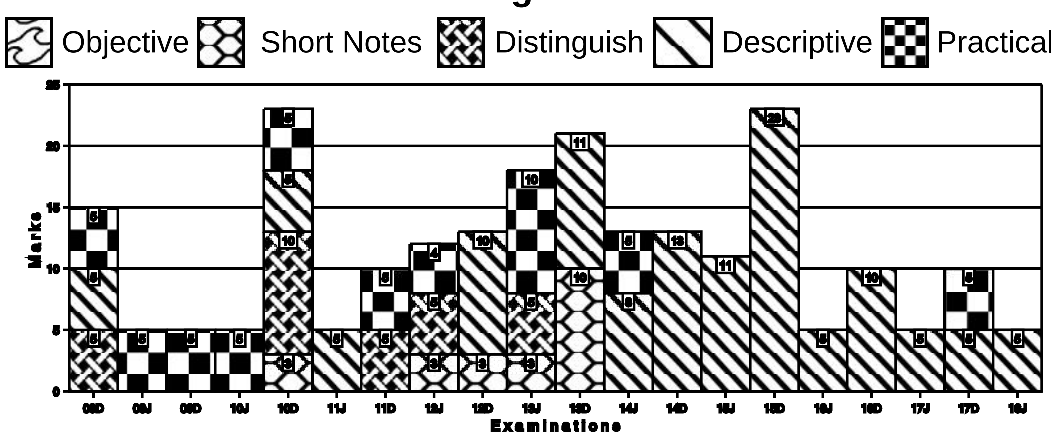
1 FOREIGN EXCHANGE MANAGEMENT

THIS CHAPTER INCLUDES

• Objective of FEMA, 1999	• Objective of FCRA
• Foreign Exchange	• Foreign Contribution
• FDI Policy	• Foreign Source
• Current Account Transactions	• Foreign hospitality
• Capital Account Transactions	• Certificate of Registration
• Direct Investment outside India	• Management of Foreign Contribution
• Establishment of Branch Office in India	• Obligation of Banks under FCRA
• Export of goods and services	• Inspection
• Realisation & Repatriation of foreign exchange	• Audit
	• Confiscation
• Compounding of offences	• Adjudication
• Adjudication and Appeal	• Offences and Penalties
• Establishment of Appellate Tribunal	• Appeal
• Directorate of Enforcement	• Compounding of Offences

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



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CHAPTER AT A GLANCE

Topic	Important Highlight
1. Foreign exchange (forex)	Foreign exchange means 'foreign currency' and includes: • Deposits • Credits and balances payable in any foreign currency • Drafts • Travellers' cheques • Letters of credit • Bills of exchange.
2. Forms of forex transactions	• Capital account transactions: Those involving long term investments of a capital nature. • Current account transactions: Those representing revenue items or payments for services like travel, expenses incurred while abroad etc.
3. Authorised person	Authority registered with RBI, usually an authorised dealer, money changer, offshore banking unit or any other person for the time being authorised to deal in forex or foreign securities.
4. Current Account transaction	Defined under **Section 2(j) of the Foreign Exchange Management Act, 1999** to mean a transaction other than a capital account transaction and includes : • Payment 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. • Expenses in connection with foreign travel, education and medical care of parents, spouse and children **[Section 5].**
5.	**Capital Account transaction**	According to **Section 2 (e) of the Foreign Exchange Management Act, 1999** 'capital account transaction' means any transaction which alters the assets or liabilities including contingent liabilities outside India of persons resident in India and includes the transactions specified in **Section 6 (3)** of the FEMA, viz, • Investments in foreign securities. • Loans raised in the country in foreign security. • Transfer of immovable asset outside India. • Remittance of Capital asset outside India. • Export or Import of currency notes. • Sale or Purchase of foreign exchange derivatives in or outside India and commodity derivatives outside. • Loans and overdrafts by person resident in India to person resident outside India. • Loans and overdrafts by person resident in India from person resident outside India.
6.	**Person resident in India**	A person residing in India for more than182 days during the course of the preceding financial year.
7.	**Remittance**	Taking outside India funds representing a deposit with a bank or a firm or a 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 Act or rules or regulations made thereunder.

8. Realisation	Realisation of forex means bringing the income earned from dealings with foreign parties (for example, through export) into India. This has to be done via the authorized dealer, registered with RBI under FEMA.
9. Limits allowed for Current Account transactions	Maximum limits allowed for the following current account transactions, above which, prior approval from RBI is required (for Individuals) is USD 2,50,000 only, as per the Foreign Exchange Management (Current Account Transactions) Amendment Rules: (i) Private visits to any country (except Nepal and Bhutan). (ii) Gift or donation. (iii) Going abroad for employment. (iv) Emigration. (v) Maintenance of close relatives abroad. (vi) Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up. (vii) Expenses in connection with medical treatment abroad. (viii) Studies abroad. (ix) Any other current account transaction
10. Foreign Direct Investment	FDI is an investment made by a company or entity based in one country, into a company or entity based in another country. The government is liberalizing the FDI limits, and most of the sectors now have full 100% capital account convertibility.

11. Period for surrender of foreign exchange	Any individual who is not a resident of India, who acquires or buys foreign exchange for any purpose from the authorized dealer, has to return any unused portion of the same to the authorized dealer or person within sixty days of first having acquired it. If it is for the purposes of travel, then it is to be surrendered within ninety days, in case it is in the form of currency and coins, and within one hundred and eighty days if it is in the form of travelers cheques. Surrender here implies the exchange of foreign currency for Indian rupees.
12. Export and import of Indian currency and currency notes	(a) An Indian resident may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes maximum up to ₹ 25,000 per person. In case of commemorative coin issued by Government of India's Mint to commemorate any specific occasion or event and expressed in Indian currency - they are not to exceed two coins. Anyone who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding ₹ 25,000 (Rupees Twenty Five Thousand only) per person. (b) In case of a person resident outside India, who is not a citizen of Pakistan or Bangladesh, upon visiting India, is allowed to take outside India Indian currency notes maximum up to ₹ 25,000 per person. Such a person may bring into India Indian currency notes up to the same amount.

Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015:

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

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

Transactions included in Schedule III

1. **Facilities for individuals:**

   Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 250,000 only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.

   (i) Private visits to any country (except Nepal and Bhutan).

   (ii) Gift or donation.

   (iii) Going abroad for employment.

   (iv) Emigration.

   (v) Maintenance of close relatives abroad.

   (vi) Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.

   (vii) Expenses in connection with medical treatment abroad.

   (viii) Studies abroad.

   (ix) Any other current account transaction.

   Provided that for the purposes mentioned at item numbers (iv), (vii) and (viii), the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme as provided in regulation 4 to FEMA Notification 1/2000-RB, dated the 3rd May, 2000 (here in after referred to as the said Liberalised Remittance Scheme) if it is so required by a country of emigration, medical institute offering treatment or the university, respectively:

Provided further that if an individual remits any amount under the said Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 (US Dollars Two Hundred and Fifty Thousand Only) by the amount so remitted:

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

(a) is a citizen of a foreign State other than Pakistan or

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

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

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

2. Facilities for persons other than individual:

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

(i) Donations exceeding one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for:

(a) creation of Chairs in reputed educational institutes,

(b) contribution to funds (not being an investment fund) promoted by educational institutes; and

(c) contribution to a technical institution or body or association in the field of activity of the donor Company.

(ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.

(iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

(iv) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses."

