

29/0/23 CHAPTER: 1 LAW RELATING TO FOREIGN EXCHANGE MANAGEMENT

From
TUE
LEC 2

PRI:

→ Any person who resides in India for more than 182 days in previous financial year.

→ It includes

Person comes in India

- for taking employment
- for carrying on business or vocation
- for a stay of uncertain period.

→ It excludes.

~~(a)~~ Person gone outside of India

- for taking employment
- for carrying on a business or vocation
- for a stay of uncertain period.

→ It also includes body corporate registered in India

ii) any branch/office in India but controlled outside India.

iii) any branch/office outside India but controlled in India.

~~Foreign exchange~~ FOREIGN EXCHANGE:

→ It means foreign currency which incs.

Balance payable in foreign currency, credits
Deposit, draft, traveller's cheque, BoE,
Letter of credit drawn in India but payable
in foreign currency.

CURRENT ACCOUNT TRANSACTION:

→ Any transaction other than capital account transaction

- It includes:
 - a) payment in relation to foreign trades in goods & services.
 - b) short term borrowing in ordinary course of business.
 - c) Interest on loan.
 - d) Net income from investment i.e. dividend after tax.
 - e) Remittance of living expenses of Parents, spouse & children.
 - (f) Remittance for
 - Travel
 - Education
 - Medical expense of [parent, spouse, children].

CAPITAL ACCOUNT TRANSACTION:

→ Any transaction which alter assets or liability inc. ~~conting~~ contingent liability of PRI, outside India

or

→ alter assets or liability in India of PROI.

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PROHIBITED CURRENT ACCOUNT TRANSACTION (WITHDRAWAL OF FOREIGN CURRENCY IS PROHIBITED)

- (a) Travel to Nepal & Bhutan or transaction with the person resident in Nepal or Bhutan.
- (b) Remittance out of the lottery winning.
- (c) Remittance for purchase of lottery tickets banned magazine, football pool.

- (d) Payment of commission on exports towards wholly owned subsidiary, joint venture abroad
- (e) Commission on export under rupee state credit route. Except 10% of invoice value on export of Tea & Tobacco.
- (f) Payment related to call back services.
- (g) Remittance of Interest on fund held in non-resident special rupee scheme account.

PRIOR APPROVAL OF GOVT. OF INDIA FOR CERTAIN TRANSACTION

- For cultural tours
- For remittance of freight of a vessel chartered by PSU
- Payment of import through ocean transport by a govt-dept. or a PSU on a CIF basis.
- Remittance to the agents of multi modal transport operator.
- Adv. in foreign print media exceeding USD 10,000 by SG or PSU however such restriction is not applicable for tourism, foreign investment, international bidding.
- Remittance of hiring charges of transparency of TV channels & internet service provider
- Remittance of container detention charges exceed prescribed rate.
- Remittance of prize money (sponsorship of sports activities abroad) excess of 1,00,000 US\$ however such restriction is not applicable to intl.

national or state level sports bodies
→ Membership of P & I club

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- Remitted Transaction with RBI approval:
- Gift / Donation
 - Private visit to foreign country
 - Emigration
 - Employment
 - Foreign travel for meeting or conference outside India.
 - Medical treatment
 - Study abroad
 - Maintenance of relative.

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Permitted transaction for a person other than individual:

→ Prior approval is required from RBI above such limit

(I.) Donation

1% of foreign exchange ^{exceeding} or 50,00,000 USD
earning in last 3 yrs

Donation for creation ^{less} of chairs ~~and~~ contribution to education institution.

(II.) Commission:

25000 ^{limit} or 5% of inward remittance
_{higher}

→ commission per transaction to agent for sale of residential / commercial plots.

(III.) Consultation

→ Infra projects → 1,00,00,000 USD per project.

→ other project → 10,00,000 USD

(IV.) Pre-incorporation expenses:

5% of investment in India or 100,000 USD → whichever is higher.

