CS EXECUTIVE

TEXT BOOK

EXECUTIVE PROGRAMME

ECONOMIC, BUSINESS

&

COMMERCIAL LAWS

Module-3

Paper-8

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(ALL INDIA RANKHOLDER IN CS)

EXECUTIVE PROGRAMME

MODULE-2

PAPER-7

ECONOMIC, BUSINESS & COMMERCIAL LAWS (MARKS 100)

Objective:

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

Part II: To provide expert knowledge in Competition Law.

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

SYLLABUS

VOLUME-1

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

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

VOLUME-2

Part II: Competition Law (25 Marks)

11. Competition Act, 2002

Part III: Business & Commercial Laws (35 Marks)

12. Consumer Protection Act, 1986
13. Essential Commodities Act, 1955
14. Legal Metrology Act, 2009
15. Transfer of Property Act, 1882
16. Real Estate (Regulation and Development) Act, 2016
17. Benami Transaction Prohibitions (Act)
18. Prevention of Money Laundering
19. Indian Contracts Act, 1872
20. Sale of Goods Act, 1930
21. Partnership Act, 1932
22. Negotiable Instrument Act, 1881

EXECUTIVE PROGRAMME

ECONOMIC, BUSINESS & COMMERCIAL LAWS

INDEX

S. No.	Chapter name	Page No.
1.	Reserve Bank of India	1.1 to 1.17
2.	Foreign Exchange Management Act, 1999 (FEMA)	2.1 to 2.29
3.	Foreign Contribution (Regulation) Act, 2010	3.1 to 3.17
4.	Foreign Investment in India	4.1 to 4.27
5.	Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) abroad	5.1 to 5.7
6.	Liberalised Remittance Scheme (LRS)	6.1 to 6.6
7.	External Commercial Borrowings (ECB) & Trade Credits	7.1 to 7.14
8.	Foreign Trade Policy (FTP)	8.1 to 8.30
9.	Non-Banking Financial Companies (NBFC)	9.1 to 9.19
10.	Special Economic Zone Act, 2005	10.1 to 10.17

CHAPTER-1: RESERVE BANK OF INDIA

INTRODUCTION

The Preamble to the Reserve Bank of India Act, 1934, under which it was constituted, specifies its objective as —to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage.

A core function of the Reserve Bank in the past years has been the formulation and implementation of monetary policy with the objective of maintaining price stability and ensuring adequate flow of credit to productive sectors of the economy. To these was added, in more recent times, the goal of maintaining financial stability. The objective of maintaining financial stability has spanned its role from external account management to oversight of banks and non-banking financial institutions as also of money, government securities and foreign exchange markets.

The Reserve Bank designs and implements the regulatory policy framework for banking and non-banking financial institutions with the aim of providing people access to the banking system, protecting depositors' interest, and maintaining overall health of the financial system.

ESTABLISHMENT AND INCORPORATION OF RESERVE BANK

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

Sub-section (2) of this section further provides that the Bank shall be a body corporate by the name of RBI, having perpetual succession and a common seal, and shall by the said name sue and be sued.

ORGANISATIONAL STRUCTURE & MANAGEMENT

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

- **Central Board of Directors**

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

  The Governor supervises and directs the affairs and business of RBI. The management team also includes Deputy Governors and Executive Directors.

  - The Central Government nominates 14 Directors on the Central Board, including 1 Director each from the 4 Local Boards.
  - The other 10 Directors represent different sectors of the economy, such as, agriculture, industry, trade, and professions.

- All these appointments are made for a period of 4 years.
- The Government also nominates one Government official as a Director representing the Government, who is usually the Finance Secretary to the Government of India and remains on the Board during the pleasure of the Central Government.