3. Procedure:

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

Liberalised Remittance Scheme (LRS):

Under Liberalised Remittance Scheme allow remittances by a resident individual up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both. If an individual has already remitted any amount under the LRS, then the applicable limit for such an individual would be reduced from the present limit of USD 250,000 for the financial year by the amount already remitted. The permissible capital account transactions by an individual under LRS are:

(i) opening of foreign currency account abroad with a bank;

(ii) purchase of property abroad;

(iii) making investments abroad;

(iv) setting up Wholly owned subsidiaries and Joint Ventures abroad;

(v) extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in **Companies Act, 2013.**

	The Scheme cannot be made use for making remittances for any prohibited or illegal activities such as margin trading, lottery, etc. **Requirements to be complied with by the remitter under LRS:** The resident individual seeking to make the remittances should furnish an application cum declaration in the prescribed format to the Authorised Dealer / full fledged money changer (FFMC) concerned regarding the purpose of the remittances and declaration to the effect that the funds belong to the remitter and will not be used for the prohibited purposes referred to in Para 4 above. Resident individuals can also purchase foreign exchange from a full fledged money changer (FFMC) for private/business visits. Foreign exchange thus purchased from an FFMC should also be reckoned within the overall LRS limit USD 250,000 and declared accordingly in the application-cum-declaration form submitted to the Authorise Dealer Bank.
Import of Foreign Exchange into India	A person may send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques. A person may bring into India from any place outside India without limit foreign exchange (other than unissued notes) subject to the condition that such person makes, on arrival in India, a declaration to the Customs authorities in Currency Declaration Form (CDF). It shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in by such person at any one time does not exceed US$10,000 (US Dollars ten thousand) or its equivalent and/ or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US$ 5,000 (US Dollars five thousand) or its equivalent.

Jobbing	"Jobbing" means processing or working upon of raw materials or semi-finished goods supplied to job worker, so as to complete a part of process resulting in manufacture or finishing of an article or any operation which is essential for aforesaid process.
Managed Hotel	"Managed Hotel" means hotels managed by a three star or above hotel/ hotel chain under an operating management contract for a duration of at least three years between operating hotel/ hotel chain and hotel being managed. Management contract must necessarily cover the entire gamut of operations/ management of managed hotel.
Quota	"Quota" means the quantity of goods of a specific kind that is permitted to be imported without restriction or imposition of additional Duties.
SCOMET	"SCOMET" is the nomenclature for dual use items of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET). Export of dual-use items and technologies under India's Foreign Trade Policy is regulated. It is either prohibited or is permitted under an authorization.
SION	"SION" means Standard Input Output Norms notified by DGFT.
State Trading Enterprises (STEs)	State Trading Enterprises (STEs), for the purpose of this FTP, are those entities which are granted exclusive right / privileges export and / or import as per FTP.

Exports and Imports – 'Free', unless regulated	(a) Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports. (b) Further, there are some items which are 'free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.
IEC/e-IEC	An IEC is a 10-digit number allotted to a person that is mandatory for undertaking any export/import activities. Now the facility for IEC in electronic form or e-IEC has also been made functional.
Mandatory documents for export/import of goods from/into India	(a) Mandatory documents required for export of goods from India: 1. Bill of Lading/Airway Bill 2. Commercial Invoice cum Packing List* 3. Shipping Bill/Bill of Export (b) Mandatory documents required for import of goods into India: 1. Bill of Lading/Airway Bill 2. Commercial Invoice cum Packing List* 3. Bill of Entry [**Note:** *(i) As per CBEC Circular No. 01/15-Customs dated 12/01/2015. (ii) Separate Commercial Invoice and Packing List would also be accepted.] (c) For export or import of specific goods or category of goods, which are subject to any restrictions/ policy conditions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of export or import.

	(d) In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.
Principles of restrictions	DGFT may, through a Notification, impose restrictions on export and import, necessary for: (a) protection of public morals (b) protection of human, animal or plant life or health (c) protection of patents, trademarks and copyrights, and the prevention of deceptive practices (d) prevention of use of prison labour (e) protection of national treasures of artistic, historic or archaeological value (f) conservation of exhaustible natural resources; (g) protection of trade of fissionable material or material from which they are derived; (h) prevention of traffic in arms, ammunition and implements of war.
Exports from India schemes	The objective of the Export from India Schemes is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing field. There shall be following two schemes for exports of Merchandise and Services respectively: (i) Merchandise Exports from India Scheme (MEIS). (ii) Service Exports from India Scheme (SEIS).
Advance authorisation	(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilised in the process of production of export product, may also be allowed.

	(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis: (i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures); OR (ii) On the basis of self declaration as per of Handbook of Procedures.
Duty exemption / remission schemes	Duty Exemption / Remission Schemes enable duty free import of inputs for export production, including replenishment of input or duty remission. **Schemes:** (a) Duty Exemption Schemes. The Duty Exemption schemes consist of the following: (i) Advance Authorisation (AA) (which will include Advance Authorisation for Annual Requirement). (ii) Duty Free Import Authorisation (DFIA). (b) Duty Remission Scheme. Duty Drawback (DBK) Scheme, administered by Department of Revenue. To deal effectively with the increasing number of complaints and disputes, a 'Committee on Quality Complaints and Trade Disputes' (CQCTD) will be constituted in the 22 offices of the Regional Authority(RA's) of DGFT. 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. 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 RAs. 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. Wherever required, the Committee (CQCTD) may take the assistance of the Export Promotion Councils/FIEO/Commodity Boards or any other agency as considered appropriate for settlement of these disputes. 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.

4.	**Liaison Office**	'Liaison Office' means a place of business to act as a channel of communication between the principal place of business or Head Office and the Indian place of business. This office, however, does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through the normal banking channels. A profit making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 or its equivalent. A liaison office is given registration for a period of three years. The branch office/liaison office may submit the Annual Activity Certificate as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year. In case the annual accounts of the office are finalized with reference to a date other than March 31, the AAC along with the audited financial statements may be submitted within six months from the due date of the Balance Sheets to the Authorised Dealer Category-bank and the Director General of Income Tax (International Taxation).
5.	**Nodal Officer**	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.
6.	**Status Category**	Status Category Export Performance FOB/FOR (as converted) Value (in US $ million) One Star Export House 3 Two Star Export House 25 Three Star Export House 100 Four Star Export House 500 Five Star Export House 2,000

7. Annual Activity Certificate (AAC)	The branch office/liaison office may submit the Annual Activity Certificate as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year. In case the annual accounts of the office are finalized with reference to a date other than March 31, the AAC along with the audited financial statements may be submitted within six months from the due date of the Balance Sheets to the Authorised Dealer Category-bank and the Director General of Income Tax (International Taxation), Drum Shape Building, I.P. Estate, New Delhi 110002. AAC from a Chartered Accountant showing the project status and certifying that the accounts of the project office have been audited and the activities undertaken are in conformity with the general/specific permission given by the Reserve Bank may be submitted by the project office to the designated Authorised Dealer Category-I bank {Regulation 4(I)}.
8. CPCTD	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) has been created in the 22 offices of the Regional Authority(RA's) of DGFT. The Committee (CQCTD) will be responsible for inquiring and investigating into all quality rand trade related complaints falling under the jurisdiction of the respective RAs. 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. 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 party.

SHORT NOTES

2010 - Dec [1] {C} With reference to the relevant legal enactments, write short notes on the following:

(ii) Declarations for export of goods and services **(3 marks)** ***[CSEM - II]***

Answer :

As per Foreign Exchange Management (Export of Goods & Services) Regulations, 2015

Regulating Declaration of exports:

1. In case of exports taking place through Customs manual ports, every exporter of goods or software in physical form or through any other form, either directly or indirectly, to any place outside India, other than Nepal and Bhutan, shall furnish to the specified authority, a declaration in one of the forms set out in the Schedule and supported by such evidence as may be specified, containing true and correct material particulars including the amount representing –
   (i) The full export value of the goods or software; or
   (ii) If the full export value is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods or the software in overseas market, and affirms in the said declaration that the full export value of goods (whether ascertainable at the time of export or not) or the software has been or will within the specified period be, paid in the specified manner.
2. Declarations shall be executed in sets of such number as specified.
3. Realization of export proceeds in respect of export of goods / software from third party should be duly declared by the exporter in the appropriate declaration form.

