 marks)**

Answer:

The Reserve Bank of India must approve the following remittances made by persons other than individuals.

- Donations in excess of 1% of their foreign exchange earnings over the previous three fiscal years, or USD 5,000,000, whichever is less, for:
  (a) Chair creation in reputable educational institutes
  (b) Contribution to funds (not being an investment fund) promoted by educational institutes
  (c) Contribution to a technical institution, body, or association in the donor Company's field of activity.

- Commission paid to foreign agents for the sale of residential flats or commercial plots in India that exceeds USD 25,000 or 5% of the inward transfer, whichever is greater.
- Remittances in excess of USD 10,000,000 per project for any advisory services related to infrastructure projects, and in excess of USD 1,000,000 per project for other consultation services obtained from outside India.
- Remittances in excess of 5% of investment brought into India, or USD 100,000, whichever is more, by a firm in India to reimburse pre-incorporation expenses.

2021 - Dec [1] (c) State the rules relating to acquisition and transfer of immovable property in India by a Non Resident Indian (NRI). **(5 marks)**

Answer:

Any person living outside India (PROI) who wishes to purchase assets in India has the following options.

PROI has the ability to acquire immovable property in India (other than agricultural land, farm houses, and plantation property).

Payment can be made from monies received through standard banking channels or by debit to his NRE/ FCNR (B) / NRO account.

Payment cannot be made by way of:

1. Traveller's cheques.
2. Foreign currency notes.
3. Any other mode not specifically indicated

2021 - Dec [2] (b) Explain various modes of acquiring property outside India by a Resident Indian. **(4 marks)**

Answer:

According to Section 6(4) of the Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India by a person resident in India) Regulation 2015:

— 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.

- Commission paid to foreign agents for the sale of residential flats or commercial plots in India that exceeds USD 25,000 or 5% of the inward transfer, whichever is greater.
- Remittances in excess of USD 10,000,000 per project for any advisory services related to infrastructure projects, and in excess of USD 1,000,000 per project for other consultation services obtained from outside India.
- Remittances in excess of 5% of investment brought into India, or USD 100,000, whichever is more, by a firm in India to reimburse pre-incorporation expenses.

2021 - Dec [1] (c) State the rules relating to acquisition and transfer of immovable property in India by a Non Resident Indian (NRI). **(5 marks)**

Answer:

Any person living outside India (PROI) who wishes to purchase assets in India has the following options.

PROI has the ability to acquire immovable property in India (other than agricultural land, farm houses, and plantation property).

Payment can be made from monies received through standard banking channels or by debit to his NRE/ FCNR (B) / NRO account.

Payment cannot be made by way of:

1. Traveller's cheques.
2. Foreign currency notes.
3. Any other mode not specifically indicated

2021 - Dec [2] (b) Explain various modes of acquiring property outside India by a Resident Indian. **(4 marks)**

Answer:

According to Section 6(4) of the Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India by a person resident in India) Regulation 2015:

— 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.

— A resident can acquire immovable property outside India by way of gift or inheritance.
— A resident can purchase immovable property outside India out of foreign exchange held in his/ her Resident Foreign Currency (RFC) account.
— 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.

2021 - Dec [2] (e) What is the object and scope of Foreign Exchange Management Act, 1999? **(4 marks)**

Answer:

The Foreign Exchange Management Act of 1999 was designed to unify and update foreign exchange law with the goal of facilitating external commerce, payments and supporting the orderly development and preservation of India's foreign exchange market. In actuality, it is the federal legislation that governs inbound and outbound investments into India, as well as commerce and business between India and other countries. The Foreign Exchange Management Act of 1999 applies to the entire country of India. It also applies to all branches, offices, and agencies outside India owned or managed by an Indian resident, as well as any violation of the Act committed outside India by any person to whom this Act applies.

2021 - Dec [2A] (Or) (i) What is Liberalised Remittance Scheme ? What are the facilities available to students for pursuing their studies abroad under this scheme? Explain. **(4 marks)**

Answer :

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

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

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

2022 - June [1] (c) What are limits of Current Account Transactions by an Individual under liberalized remittance scheme? **(5 marks)**

Answer:

The limit of Current Account Transaction under the liberalized remittances scheme is USD 2,50,0000 per Financial Year (FY).