The Governor and Deputy Governors devote their whole time to the affairs of the Bank, and receive such salaries and allowances as may be determined by the Central Board, with the approval of the Central Government [Section 8(2)]

The Deputy Governor and the Director nominated may attend any meeting of the Central Board and take part in its deliberations but shall not be entitled to vote. However, when the Governor is, for any reason, unable to attend any such meeting, a Deputy Governor authorized by him in this behalf in writing may vote for him at that meeting. [Section 8(3)]

The Governor and a Deputy Governor hold the office for such term not exceeding 5 years as the Central Government may fix when appointing them, and they are eligible for re-appointment. A Director nominated holds the office for a period of 4 years and thereafter until his successor is nominated. [Section 8(4)]

No act or proceeding of the Board can be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution, of the board. [Section 8(5)]

- **Local Boards**

  The Reserve Bank Governor and a maximum of 4 Deputy Governors are also ex officio Directors on the Central Board. The Reserve Bank also has 4 Local Boards, constituted by the Central Government under the RBI Act, one each for the Western, Eastern, Northern and Southern areas of the country, which are located in Mumbai, Kolkata, New Delhi and Chennai.

  Each of these Boards has 5 members appointed by the Central Government for a term of 4 years and thereafter until his successor is appointed. They are eligible for re-appointment [Section 9(3)].

  The members of the Local Board shall elect from amongst themselves one person to be the Chairman of the Board. [Section 9(2)].

  These Boards represent territorial and economic interests of their respective areas, and advise the Central Board on matters, such as, issues relating to local cooperative and indigenous banks. They also perform other functions that the Central Board may delegate to them. [Section 9(1)]

- **Offices and Branches**

  The Reserve Bank has a network of offices and branches through which it discharges its responsibilities. The units operating in the four metros — Mumbai, Kolkata, Delhi and Chennai — are known as offices, while the units located at other cities and towns are called branches. Currently, the Reserve Bank has its offices, including branches, at 27 locations in India. The offices and larger branches are headed by a senior officer of the rank of Chief General Manager, designated as Regional Director while smaller branches are headed by a senior officer of the rank of General Manager.

FUNCTIONS OF THE RESERVE BANK

The statutes governing the establishment and mandates of central banks play a crucial role in determining their functions across the world. The RBI has been constituted under RBI Act, 1934. The legal backing for the functions of the RBI is not only confined to the provisions of the RBI Act, but also spread over a number of statutes, such as the Banking Regulation Act, 1949, Foreign Exchange Management Act, 1999, Government Securities Act, 2006, Payment and Settlement Systems Act, 2007, etc.

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

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

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

i. Banking Functions

- To do banking business, such as accepting deposits, without interest, from any person.
- RBI may transact various businesses such as acceptance of deposits without good interest from Central Government and State Governments, purchase, sale and rediscount of Bills of Exchange, short term Loans and Advances to banks, annual Contributions to National Rural Credit Funds, dealing in Derivatives, purchase and sale of Government Securities, purchase and sale of shares of State Bank of India, National Housing Bank, Deposit Insurance and Credit Guarantee Corporation, etc., keeping of deposits with SBI for specific purposes, making and issue of Banknotes, etc.
- To act as a 'Lender of Last Resort';
- To act as banker to Central Government and State Governments.
- RBI shall have an obligation and right respectively to accept monies for account of Central Government and to make payments up to the amount standing to the credit of its account, and to carry out its exchange, remittance and other banking operations, including the management of public debt of the Union.

ii. Issue Functions

Right to issue bank notes is one of the key central banking functions of the RBI. Section 22 of RBI Act confers RBI with sole right to issue bank notes in India.

The issue function of bank notes is performed by the Issue Department, which is separated and kept wholly distinct from Banking Department.

The RBI Act enables the RBI to recommend to Central Government the denomination of bank notes, i.e. 2 rupees, 5 rupees, 10 rupees, 20 rupees, 50 rupees, 100 rupees, 500

rupees, 1,000 rupees, 2,000 rupees, 5,000 rupees and 10,000 rupees or other denominations not exceeding 10,000 rupees.

The design, form and material of bank notes is approved by Central Government on the recommendations of Central Board of the RBI. Every bank note is a legal tender at any place in India, however, on recommendation of the Central Board, the Central Government may declare any series of bank notes of any denomination as not to be a legal tender.