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

(vii) Current account transactions. **(3 marks)** ***[CSEM - II]***

Answer :

Current account transaction has been defined under **Section 2(j) of the Foreign Exchange Management Act, 1999** 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.
- Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

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

(vi) Depository receipt **(3 marks)** ***[CSEM - II]***

Answer:

Depository Receipts

- Depository receipt means a negotiable security issued outside India by a Depository bank, on behalf of an Indian company, which represents the rupee denominated equity shares of the company held as deposit by custodian bank in India.
- Depository receipts are of two types
  - American Depository Receipts (ADRs)
  - Global Depository Receipts (GDRs)
- Those depository receipts which are listed & traded in the US markets are known as American Depository Receipts.
- Those depository receipts which are listed & traded anywhere else globally are known as Global Depository Receipts.

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:

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

(1) he has at any time has held on Indian Passport.

(2) 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

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

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

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

(b) 'Cancellation of certificate' under the Foreign Contribution (Regulation) Act, 2010 **(5 marks)**

Answer:

(a) '**Person' includes:**

- an individual,
- a Hindu undivided family,
- a company,
- a firm,
- an association of persons or a body of individuals, whether incorporated or not,
- every artificial juridical person, not falling within any of the preceding sub-sections, and
- any agency, office or branch owned or controlled by such person. **[Section 2(u) of Foreign Exchange Management Act,1999]**

'Authorised person' under the **Foreign Exchange Management Act,1999** means an authorised dealer, money changer, offshore banking unit or any other person for the time being authorised under sub-section (a) of **Section 10** to deal in foreign exchange or foreign securities. ***[Section 2 (c) of Foreign Exchange Management Act,1999].***

Under **section 10(1)** of FEMA, the Money Changers are of two categories: Full Fledged Money Changers (FFMCs) and Restricted Money Changers (RMC).

(b) As per **Section 14 of the Foreign Contribution Regulation Act, 2010,** the Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if:

- the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or
- the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
- in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or
- the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder; or
- if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct;

No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard. Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

DISTINGUISH BETWEEN

2008 - Dec [3] (a) Distinguish between of the following :

(iii) 'Current account transactions' and 'capital account transactions' .

(5 marks) ***[CSEM - II]***

Answer :

Current account transaction has been defined under **Section 2(j) of the Foreign Exchange Management Act, 1999** 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.
- Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

According to **Section 2 (e) of the Foreign Exchange Management Act, 1999** 'capital account transaction' means any transaction which alters the asset or liabilities including contingent liabilities outside India of persons resident in India and includes the transactions specified in **Section 6 (3)** of the FEMA

- Subject to certain conditions, **Section 6** of the Act allows capital account transactions. Reserve Bank is empowered to specify any class or classes of capital account transactions permissible and also prescribe its limit. This power of Reserve Bank is exercised in consultation with Central Government.
- Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 specifies the capital account transactions.

2010 - Dec [3] (a) Distinguish between the following :

(i) 'Foreign exchange' and 'foreign security'. **(5 marks)** ***[CSEM - II]***

(iii) 'Automatic route' and 'approval route' under the FDI policy.

(5 marks) ***[CSEM - II]***

Answer :

(i) Foreign exchange : Clause (n) of **Section 2 of the Foreign Exchange Management Act, 1999** defines the term 'foreign exchange' as to mean foreign currency and includes deposits, credits, balance payable in foreign currency drafts, travellers cheques, letters of credits, bills of exchange drawn in Indian currency but payable in any foreign currency and drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency have also been included in the definition of foreign exchange.

Foreign security : In terms of clause (o) of **Section 2 of the Foreign Exchange Management Act, 1999,** foreign security has been defined as 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.

(iii) 'Automatic route' and 'approval route' under the FDI policy

Basis	Automatic Route	Approval Route
Meaning	As the name suggests under automatic route come those cases wherein the foreign investment does not call for obtaining any permission / approval from Government of India.	Approval route on the other hand takes into account those cases wherein consent of FIPB i.e. Foreign Investment Promotion Board is to be taken.
Example	Foreign investment in case of mining and exploration	Areas of Defence

2011 - Dec [3] (a) Distinguish between the following:

(iv) 'Appellate tribunal' and 'Court'. **(5 marks)** ***[CSEM - II]***

Answer :

Appellate Tribunal:

- It is constituted under a special enactment
- Members of Appellate Tribunal are both judicial & technical
- Procedures followed by it are enshrined in the enactment itself
- Appellate Tribunal is an adjudicating body
- It discharges judicial functions

Court:

- Members of the Court are judicial
- Courts follow the procedures prescribed under the Civil Procedure Code
- Courts are constituted by the State and are vested with judicial functions like that of Appellate Tribunal.

2012 - June [3] (a) Distinguish between the following:

(i) 'Political party' and 'an organisation of political nature'.

(5 marks) ***[CSEM - II]***

Answer :

Political Party

'Political party' means:

(i) an association or body of individual citizens of India:

  (a) Registered with the Election Commission of India as a political party under **section 29A of Representation of 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.

An organisation of political nature

Organisation of political nature not being a political party refers to such organisation as the Central Government may specify by order in the Official Gazette, having regards to:

- The activities of the organisation
- Ideology propagated by the organisation
- Programme of the organisation.
- Association of the organisation with the activities of any political party.

The Central Government may, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of an political nature.

2013 - June [3] (a) Distinguish between the following.

(ii) 'Depository receipt' and 'foreign currency convertible bond'.

(5 marks)

Answer :

Depository Receipt: Depository Receipt (DR) means a negotiable security issued outside India by a Depository bank, on behalf of an Indian Company, which represents the local rupee denominated equity shares of the company held as deposit by a custodian bank in India.

- DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded anywhere / elsewhere are known as Global Depository Receipts (GDRs).

Foreign Currency Convertible Bonds.

- These are the bonds issued by an Indian company expressed in foreign currency, the principal and interest of which are payable in foreign currency.
- FCCBs are subscribed by non- resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole or in part.

DESCRIPTIVE QUESTIONS

2008 - Dec [4] (b) Mention the provisions of the Foreign Contribution (Regulation) Act, 2010 in respect of exemptions from accepting foreign contributions. **(5 marks)** ***[CSEM - II]***

Answer:

Section 4 provides that nothing contained in **Section 3** shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provision of **Section 10**;

(a) by way of
   - salary
   - wages
   - other remuneration,

   from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

(b) payment for international trade & commerce or in ordinary course of business transacted by him outside India.

(c) amount received by way of gift or presentation made to him as a member of any Indian delegations if such gift or present was accepted in accordance with the rules made by the Central Government in regard to the acceptance or retention of such gift or presentation.

(d) amount received from his relative.
(e) amount received in ordinary course of business through —
- → any official channel
- → post office
- → any authorised person.

(f) by way of any scholarship, stipend or, any payment of like nature.

2010 - Dec [5] (b) What are the exemptions to the prohibition of acceptance of foreign contribution under the Foreign Contribution (Regulation) Act, 2010? **(5 marks)** ***[CSEM - II]***

Answer :

Please refer 2008 - Dec [4] (b) on page no. 48

2011 - 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 :

(i) Karan, a person resident in India, borrows US $ 20,000 from his friend resident outside India.

(ii) Rakesh, a person resident in India, is interested in extending an invitation to George, a person resident outside India, to stay as his guest while on a visit to India.

(iii) A person, resident outside India, is interested to repatriate outside India the sale proceeds of an immovable property held in India.

(iv) A person, resident in India, wants to acquire immovable property outside India by way of gift from a person who is resident outside India.