Capital Account transaction:

(A) Prohibited capital Account transaction for PR OZ Investment in

i) chit-fund

ii) Nidhi company

iii) Agriculture or plantation activities.

- (18) (iv) Real estate business or construction of farmhouse
- (19) (v) Trading in transferable development Right.

Note I: Real estate does not inc.

- (a) Townships
- (b) Residential & commercial projects.
- (c) Roads & bridges
- (d) Real estate investment trust

Note II: • TDR → certificate issued by Govt. in ^{scrap} receipt of land acquired from owner for development purpose.

• TDR certificates are transferable.

Permitted C.A.T for PRI

S → Security → foreign security

A → Assets → remittance of capital assets out India.

kA → Loan → loans / overdraft to PROI

M → Maintenance of foreign currency accounts in India or outside India

I → Immovable property → Purchase / transfer of IP outside India

G → Guarantee in favour of PROI

O → Overdraft / loan from PROI

L → Loan → foreign currency loan

I → Insurance policy from a company incorporated outside India.

DE → Derivative → Sale & purchase of foreign exchange derivative.

Permitted C.A.T to PRT

- Investment in Indian security
- Investment in Capital of firm or sole proprietorship
- Acquisition & transfer of IP in India.
- Guarantee in favour of PRT
- Import & export of currency in India
- Deposit b/w PRT & PRT
- Opening of foreign currency account in India
- Remittance of capital Assets in India.

Person who is Resident but not permanently resident in India can make remittance upto his net salary outside India.

→ Person resident but not permanently resident means a person resident in India for a period of 3 yrs.

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REPATRIATION

Bring into India the realize foreign exchange

↓
Selling to authorised person or Holding upto specified amount or use to discharge the debt in foreign currency

SURRENDER OF FOREIGN EXCHANGE

1) Person other than individual → Remuneration - settlement amt; income on foreign debt; inheritance, gift → within 7 days from receipt

2) other than individual → unused foreign exchange → 60 days from acquisition

3) other than resident individual acquired foreign currency for travel → suspend amt in the form of coin & currency → 90 days from returning to India.

→ unspent amt in
Traveller's cheque → 180 days

4) PR I → unspent amt in
any form → 180 days

Remittance of Assets

(a) REMITTANCE BY INDIVIDUAL NOT BEING NRI/PIO.

→ Remittance outside India of fund deposit with bank, firm, co., provident balance, superannuation benefit, insurance claim, sales of shares, immovable property.

→ AD may allow remittance if:

- Such person retired from India
- Such person is non-resident widow and has inheritance from deceased spouse → upto 1 million USD per year
- Balance in bank account by a foreign student.

Remittance by NRI/PIO

- upto 1 million per financial year is allowed.
- out of the balance held in non-resident ordinary account or from sale of assets in India.
- assets acquired under deed of settlement made by relative.

Remittance by companies:

→ Remittance by Indian company under liquidation or direction by court after submitting following docs:

(a) Auditor's certificate confirming that all liability

have been fully paid.

(b) Auditor's certificate that winding up is in accordance with co. Act.

(c) Auditor's certificate that no legal proceeding is pending.

Acquisition or transfer of immovable property in India:

(A) PROI:

→ PROI can hold, own, transfer immovable property if such property is acquired when he was PRI or inherited from PRI

(B) NRI/OCI

- can purchase IP other than agriculture, plantation & farm house.
- May acquire IP from relative by way of gift from PRI, NRI, OCI other than A/P/F
- can acquire by inheritance from PROI who acquired property under FEMA provision (any property)
- can acquire or transfer IP in India from PR
- NRI/OCI may transfer IP except A/P/F to an NRI by way of gift if they are relative.
- payment through normal banking channel or by debit from authorized account.