It may be noted that one release of foreign exchange in excess of USD 2, 50,000 requires prior permission from the Reserve Bank of India. The permitted areas are;

1. **Private Visits:** For private visits abroad, other than visit to Nepal and Bhutan, resident & individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000 from an authorized dealer in any one financial year, irrespective of number of visits undertaken during the year.
2. **Gift/Donation:** Any 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.
3. **Going Abroad on Employment:** A person going abroad for employment can draw foreign exchange up to USD 2,50,000 in one Financial Year from an authorized dealer in India.
4. **Emigration:** A person wanting to emigrate can draw foreign exchange from AD Category I bank AD category II up to the amount prescribed by the country of emigration or USD 2,50,000.
5. **Maintenance of Close Relatives Abroad:** A resident individual can remit up-to USD 2,50,000 in one Financial Year towards maintenance of close relatives.
6. **Business Trip:** Visits by individuals in connection with attending of an international conference, seminar, specialized apprentice training, etc.,

are treated as business visits. For business trips to foreign Countries individuals can avail of foreign exchange up to USD 2,50,000 in one Financial Year irrespective of the visits undertaken during the year.

7. **Medical Treatment Abroad:** Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 in one Financial Year or its equivalent per financial year without insisting on any estimate from a hospital/doctor.
8. **Foreign Studies:** AD Category I banks and AD Category II, may release foreign exchange up to USD 2, 50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University.

2022 - June [2] (a) What do you mean by Compounding of Contraventions? **(4 marks)**

Answer:

- Contravention is a breach of the provisions of any Act and rules/ regulations / notification / orders/ directions/ circulars issued there under.
- Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.
- The Reserve Bank of India is empowered to compound any contraventions under section 13 of the Foreign Exchange Management Act, 1999 except the contravention under Section 3(a), for a specified sum after offering an opportunity of personal hearing to the contravener.
- It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of Foreign Exchange Management Act, 1999 by minimizing transaction costs.
- Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.
- Any person who contravenes any provision of the Foreign Exchange Management Act, 1999 except section 3(a) or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank.

- Applications seeking compounding of contraventions under section 3(a) of Foreign Exchange Management Act, 1999 may be submitted to the Directorate of Enforcement.

2022 - June [2] (e) What is the limit on possession and retention of foreign currency or foreign coins under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015?

(4 marks)

Answer:

As per Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, the Reserve Bank has specified following limits for possession or retention of foreign currency or foreign coins, namely:

(i) Possession without limit of foreign currency and coins by an authorized person within the scope of his authority;

(ii) Possession without limit of foreign coins by any person;

(iii) Retention by a person resident in India of foreign currency notes, bank notes and foreign currency travelers cheques not exceeding US$ 2000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travelers cheques acquired during a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or from any person not resident in India and also who is on a visit to India, or as honorarium or gift or for services rendered or in settlement of any lawful obligation; or as a honorarium or gift while on a visit to any place outside India; or represents unspent amount of foreign exchange acquired from an authorised person for travel abroad.

As per Regulation 4 provides that a person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travelers' cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the law for the time being in force.

2022 - Dec [1] (d) What documents are to be submitted by a person resident in India for transfer of shares, to a person resident outside India by way of gift. **(5 marks)**

Answer:

Following documents to be submitted by a person resident in India for transfer of shares to a person resident outside India by way of gift:

(i) Name and address of the transferor (donor) and the transferee (donee).

(ii) Relationship between the transferor and the transferee.

(iii) Reasons for making the gift.

(iv) CA Certificate on the market value of such security (In case of Government dated securities and treasury bills and bonds)

(v) In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.

(vi) In case of shares and convertible debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by SEBI or as per any internationally accepted pricing methodology on arm's length basis for listed companies and unlisted companies, respectively.

(vii) Certificate from the concerned Indian company certifying that the proposed transfer of shares/convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non- resident transferee shall not exceed 5 per cent of the paid up capital of the company.

(viii) An undertaking from the resident transferor that the value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 50,000 during a financial year.

(ix) A declaration from the donee accepting partly paid shares or warrants that donee is aware of the liability as regards calls in arrear and consequences thereof.

2022 - Dec [2A] (Or) (iii) Discuss Overall Scheme of Foreign Exchange Management Act, 1999. **(4 marks)**

Answer:

Foreign Exchange Management Act, 1999 (FEMA) makes provisions for dealings in foreign exchange. Broadly, all Current Account Transactions are free. However, Central Government can impose reasonable restrictions by issuing rules (Section 3 FEMA).Capital Account Transactions are permitted to the extent specified by RBI by issuing Regulations. (Section 6 of FEMA).

FEMA envisages that RBI shall have a controlling role in management of foreign exchange. Since RBI cannot directly handle foreign exchange transactions, it authorizes "Authorised Persons" to deal in foreign exchange. RBI has been empowered to issue directions to such "Authorised Persons" under Section 11.