(v) A foreign investor is interested to invest in an Indian company which is a small scale industrial unit. **(1 mark each)** ***[CSEM - II]***

Answer :

(i) Yes, in this case Karan can borrow US $ 20,000 from his friend resident outside India subject to the compliance of provisions of **Foreign Exchange Management Act, 1999** and Foreign Exchange Management (Capital Account Transaction) (Amendment)Regulations, 2015,as it is within the limit of US $2,50,000 allowed under the Rules.

(ii) There is no prohibition under the Act, for making any payment in rupees towards meeting expenses on account of boarding, lodging and service related thereto or travel to and from and within India of a person resident outside India who is on a visit to India.
So in the given case, Rakesh can invite George to stay as his guest on a visit to India and to expend on his boarding, lodging etc.

(iii) Yes, according to the provision of **Foreign Exchange Management Act, 1999** and Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2015, a person resident outside India can repatriate outside India the sale proceeds of an immovable property held in India.

(iv) A person resident in India may acquire immovable property outside India by way of gift or inheritance from a person who was resident out side India, in terms of **Sec. 6(4) of FEMA** acquired by a person resident in India on or before July 8, 1947 and continued to be held by him with the permission of RBI.

(v) Yes the foreign investor can invest in an Indian company which is a small scale industrial unit. But foreign direct investment policy & sectoral cap besides re-entry route & other regulations need to be complied with.

2012 - Dec [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:

(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.

(iv) Indel Manufacturing Inc., a company incorporated outside India, engaged in software development, intends to open its branch in a special economic zone (SEZ) in India.

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

Answer:

(i) As per the provisions of the Act, Rajiv can acquire the foreign securities as qualification shares issued by a company incorporated outside India for holding the position of a director in the company, provided the value of the said securities is within the limits prescribed under the LRS (Liberalized Remittance Scheme), which allows remittances by a resident individual upto USD 2,50,000 per financial year for permitted capital or current account transaction.

(ii) Foreign Exchange Management Regulations, 2000 permit an Indian resident outside India to transfer any immovable property in India to a person resident in India. Thus Shyam can sell his ancestral house in India to a person resident in India.

(iii) As per the provisions of the Regulations, a person can acquire bonus shares on foreign securities held in accordance with the provisions of the Act made there under. Thus, he can acquire bonus shares of value of US$ 20,000 by a company incorporated outside India.

(iv) RBI has given a general permission to foreign companies for establishing branch/ unit in SEZ. Thus the Indel Manufacturing Inc can open its branch in SEZ.

(v) An Indian party has been permitted to make investment in overseas JV/ Wholly Owned Subsidiaries, not exceeding 400% of the net worth. Thus, it can make direct investment in a joint venture outside India.

2012 - Dec [5] (c) Discuss the powers of the Central Government to prohibit receipt of foreign contribution under the Foreign Contribution (Regulation) Act, 2010. **(5 marks)** ***[CSEM - II]***

Answer:

Section 9 of Foreign Contribution (Regulation) Act, 2010 provides power to Central Government to prohibit receipt of foreign contribution etc in following cases. Accordingly Central Government has been empowered to:

(a) prohibit any person or organisation not specified in **Section 3**, from accepting any foreign contribution

(b) require any person or class of person not specified in **Section 6**, to obtain prior permission of the Central Government before obtaining any foreign hospitality.

(c) require any person not specified in **Section 11**, to furnish intimation within such time and in such manner as may be prescribed as to
- the amount of foreign contribution
- the source of such foreign contribution
- the manner in which such foreign contribution was received
- the purpose and manner in which such foreign contribution was utilised.

(d) without prejudice to the provision of sub **section (1)** of **Section 11**, require any person or class of person specified in that sub section to obtain prior permission of the Central Government before accepting any foreign contribution

(e) require any person not specified in **section 6** to furnish intimation as to
- the receipt of foreign hospitality
- the source from which such foreign hospitality was received
- the manner in which such foreign hospitality was received.

However, the Central Government shall not order such prohibition or requirement unless it is satisfied that acceptance of foreign contribution or foreign hospitality by such person 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.

2013 - Dec [2A] (Or) (iv) State the persons who are prohibited from accepting foreign contributions under the Foreign Contribution (Regulation) Act, 2010. **(3 marks)**

Answer:

Prohibition on certain persons from accepting foreign contribution :

The following persons are prohibited from accepting foreign contributions:

(a) Candidate for election;

(b) Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

(c) Judge, government servant or employee of any entity controlled or owned by the government;

(d) Member of any Legislature;
(e) Political party or its office bearers;
(f) Organisations of a political nature as may be specified;
(g) Associations or company engaged in the production or broadcast of audio news or audiovisual news or current affairs programmes through any electronic mode or form or any other mode of mass communication;
(h) Correspondent or columnist, cartoonist, editor, owner of the association or company referred to in (g) above.

However, foreign contribution can be accepted by the above-mentioned persons in the following specific situations :

(a) By way of remuneration for himself or for any group of persons working under him;
(b) By way of payment in the ordinary course of business transacted in or outside India or in the course of international trade or commerce;
(c) As agent of a foreign source in relation to any transaction made by such foreign source with the Central or State Government;
(d) By way of gift or present as a member of any Indian delegation. However, the gift or present should be accepted in accordance with the rules made by the Central Government;
(e) From his relative;
(f) By way of any scholarship, stipend or any similar payments.

It is important to note that barring the above exceptions, there is blanket prohibition on the above-mentioned persons from accepting foreign contribution.

2013 - Dec [4] (a) Discuss the provisions of the Foreign Exchange Management Act, 1999 relating to the export of goods and services without declaration. **(8 marks)**

Answer:

Foreign Exchange Management (Export of goods and services) Regulations, 2015 provide for declarations with regard to goods and services being exported (Regulation 4). Notwithstanding anything contained in Regulation 4, export of goods or services may be made without furnishing the declaration in the following cases, namely:

(a) trade samples of goods and publicity material supplied free of payment;
(b) personal effects of travellers, whether accompanied or unaccompanied;

(c) ship's stores, trans-shipment cargo and goods supplied under the orders of Central Government or of such officers as may be appointed by the Central Government in this behalf or of the military, naval or air force authorities in India for military, naval or air force requirements;

(d) goods or software accompanied by a declaration by the exporter that they are not more than twenty five thousand rupees in value;

(e) by way of gift of goods accompanied by a declaration by the exporter that they are not more than one lakh rupees in value;

(f) aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their re-import into India after overhauling/repairs, within a period of six months from the date of their export;

(g) goods imported free of cost on re-export basis;

(h) the following goods which are permitted by the Development Commissioner of the Export Processing Zones or Free Trade Zones to be re-exported, namely:
   - imported goods found defective, for the purpose of their replacement by the foreign suppliers/collaborators;
   - goods imported from foreign suppliers/collaborators on loan basis;
   - goods imported from foreign suppliers/collaborators free of cost, found surplus after production operations.

(i) replacement goods exported free of charge.

(j) defective goods sent outside India for repair and re-import purposes. This would be allowed only when the goods are accompanied by a certificate from an authorised dealer in India that the export is solely for repair and re-import and that no forex is involved.

(k) Exports that are permitted by the Reserve Bank upon application, on fulfilment of certain conditions.

2014 - June [1] (a) "FEMA is to facilitate external trade and payments and promotion of orderly development and maintenance of foreign exchange market in India." Discuss in brief. **(5 marks)**

Answer:

Foreign Exchange Regulation Act, 1973 (FERA) was a relatively strict Act, that had as its main objective as the control of all foreign exchange movements to and from India. The **Foreign Exchange Management Act, 1999,** which has replaced FERA, is mainly intended to manage the flows of foreign exchange and to encourage FDI in India.