Acquisition of IP by long term visa holder

(i) Minority citizen of Bangladesh, Pak, Afghanistan (Hindu, Jain, Sikh, Buddhist, Parsi, Christian) can acquire one residential & one commercial property in India

- (b) Property shall not be located in restricted or prohibited area.
- (c) Submit declaration to revenue authority of such dist. about the source of fund.
- (d) Registration document shall specify nationality of the person.
- (e) Can sale such property only, after acquiring Indian citizenship.

Acquisition of IP by foreign (embassies) diplomats

- (a) can acquire IP other than A, P, F
- (b) Clearance from ministry of external affairs.
- (c) Payment through normal banking channel.

Acquisition of IP by PROZ for coming on permitted activities.

- (a) Branch office except Liaison office establishment, can acquire the IP.
- (b) File declaration to RBI within 90 days from acquisition
- (c) can mortgage with authorised dealer.
- (d) Person of Pak, Bangladesh, China, Iran, Afgan, Hong-Kong, Nepal Bhutan obtain prior approval from RBI.

Authorised Person:

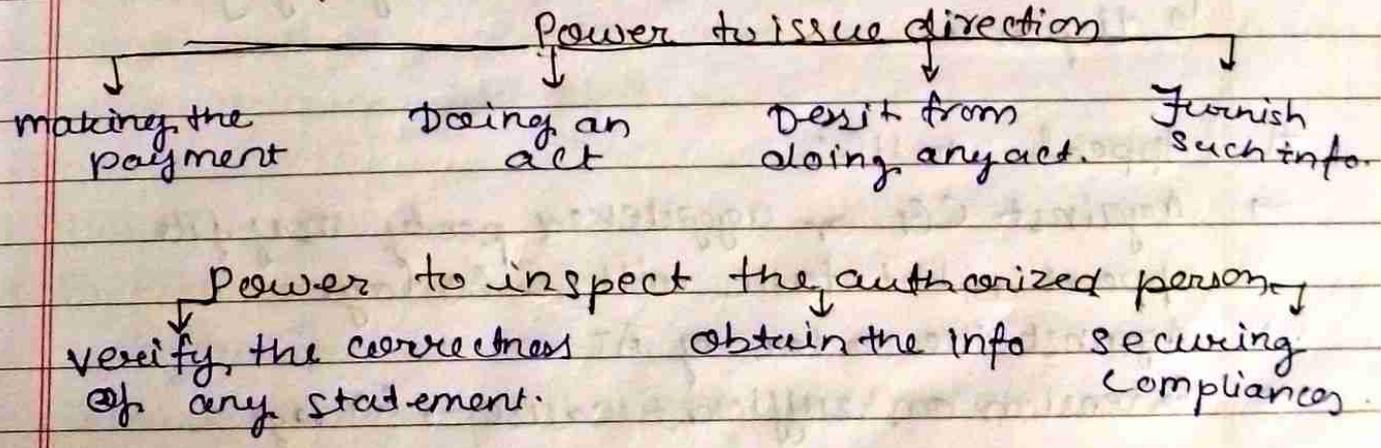
It means: authorized dealer
money changer
off shore banking unit
and other specified person.

- # Application for appointment as an authorised person:
 - App to RBI in prescibe form
 - RBI shall consider the application
 - can grant the authorisation in writing subject to condⁿ laid down by RBI.

- # Revocation of authorization by RBI
 - (a) Appl. failed to comply with condⁿ
 - (b) failed to follow the provision of this act or regulation

- # Duties of authorized person:
 - Comply the RBI director
 - Not to engage in transaction which are not con formity with the condⁿ of RBI or obtain prior approval from RBI
 - Duty to comply with FEMA Act.

Power of RBI



- # Adjudication & Appeal
 - Appointment of AA by CG
 - AA will adjudicate & impose.
 - Before imposing penalty give opportunity to be heard.

- # Appeal to special director:
 - CG by notification in special gazette may appoint SD
 - Special director is appointed to accept, appeal against the order of AA or asst. director or deputy director.
 - Appeal within 45 days.
 - Spcl director may accept the appeal even after expiry of 45 days.