FEMA also makes provisions for enforcement, penalties, adjudication and appeal. The FEMA contains only basic legal framework. The practical aspects are covered in Rules made by Central Government and Regulations made by RBI.

FDI Policy announced by Department for Promotion of Industry & Internal Trade, Ministry of Commerce and Industry is directly relevant to understanding the provisions of FEMA. Instructions/Guidelines etc. of Ministry of Finance and Securities and Exchange Board of India (SEBI) become relevant when (ECB) /ADR/GDR and capital market is involved.

2023 - June [1] (b) Elaborate briefly the pre-requisites for compounding process under Foreign Exchange Management Act (FEMA), 1999. **(5 marks)**

Answer:

Pre-requisite for Compounding Process under Foreign Exchange Management Act, 1999:

1. **Contravention committed by any person:** 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. Any second or subsequent contravention committed after 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.

2. **Prior approval by concerned authorities:** 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.
3. **Contravention suspected of money laundering:** 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 specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation and necessary action under FEMA, 1999.

Note: In this connection, it is clarified that whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide:

- whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice;
- whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed.

2023 - June [2] (b) What do you mean by Liberalised Remittance Scheme? **(4 marks)**

Answer:

Liberalised Remittance Scheme:

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

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

Remittances under the LRS can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.

Although, clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/ investment/property.

Further, a resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under Liberalised Remittance Scheme.

2023 - June [2A] (Or) (i) Define the following terms as stated under Foreign Exchange Management Act, 1999:

(a) Automatic Route

(b) Government Route

(c) Foreign Portfolio Investment

(d) Foreign Portfolio Investor. **(4 marks)**

Answer:

(a) 'Automatic Route' means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank of India or the Central Government.

(b) 'Government Route' means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

(c) 'Foreign Portfolio Investment' means any investment made by a person resident outside India through capital instruments where such investment is less than ten percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than ten percent of the paid-up value of each series of capital instrument of a listed Indian company.

(d) 'Foreign Portfolio Investor' (FPI)1 means a person registered in accordance with the provisions of Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, as amended from time to time.

2023 - Dec [4A] (Or) (ii) What facilities are available in case of private visits and for emigration under the Liberalized Remittance Scheme (LRS)?

(4 marks)

Answer:

Private Visits Abroad:

1. Residents can obtain foreign exchange up to USD 2,50,000 in a financial year for private visits abroad (excluding Nepal and Bhutan).
2. The limit applies regardless of the number of visits made during the year.
3. All tour-related expenses, including transportation, Euro Rail, passes, overseas hotel/lodging expenses, are covered under the LRS (Liberalized Remittance Scheme) limit.
4. Tour operators can collect this amount in Indian rupees or foreign currency from the resident traveler.

Emigration/Maintenance of Close Relatives/Business Trip:

1. Individuals wanting to emigrate can draw foreign exchange from an Authorized Dealer (AD) Bank up to the prescribed amount by the country of emigration or USD 2,50,000.
2. Remittance beyond this limit is allowed only for incidental expenses in the country of immigration and not for earning points or credits towards eligibility for immigration through overseas investments (e.g., government bonds, land, commercial enterprise).
3. The guidelines fall under the Liberalized Remittance Scheme (LRS) for private visits and emigrations.

2024 - June [2] (b) Vinesh is a person resident outside India. He wishes to acquire the Immovable property in India for carrying on a permitted activity. Explain whether Vinesh can do so under Section 6(5) of the Foreign Exchange and Management Act, 1999? **(5 marks)**

PRACTICAL QUESTIONS

2012 - Dec [4] (a) With reference to the relevant provisions of the **Foreign Exchange Management Act, 1999** and the rules and regulations made there under, advise on the following:

(i) Rajiv, a person resident in India, wishes to acquire foreign securities as qualification shares issued by a company incorporated outside India for holding the position of a director in the company.

(ii) Shyam, a non-resident Indian working in the USA intends to sell his ancestral house in India to a person resident in India.

(iii) Ashok, a person resident in India, has been offered bonus shares of the value of US $20,000 by a company incorporated outside India.

(v) An Indian company intends to make direct investment in a joint venture outside India. **(1 mark each)**

Answer:

(i) Under the Act's provisions, Rajiv may acquire foreign securities as qualification shares issued by a company established outside India in order to hold the position of director in the firm.
Provided that the amount of the stocks is within the limits prescribed by the LRS (Liberalized Remittance Scheme), which enables transfers by a resident individual of up to USD 2,50,000 each fiscal year for allowed capital or current account transactions.