Broadly, the objectives of FEMA are:

(i) To facilitate external trade and payments; and

(ii) To promote the orderly development and maintenance of foreign exchange market. The Act reserves an important role for the Reserve Bank of India in the administration of FEMA. The rules, regulations and norms pertaining to several sections of the Act are laid down by the Reserve Bank of India, in consultation with the Central Government. These help in maintaining the economy by ensuring a steady movement of foreign exchange.

As the very name indicates, the Act is to 'manage' not to 'regulate'; hence FEMA, 1999 is a very investor friendly Act. FEMA was passed with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. FEMA lays down that 'everything other than what is expressly covered is not controlled'.

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

Answer:

Capital Account Transactions have been covered under **Section 6 of the Foreign Exchange Management Act, 1999.** The section gives RBI the right to set the limits for such transactions in consultation with the Central Government. These are transactions of a long term nature, whether in currency, securities or immovable property. Any such investments by way of branch offices or places of business are also covered under this. Different sets of rules have been provided for persons resident in India and for persons resident outside India.

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

Answer:

Please refer 2012 - June [1] {C} (vii) on page no. 41

2014 - Dec [2] (d) Discuss the powers of the Central Government to prohibit receipt of foreign contribution under the Foreign Contribution (Regulation) Act, 2010. **(3 marks)**

Answer:

Please refer 2012 - Dec [5] (c) on page no. 51

2014 - Dec [3] (c) Discuss the methods of funding of foreign direct investment (FDI) under the Foreign Exchange Management Act, 1999.

(5 marks)

Answer:

Methods of funding of FDI

Foreign Direct Investment (FDI) is a category of cross border investment made by a resident of another economy (the direct investor) with the objective of establishing a lasting interest in an enterprise. The motivation of the direct investor is a strategic long term relationship with the direct investment enterprise to ensure a substantial degree of influence by the direct investor in the management of the enterprise in which he has invested.

There are two modes of bringing in FDI into India

- **Automatic Route:** Under the Automatic Route, the foreign investor or the Indian Company does not require any approval from the Reserve Bank or Government of India for the investment.
- **Government Route:** Under the Government Route, the foreign investor or the Indian Company should obtain prior approval of the Government of India, Ministry of Finance, Foreign Investment Promotion Board (FIPB) for the investment.

There are various modes of investment available under these two routes-

- New shares issued by the company, under normal route or as ADRs/GDRs
- Acquiring shares by transfer of shares from a resident or non-resident
- Acquiring of shares by a non-resident through recognized stock exchange, under FDI scheme
- Conversion of royalty income/ECB/lump sum fee into shares
- Issue of Rights shares or ESOP.

2015 - June [1] (b) Define 'foreign contribution' under the Foreign Contribution (Regulation) Act, 2010. **(5 marks)**

Answer:

Foreign Contribution:

Foreign contribution, as defined under the Foreign Contribution (Regulation) Act, 2010 means only:

- Donation
- Delivery
- Transfer

Made by any foreign source of:

Article (other than gift given to a person as a gift for his personal use) if the market value in India, of such article, on the date of gift is not more than such sum as may be specified from time to time by the Central Government. It can be a gift of:

- any currency, whether Indian or Foreign
- of any security as defined in clause (h) of **Section 2 of the Securities Contract (Regulation) Act, 1956** and includes any foreign security as defined in **Clause (o) of the Foreign Exchange Management Act, 1999.**

  [As per FCRA, 2010]

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

Answer:

Please refer 2013 - June [1] (v) on page no. 42

2015 - June [2A] (Or) (v) What is meant by foreign currency convertible bond (FCCB)? **(3 marks)**

Answer:

'Foreign Currency Convertible Bond (FCCB) means a bond issued by an Indian Company, which is denoted in a foreign currency, the principal and interest of which are also payable in foreign currency. They are governed by the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993. They are issued to non-resident entities against convertible foreign currency. These bonds are later convertible into ordinary shares of the issuing company, either in whole or in part.

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’ means an authorized dealer, money changer, offshore banking unit or any other person for the time being authorized under sub-section (a) of **Section 10** of FEMA to deal in foreign exchange or foreign securities.

As per **Section 11** of the Foreign Exchange Management Act, the RBI has power to issue directions to the authorised person regarding any activities in relation to foreign exchange and securities, and to provide due information when he has transacted in any manner in forex and foreign securities. If these directions are not complied with, the RBI may levy a fine not exceeding ₹ 10,000/- and in the case of continuing contravention, an additional penalty which may extend to ₹ 2,000 for every day during which such contravention continues.

2015 - Dec [2] (b) Mention the activities/sectors in which Foreign Direct Investment (FDI) is prohibited. **(3 marks)**

(c) Alex, a foreign diplomat desires to buy immovable property in India. Is he permitted to do so? Give reasons in brief. **(3 marks)**

(e) How much foreign exchange is available to a person going abroad on emigration? **(3 marks)**

Answer:

(b) FDI is prohibited in the following sectors:

- Atomic Energy
- Lottery Business including Government/private lottery, online lotteries, etc.
- Gambling and Betting including casinos etc.
- Business of chit fund
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real Estate Business or Construction of Farm Houses
- Activities/sectors not opened to private sector investment.

(c) A Foreign Embassy/Diplomat/Consulate General may purchase/sell immovable property in India other than agricultural land/farm house/plantation property, provided they fulfill the following conditions:

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

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

Such a person shall not, however, repatriate outside India the sale proceeds of any immovable property except with the prior permission of the Reserve Bank of India.

Then too, in case the property is sold, by such a person resident outside India, who is a citizen of India or a person of Indian origin, the authorized dealer may allow repatriation of the sale proceeds outside India, on the following conditions:

(i) The immovable property was acquired by the seller as per the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2000.

(ii) No more than the amount originally paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non-Resident Account or the foreign currency equivalent can be repatriated.

(iii) In the case of residential property, only the proceeds from the sale of maximum two such properties can be repatriated. **[Section 5A].**

Hence, Alex can procure immovable property in India, but subject to the above mentioned rules.

(e) Rule 5 as amended by the Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015, provides a limit of US$ 250,000 for emigration purposes. Another cap is provided by the amount prescribed by the country of emigration. Whichever is higher of the two is taken to be the cap.

A person going abroad on emigration can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 250,000. He can draw foreign exchange up to USD 250,000 on self-declaration basis from an Authorised Dealer in India. This amount is only to meet the incidental expenses in the country of emigration. If requirement exceeds USD 250,000, the person is to obtain prior approval from the Reserve Bank of India.

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

(iii) Which organisations/individuals are specifically prohibited from receiving foreign contribution under the Foreign Contribution (Regulation) Act, 2010? **(3 marks)**

(iv) State the procedure for making an application for renewal of certificate under the Foreign Contribution (Regulation) Act, 2010. **(3 marks)**

Answer:

(i) The following classes of capital account transactions of a person resident in India are recognized under FEMA :

- Investment by a person resident in India in foreign securities;
- foreign currency loans raised in India and abroad by a person resident in India;
- transfer of immovable property outside India by a person resident in India;
- guarantees issued by a person resident in India in favour of a person resident outside India;
- export, import and holding of currency/currency notes;
- loans and overdrafts by a person resident in India from a person resident outside India;
- maintenance of foreign currency accounts in India and outside India by a person resident in India;
- taking out of insurance policy by a person resident in India from an insurance company outside India;

- loans and overdrafts by a person resident in India to a person resident outside India;
- remittance outside India of capital assets of a person resident in India;
- sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

(iii) The following persons are expressly prohibited from accepting foreign contribution as per the Foreign Contribution (Regulation) Act, 2010:

(a) candidate for election;

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

(c) judge, government servant or employee of any entity (corporation, semi-government setups etc.) controlled or owned by the Government;

(d) member of any Legislature;

(e) political party or its office bearers;

(f) organizations of a political nature as may be specified;

(g) associations or companies engaged in the production or broadcast of audio news/audiovisual news/current affairs programmes through electronic or any other mode of mass communication;

(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in the above point. **[Section 3]**

(iv) Every person operating under a certificate under **section 12 of the Foreign Contribution (Regulation) Act, 2010** shall have such certificate renewed within six months before the expiry of the period of the certificate **[Section 16].** For this, the person needs to apply to the Central Government in such form and manner and accompanied by such fee as may be prescribed. The Central Government shall renew the certificate, subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years. This is normally done within ninety days from the date of receipt of application for renewal of certificate. In case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant, upon which, if there are any corrections that the government desires, he shall make them and resubmit. If, however, the person in question has violated certain provisions of this Act, or the rules pertaining to it, the Central Government may refuse to renew the certificate.