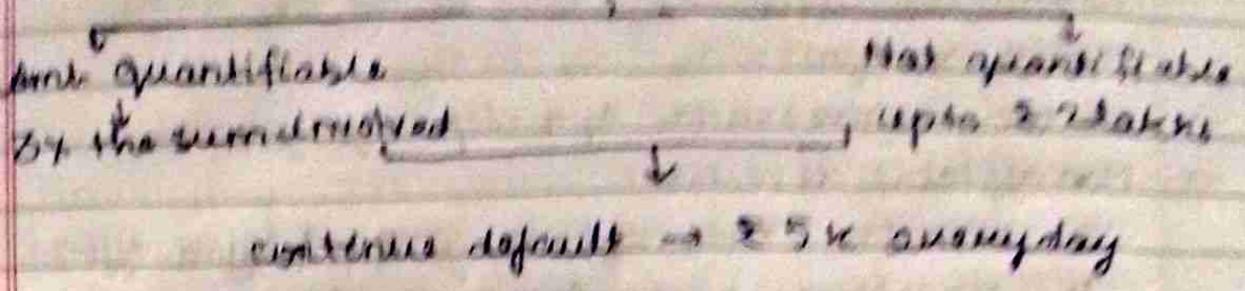
- # Appellate Tribunal
 - Accept appeal against the order of AA or Spcl Director
 - Before filing the appeal deposit penalty amount with the authority however CG may dispense with such deposit.
 - Appeal within 45 days
 - Extension on sufficient cause
 - Dispose of the appeal within 180 days or record its reasons in writing, if failed to dispose.

- # Appeal to HC:
 - Against CG or aggrieved party may file appeal with HC within 60 days.
 - Against the order of AT
 - Extension on sufficient cause → 60 days

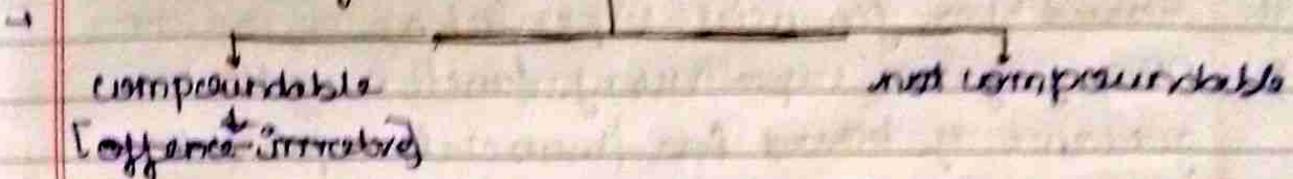
- # Directorate of Enforcement (ED):
 - CG can establish the ED
 - Rank of asst. director
 - Investigate the contravention

Penalty

→ Contravention of FEMA Act, any state regulation



Compounding of offence



- voluntarily admitting the contravention
- Apply to RBI for compounding with fees of ₹ 5000 by way of demand draft in favour of RBI.
- RBI shall examine the appeal & compare compounding order
- may call additional info.
- order within 180 days from such appeal.
- contravention of similar nature cannot be compounded within a period of 3 yrs.

RBI:

→ Preamble of RBI

- To regulate the issuing of bank note
- Secure monetary stability in India
- Operate the currency & credit system
- meet the challenge of increasing complex economy
- maintain price stability.

CENTRAL BOARD OF DIRECTORS:

- RBI's affairs are governed by central board of directors
- Term → 4 yrs
- It inc. a governor & 4 deputy governor.
- Non official directors:
 - 10 director : nominated by CG & 2 govt. officials.
 - 4 director → one from each board.

Board for financial supervision.

- RBI perform supervisory function under the guidance of board for financial supervision.
- Under take consolidate supervision of financial sector, banking sector & other institution.