(ii) The Foreign Exchange Management Regulations, 2000 allow an Indian resident outside India to transfer any immovable property in India to an Indian resident. As a result, Shyam can sell his ancestral home in India to a resident of India.

(iii) In accordance with the requirements of the Regulations, a person may acquire bonus shares on foreign securities held in accordance with the provisions of the Act. As a result, Ashok can obtain bonus shares worth US$ 20,000 from a company established outside of India.

(v) An Indian party may spend up to 400% of its net worth in overseas joint ventures/wholly owned subsidiaries. As a result, it can invest directly in a joint venture outside of India.

2013 - June [4] (a) With reference to the relevant provisions of the **Foreign Exchange Management Act, 1999** and the rules and regulations made thereunder, advise on the following:

(iv) Dr. Sukant, who is permanently resident in India, retains foreign currency notes of US $ 5,000 which he had acquired during his visit to USA by way of expert medical advice rendered to patients there.

(v) Jay, a person resident in India, desires to take a life insurance policy from a foreign insurance company, the yearly premium of which is US$ 25,000. **(1 mark each)**

Answer :

(iv) Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 prescribes the retention of foreign currency notes, bank notes, and foreign currency travelers' cheques not exceeding US$ 2000 or its equivalent in aggregate by a person resident in India. As a result, Dr. Sukant is not allowed to keep US $5,000 in foreign currency notes.

(v) Under the Foreign Exchange Management (Permissible Capital Account Transaction) (Amendment) Regulation, 2007, Jay, an Indian resident, can obtain a Life Insurance Policy from a foreign insurance firm for a yearly premium of US$ 25,000.

2014 - June [3] (b) Yogesh, a person resident in India, is desirous of taking a life insurance policy from a foreign insurance company, the yearly premium of which is US $ 25,000.Mention the provisions of the Foreign Exchange Management Act, 1999 and the FEMA Regulations, 2000 in this regard.

(5 marks)

Answer :

According to the Foreign Exchange Management (Insurance) Regulations, 2015, a person resident in India may take or continue to hold a health insurance policy issued by an insurer outside India as long as the aggregate remittance, including the amount of premium, does not exceed the limit prescribed under the Liberalised Remittance Scheme. Furthermore, where the premium due on a general insurance policy has been paid by remittance from India, the policyholder shall repatriate the maturity proceeds or amount of any claim due on the policy to India through normal banking channels within seven days of receipt thereof.

2017 - Dec [3] (c) Mr. Ronu an Indian national, failed to realize and repatriate foreign exchange amounting to ₹ 1 crore. Subsequently, Mr. Ronu realized that he has committed a contravention of the Foreign Exchange Management Act, 1999. He desires to compound the said offence. State, whether Mr. Ronu can do so? **(5 marks)**

Answer:

The process of willingly admitting the violation, pleading guilty, and seeking redress is referred to as compounding.

Section 15 of the Foreign Exchange Management Act of 1999 is involved in this issue. Mr. Ronu has failed to realise and repatriate foreign exchange, in violation of Section 8 of FEMA, and is subject to the penalties imposed under Section 13 of the Foreign Exchange Management Act, 1999, which will be followed by adjudication proceedings.

Section 15 of the Foreign Exchange Management Act of 1999 allows the offending party to compound the violation within 180 days of the date of receipt of an application by the Directorate of Enforcement or such other offices of the Directorate of Enforcement and officers of the RBI as the Central Government may authorize in the manner prescribed. There shall be no compounding of contraventions unless the amount involved in such infringement is quantifiable. When a contravention is compounded, no procedure can be continued or begun against the individual in relation to the compounded contravention.

2019 - Dec [1] (c) Dr. Gupta, an Indian national, residing in Thailand and wanted to avail foreign exchange facility upto USD 2,00,000 only. Whether he can do so? Explain the relevant provisions of the Foreign Exchange Management Act, 1999 in this respect. **(5 marks)**

Answer:

- Remittances of USD 2,50,000 per Fiscal Year (FY) are available to resident individuals under the Liberalised Remittance Scheme (LRS) for permitted Current Account Transactions such as private visit; gift/donation; going abroad on employment; emigration; maintenance of close relatives abroad; business trip; medical treatment abroad; and studies abroad.
- Foreign exchange releases in excess of USD 2,50,000 require prior authorisation from the Reserve Bank of India.
- Given the foregoing, Dr. Gupta is free to use foreign exchange facilities up to USD 200,000.