2016 - June [1] (c) Which organisations/individuals are specifically prohibited from receiving foreign contribution under the Foreign Contribution (Regulation) Act, 2010? **(5 marks)**

Answer:

Please refer 2013 - Dec [2A] (Or) (iv) on page no. 52

2016 - Dec [2A] (Or) (iv) What is 'intent and obligation' of foreign direct investment in India under the Foreign Exchange Management Act, 1999? **(3 marks)**

Answer:

Foreign Direct Investment or FDI is a type of international investment by the resident of one country in the economy of another, by investing in an enterprise in the other country by way of a capital investment. It generally entails an element of control over the management of such enterprise by the investor.

The intention of such an investment is to create a lasting, long-term working relationship with the enterprise, usually as part of an investment strategy of the investor. The intent also envisages management control through ownership of shares, control of voting power through the shares so held, or a control of management as per the terms of the investment made. Hence, the objectives of direct investment are different from those of portfolio investment, in which mode the investors do not generally expect to influence the management of the enterprise.

Since all Foreign Direct Investment in India is undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India, the investor needs to comply with its conditions as well as the rules and regulations under FEMA. FEMA Regulations also prescribe:

- the mode of investments i.e. issue or acquisition of shares / convertible debentures and preference shares;
- manner of receipt of funds;
- pricing guidelines; and
- reporting of the investments to the Reserve Bank.

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:

In terms of **Section 6(3) of FEMA, 1999,** direct investments by residents is allowed in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) abroad. **Section 6(3) of Foreign Exchange Management Act** empowers the Reserve Bank to prohibit, restrict or regulate such transactions, by making Regulations and providing for procedures regarding these transactions. In exercise of the above powers, the Reserve Bank has, issued the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2015, which has been amended from time to time. It covers investments by Indian entities in overseas joint ventures and wholly owned subsidiaries and also investment by a person resident in India in shares and securities issued outside India.

A person resident in India is prohibited from acquiring or transferring immovable property outside India, until permission whether general or special is obtained from RBI Exceptions to the above mentioned restrictions are as follows :

(i) Immovable property held by person resident in India, who is a national of foreign state.

(ii) Property held before 8th of July, 1947, and continued to be held by him.

(iii) Property acquired by means of inheritance or gift by person resident in India from person resident outside India.

(iv) Property acquired by way of purchase out of foreign exchange in RFC i.e. Resident Foreign Currency Account.

(v) Company formed in India and having overseas office may be permitted to acquire immovable property upon compliance with conditions prescribed by RBI.

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

(5 marks)

Answer:

'Appellate Tribunal' implies a tribunal made under the Foreign Exchange Management Act to hear appeals against the orders of the adjudicating authorities and Special Directors (Appeals) **[Section 2(b)]**.

The Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit. **[Section 18]**

The below-mentioned points cover its major aspects:

- the Appellate Tribunal may exercise its jurisdiction through its Benches;
- a Bench may comprise of one or more Members as the Chairperson may deem necessary;
- ordinarily, the Benches of the Tribunal shall sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify in the Official Gazette. The government shall also notify the jurisdiction of such Benches.

The Chairperson of the Tribunal has powers to transfer any member from one Bench to another and even to change the number of persons in a Bench.

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

Answer:

The term current account transaction has been defined under **Section 2(j) of the Foreign Exchange Management Act, 1999,** 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, are all considered as part of current account transaction.

Under the Foreign Exchange Management Act, 1999 freedom has been granted for selling and drawing of foreign exchange to or from an authorized person for undertaking current account transactions. However, the Central Government has been vested with powers in consultation with Reserve Bank to impose reasonable restrictions on current account transactions. The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000 dealing with various aspects of current account transactions.

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

PRACTICAL QUESTIONS

2008 - Dec [4] (a) With reference to the relevant provisions of the Foreign Exchange Management Act, 1999. Provides that the rules and regulations made thereunder, advise on the following :

(i) Indotech Ltd. desires to make payments of commission on exports made towards equity investment in its joint venture company abroad.

(ii) Rupa intends to take an insurance policy in her name from an insurance company abroad involving payment of premium amounting to US$20,000.

(iii) A non-resident shareholder has applied for the issue of additional shares over and above his entitlement of rights shares in an Indian company.

(iv) Girish intends to transfer his shareholding in rupee equivalent to US$20,000. as gift to his son who is a resident outside India.

(v) Microtech Ltd., a software exporter company, desires to receive 25% of the value of its exports in the form of shares in an overseas software company without entering into joint venture agreement.

(1 mark each) ***[CSEM - II]***

Answer :

(i) No, Indotech Ltd. is not permitted to make payments of commission on exports made towards equity investment in its joint venture company abroad since Schedule I of FEMA (Current Account Transaction) Amendment Rules, 2015 forbids the same.

(ii) Yes, Rupa can very well take an insurance policy in her name from the foreign insurance company which involves premium of US$ 20,000 as the same is permitted to the extent of US$ 2,00,000 by virtue of Schedule I of Foreign Exchange Management (Capital Account Transaction) (Amendment) Regulations 2007 Foreign Exchange Management (Insurance) Regulations, 2015 stipulate that a person resident in India may take or continue to hold a health insurance policy issued by an insurer outside India provided aggregate remittance including amount of premium does not exceed limit prescribed under the Liberalised Remittance Scheme. Provided further that where the premium due on a general insurance policy has been paid by making remittance from India, the policy holder shall repatriate to India through normal banking channels, the maturity proceeds or amount of any chain due on the policy, within a period of seven days from the receipt thereof.

Premium for the same has to be paid from external foreign currency resources or an RFC account. Plus, it can only be a non-life insurance, that too, after Government Permission.

(iii) Yes, the shareholder can apply for the issue of additional shares over and above his entitlement to rights shares in Indian company even if he is non resident but it should be taken into notice that price charged from non-resident should not be less than that charged from resident shareholder.

(iv) Yes, Girish may transfer his shareholding, as the same is less than USD 2,50,000, as a maximum of USD 2,50,000 worth of security can be transferred as gift in a year. Also, RBI's consent is a prerequisite.

(v) Yes, Microtech Ltd. Can receive 25% of the value of exports in the form of shares in an overseas software company without entering into joint venture agreement as it is a software exporting company.

2009 - June [5] (c) With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder, advise on the following :

(i) ABC Ltd., a company listed on the National Stock Exchange Ltd., is interested in investing in a company in the USA.

(ii) Ram, an NRI resident in Nepal, is interested to invest in shares and convertible debentures of an Indian company.

(iii) A foreign investor wants to invest in an Indian company which is a small scale industrial unit.

(iv) Brown, a UK citizen, is interested to make investment in the form of foreign direct investment (FDI) in retail trading business.

(v) XYZ Ltd., a company listed on the Bombay Stock Exchange Ltd., wants to issue shares under the Employees Stock Option Scheme (ESOS) to the employees of its joint venture abroad.

(1 mark each) ***[CSEM - II]***

Answer :

(i) Listed Indian Companies are permitted to invest up to 50 per cent of their net worth as on the date of the last audited balance sheet in (i) shares, and (ii) bonds/ fixed income securities, rated not below investment grade by accredited/ registered credit rating agencies, issued by listed overseas companies.

In the light of the above provision, ABC Ltd. can invest in a company in the USA.

(ii) Yes, Ram can invest in shares and convertible debentures of an Indian company provided he made the investment by means of inward remittance via -

- Normal banking or
- NRE/FCNR account

Thus, Ram, even being an NRI residing in Nepal and Bhutan, can make the desired investment.

(iii) Yes, the foreign investor can invest in an Indian company which is a small scale industrial unit, subject to the compliance of the maximum limit of 24% of paid up capital of the Indian company as is required by virtue of FDI policy.

(iv) No, Mr. Brown being a UK citizen shall not be allowed to make investment in form of FDI in retail trading business since the same is prohibited as per the foreign policy.

(v) Subject to compliance with regulation issued by SEBI Act 1992, an Indian company may issue shares to:
- its own employees or
- employees of joint venture or
- employees of Wholly Owned Subsidiary (WOS) abroad, who are resident outside India.
  - ➢ Face value of shares allotted should not exceed 5% of paid up capital of the issuing company.
  - ➢ A report containing details about number and name along with certificate of Company Secretary is required to be filed within 30 days from issue to Reserve Bank.

2009 - Dec [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 :

(i) Naresh, an Indian citizen, is interested in sending ₹ 10,000 to his sister residing in USA as birthday gift.

(ii) A person resident outside India desires to contribute ₹ 10 lakh as capital in a firm engaged in software business in India.

(iii) An Indian company intends to open a foreign currency account in India as well as outside India.

(iv) A company incorporated in USA desires to establish its manufacturing unit in special economic zone in India.

(v) Dinesh, an Indian citizen, wants to use his international debit card for withdrawal of cash during his visit abroad.

(1 mark each) ***[CSEM - II]***

Answer :

(i) Rule 5 of Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015 requires prior approval of the Reserve Bank for gift remittances exceeding US$ 2,50,000 per remitter/donor per annum.

(ii) Foreign Exchange Management (Investment in Firm or Proprietary Concern in India) Regulation, 2000 requires prior approval of Reserve Bank for investment by way of contribution to capital in firm engaged in software business.

(iii) In terms of Foreign Exchange Management (Capital Account Transaction) (Amendment) Regulations, 2007 an Indian company can open a foreign currency account in India as well as outside India.

(iv) Generally, a person resident outside India has been prohibited from establishing in India, without prior approval of the Reserve Bank, a branch or liaison office or any other place of business by whatever name called. However, a company incorporated outside India has been allowed to establish a manufacturing unit in Special Economic Zones in India, subject to condition that:

- such units are functioning in those sectors where 100% FDI is permitted;
- such units comply with the **Companies Act, 2013** dealing with companies incorporated outside India **(Section 379 to 383);**
- such units function on a stand-alone basis;
- in the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an Authorised Dealer in Foreign Exchange.

In the light of the above legal position, a company incorporated in USA can establish its manufacturing unit in special economic zones in India.

(v) Dinesh who is an Indian citizen can use his international debit card for withdrawal of cash during his visit abroad, subject to limit as prescribed by virtue of Rule 7 of Foreign Exchange Management (Current Account Transaction) Amendment Rules, 2015.

2010 - 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:

(i) An Indian company engaged in financial sector is interested in making investment in banking business abroad.

(ii) An Indian resident wants to purchase foreign securities by making remittances from his resident foreign currency (RFC) account.

(iii) A Bangladeshi millionaire is interested to invest in India subject to FDI policy of the Government of India.

(iv) An Indian public limited company wants to issue bonus shares to an existing non-resident shareholder.

(v) An Indian citizen resident outside India is interested in acquiring a house in Chennai and a farm house on the outskirts of Delhi.

(1 mark each) ***[CSEM - II]***

Answer :

(i) Regulation 7 of FEM (Transfer or Issue of any foreign security) (Amendment) Regulations, 2004:

They will have to fulfil these conditions:

1. Net profit in preceding 3 Financial years, from financial services.
2. Regd. with regulatory authority in India.
3. Approval from regulatory authorities in India and abroad.
4. Fulfil prudential norms.

(ii) Yes, the Indian resident can make use of the RFC i.e. Resident Foreign Currency Account to purchase foreign securities since there exist no restrictions in making such remittances from RFC Account.

(iii) As per the FDI Policy, 2017 a Bangladeshi citizen can invest in India through the approval route.

(iv) There is no prohibition to issue bonus shares to existing non-residents as per Foreign Exchange Management Act and regulations made thereunder, provided compliance with sectoral ceiling limit or sectoral cap is made and SEBI regulations duly followed.

(v) Though there is no restriction on Indian citizen resident outside India to acquire house in Chennai but there is a prohibition to acquire farm house.

As per the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2016, a person of Indian origin resident outside India may acquire any immovable property other than agricultural land/farm house/plantation property in India.

2010 - Dec [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:

(i) Shyam, an Indian businessman, is interested in remitting US $ 8,000 for purchase of trade mark/franchise in India.

(ii) Suresh, 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.

(iii) Desire Ltd., a company incorporated outside India, wants to buy shares up to 10% of paid-up capital of an Indian company engaged in infrastructure development.

(iv) Aadarsh Ltd., an Indian company, wants to issue FCCBs for the purpose of investing in the stock market.

(v) An Indian company engaged in software business intends to adjust the value of its exports towards the value of imported items.

(1 mark each) ***[CSEM - II]***

Answer :

(i) Yes, Shyam is permitted to remit US $ 8,000 for purchase of trade mark/franchisee.

Indian businessman will have to obtain prior permission of Reserve Bank.

- Rule 5 of Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015 drawal of items mentioned in Schedule IV. 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.

(ii) Yes, Suresh can take a life insurance policy from foreign insurance company, the yearly premium of which is US $ 25,000, since that is the upper limit of such a transaction.

Please refer 2008 - Dec [4] (a) (ii) on page no. 65

(iii) ⇒ Subject to compliance of specified conditions, 100% FDI is permitted in case of infrastructure development companies.

(iv) No, Adarsh Ltd., which is an Indian company cannot issue FCCBs for the purpose of investing the same in the stock market.
- ⇒ FEMA (Transfer or Issue of Security by Persons Resident Outside India) (Amendment) Regulations, 2015. Foreign Currency Convertible Bonds (FCCBs) and Depository Receipts (DRs) having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment under such composite limit/cap. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the composite limit/cap.
- ⇒ Investing the funds in the stock market is restricted.

(v)
- ⇒ Indian company engaged in software business can adjust the value of its exports towards the value of imported items.
- ⇒ The Indian company shall be required to obtain prior permission of RBI.

2011 - Dec [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:

(i) Ram, a person resident in India, intends to invest ₹ 25,000 in foreign securities in a calendar year.

(ii) Infotech Ltd., an Indian company owning a micro/small enterprise, intends to issue shares against foreign direct investment.

(iv) Naresh, an Indian citizen, enters into an agreement for the lease of machinery to a foreign party and intends to ship the machinery abroad.

(v) Mohan, an Indian citizen resident outside India, intends to acquire immovable property in India. **(1 mark each)** ***[CSEM - II]***

Answer :

(i)
- In the above case, Ram, a person resident in India, intends to invest ₹ 25,000 in foreign securities in a calendar year
- As per the provisions of the Act, investment in foreign securities is a capital account transaction specified in Schedule I.

- For capital account transactions specified in Schedule I a resident individual may draw from an authorised person, not exceeding US $ 2,50,000 per financial year.
- Thus Ram can invest ₹ 25,000 in foreign securities in a calendar year.

(ii)
- As per the provisions of the **Foreign Exchange Management Act, 1999** and the rules and regulations made thereunder, an Indian company owning a micro/small enterprise, can issue capital against foreign direct investment subject to compliance with FDI policy issued by Government.
- Thus in the above case, Infotech Ltd. an Indian company owning a micro/ small enterprise, can issue shares against foreign direct investment.

(iv)
- Prior approval of RBI is required in these circumstances.
- Thus in this case, Naresh can enter the above agreement with the prior approval of RBI.

(v)
- In the above case Mohan, an Indian citizen resident outside India, intends to acquire immovable property in India
- As per the provisions of the Act, an Indian citizen resident outside India can acquire immovable property in India other than agricultural or plantation property or farm house.
- Thus, Mohan can acquire immovable property other than agricultural or plantation property or farm house.

2012 - 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:

(i) Anand desires to donate US $ 10,000 to Rotary International, an NGO in Chicago, USA.

(ii) Atul Ltd., an Indian company intends to export its software of the value of ₹ 15,000.

(iii) Suresh desires to pay US $10,000 through international credit card being the remittance out of lottery earnings.

(v) Aadarsh Education Society, engaged in education sector, intends to make investment in the education sector in a joint venture in USA.

(1 mark each) ***[CSEM - II]***

Answer :

(i) As per the provisions of Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015, any resident individual, if he so desires, may remit the entire limit of USD 2,50,000 in one financial year under LRS as gift to a person residing outside India or as donation to a charitable/educational/ religious/ cultural organization outside India. Remittances exceeding the limit will require prior permission from the Reserve Bank. Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 2,50,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. Hence Anand can donate US $ 10,000 to the Rotary.

(ii) In the present case, Atul Ltd. an Indian Company can export its software. It is allowed under Foreign Trade Policy 2015-2020.

(iii) Suresh cannot remit the amount of US $ 10,000 because as per the FEMA Rules, 2000, drawal of foreign exchange for the purposes of remittances out of lottery earnings is prohibited. In terms of **Section 5** of the FEMA, persons resident in India are free to buy or sell foreign exchange for any current account transaction except for those transactions for which drawal of foreign exchange has been prohibited by Central Government, such as remittance out of lottery winnings, remittance of income from racing/riding, etc., or any other hobby, remittance for purchase of lottery tickets, banned / prescribed magazines, football pools, sweepstakes, etc., payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies, remittance of dividend by any company to which the requirement of dividend balancing is applicable, payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco and payment related to “call back services” of telephones. Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015.

(v) Prior approval of RBI & eligibility criteria as prescribed is required before making investment in the education sector in a Joint Venture or wholly owned subsidiary outside 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:

(i) Zenith Ltd., a foreign company is interested in purchasing its shares issued to some of its employees, who are residents in India, under the ESOP scheme.

(ii) A Malaysian diplomat entered into an agreement with a real estate company in India to purchase non-agricultural land near New Delhi to establish a laboratory.

(iii) ABC Ltd., a company incorporated in India, is eligible to issue shares to persons resident outside India under the FDI policy and intends to retain the share subscription amount in a foreign currency account.

(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)**

(b) Ashok, a director of a public limited company, was on a business trip to USA. Suddenly, he developed chest pain there and was provided medical treatment in a hospital, the funds for which were provided by one John, a US national, who happened to be his friend. Did Ashok violate the provisions of the **Foreign Contribution (Regulation) Act, 2010?** Give reasons. **(5 marks)**

Answer :

(a) (i) Foreign companies are permitted to repurchase the shares issued to residents in India under any ESOP Scheme provided that:

(1) the shares were issued in accordance with the Rules/ Regulations framed under **Foreign Management Act, 1999;**

(2) the shares are being repurchased in terms of the initial offer document and;

(3) an annual return is submitted through the authorised dealer / bank, giving details of remittances / beneficiaries etc.

Thus, Zenith Limited can purchase its shares from its employees, provided it complies with the above requirements.

(ii) • As per Regulation 5A of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) a Foreign Embassy / Diplomat / Consulate General, may purchase or sell immovable property (other than agricultural land / plantation property / farm house) in India provided that -

(1) Clearance from the Government of India, Ministry of External Affairs is obtained for such purchase / sale, and

(2) The consideration for acquisition of immovable property in India is paid out of the funds remitted from abroad through the normal banking channels.

So, a Malaysian diplomat can enter into an agreement with a real estate company in India to purchase non-agricultural land near New Delhi to establish a laboratory.

(iii) • Yes, ABC Limited can retain the share subscription amount in Foreign Currency Account with prior approval of the Reserve Bank.

• According to the provision, Indian companies which are eligible to issue shares to persons resident outside India under the FDI Scheme will be allowed to retain the share subscription amount in a Foreign Currency Account for *bonafide* business purpose only with the prior approval of the Reserve Bank.

(iv) • Regulation 3 of Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 prescribes 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.

• Thus, Dr. Sukant can not retain foreign currency notes of US $ 5,000.

(v) According to the provisions of Foreign Exchange Management (Permissible Capital Account Transaction) (Amendment) Regulation, 2007, Jay, a person resident in India, can take a Life Insurance Policy from a foreign insurance company with a yearly premium of US$ 25,000.

(b) • Provisions of **Foreign Contribution (Regulation) Act, 2010** prohibits acceptance of foreign hospitality by certain persons except with the prior permission of Central Government.

- Accordingly no member of legislature, office bearer of a political party, Judge, government servant or employee of a corporation shall while visiting any country or territory outside India accepts without the prior permission of the Central Government, any foreign hospitality.
- However it shall not be necessary to obtain any such prior permission for an emergent medical aid needed on account of sudden illness contracted during the visit outside India.
- The person receiving such medical aid is required to give, within one month from the date of receipt of such hospitality, an intimation to the Central Government as to the receipt of such hospitality and the source from which and the manner in which such hospitality was received by him.
- Thus Ashok did not violate the **Foreign Contribution (Regulation) Act, 2010.**

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:

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

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

This problem is related to **Section 15 of the Foreign Exchange Management Act, 1999.** Mr. Ronu has failed to realise and repatriate foreign exchange and contravened the provisions of Section 8 of FEMA and he is liable to the penalties leviable under **section 13 of the Foreign Exchange Management Act, 1999** followed by adjudication proceedings.

Section 15 of the Foreign Exchange Management Act, 1999 permits the offending party to compound the contravention within 180 days from the date of receipt of application by the Directorate of Enforcement or such other offices of the Directorate of Enforcement and officers of RBI as may be authorised by Central Government is such manner as may be prescribed. No Contravention shall be compounded unless the amount involved in such contravention is quantifiable. Where a contravention has been compounded, no proceeding can continue or be initiated against the person in respect of the contravention so compounded.

Repeatedly Asked Questions		
No.	**Question**	**Frequency**
1	Short Notes on Current account transactions. 12 - June [1] (vii), 14 - Dec [1] (d)	2 Times

2	Attempt the following : What are the powers of the Central Government to prohibit receipt of foreign contribution under the Foreign Contribution (Regulation) Act, 2010? 12-Dec [5] (c), 14 - Dec [2] (d)	2 Times
3	What is meant by 'person of Indian origin'? 13 - June [1] (v), 15 - June [2] (d)	2 Times
4	Which organisations/individuals are specifically prohibited from receiving foreign contribution under the Foreign Contribution (Regulation) Act, 2010? 13 - Dec [2A] (Or) (iv), 16 - June [1] (c)	2 Times
5	What is current account transaction under Foreign Exchange Management Act, 1999. 12 - June [1] {C} (vii), 17 - Dec [1] (a)	2 Times