Another important function is exchange of mutilated or torn notes, which under the RBI Act is not a matter of right, but a matter of grace. The bank notes that are being issued by RBI are exempt from payment of stamp duty.

iii. Monetary Policy Function

Chapter III-F of the RBI Act provides a statutory basis for Monetary Policy Framework and the Monetary Policy Committee (MPC). The Central Government, in consultation with the RBI shall determine the inflation target in terms of the Consumer Price Index, once in every 5 years, which needs to be notified in the Official Gazette. Similarly, it is the Central Government that should constitute a Monetary Policy Committee by notification in the Official Gazette.

The Monetary Policy Committee consists of

(a) the Governor of the RBI;
(b) Deputy Governor of the RBI in charge of Monetary Policy;
(c) 1 officer of the RBI to be nominated by the Central Board; and
(d) 3 persons to be appointed by the Central Government.

The Monetary Policy Committee has been entrusted with the statutory duty to determine the Policy Rate required to achieve the inflation target. The decision of the Monetary Policy Committee is binding on RBI and the RBI is required to publish a document explaining the steps to be taken to implement the decisions of the Monetary Policy Committee. The meetings of the MPC are required to be held at least 4 times a year and its decisions to be published after each meeting.

iv. Public Debt Functions

The Parliament of India enacted the Government Securities Act, 2006 ('GS Act') with an objective to consolidate and amend the law relating to Government securities and its management by the Reserve Bank of India. The GS Act applies to Government securities created and issued by the Central Government or a State Government.

The GS Act prescribes the procedure and modalities to be followed by RBI in the management of public debt and also confers various powers on RBI including the power to determine the title to a Government security if there exists any doubt in the opinion of RBI.

Further, Section 18 of the GS Act provides that no order made by RBI under this Act shall be called in question by any Court for the reasons stated therein.

v. Foreign Exchange Management

The powers and responsibilities with respect to external trades and payments, development and maintenance of foreign exchange market in India have been conferred on RBI under the provisions of Foreign Exchange Management Act, 1999 ('FEMA').

Section 10 of the FEMA empowers the RBI to authorize any person to be known as authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

Similarly, FEMA empowers the RBI to revoke an authorization issued to an authorized dealer in public interest, or if the authorized person has failed to comply with the conditions subject to which the authorization was granted or has contravened any of the provisions of the FEMA or any rule, regulation, notification, direction or order issued by the RBI.

vi. Banking Regulation & Supervision

The power to regulate and supervise banks has been provided to RBI under the provisions of Banking Regulation Act, 1949 (BR Act, 1949). Although, the preamble to the BR Act, 1949, states that it is an Act to consolidate and amend the law relating to banking, the powers of RBI to formulate banking policy, regulate banking business, protect the interests of banking companies, supervision of banking companies, etc., are spread across the provisions of BR Act, 1949.

Firstly, Section 5(ca) of the BR Act, 1949, states that banking policy means any policy, which is specified from time to time by the RBI, in the interest of banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources.

Secondly, as a part of RBI's regulatory power, Section 10BB of the BR Act, 1949 empowers RBI to appoint a Chairman or Managing Director of a banking company for the reasons stated therein.

Similarly, as a part of control over management, Section 36-AB of BR Act, 1949, provides for power to appoint additional directors on the boards of banking companies. Not only the powers to appoint managerial persons but also the power to remove them are vested with the RBI under Section 36-AA of the BR Act, 1949. Moreover, the RBI has been empowered, to supersede the board of banking companies.

Similarly, Section 22 of the BR Act, 1949 confers on RBI the power to issue license and also to cancel licenses of banking companies.

Under Section 35-A of BR Act, 1949, RBI has the power to issue directions to banking companies in the public interest or in the interest of banking policy or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of banking company or to secure the proper management of any banking company.

The provisions of the Banking Regulation (Amendment) Act, 2017, provides for dealing with cases relating to stressed assets. Stressed assets are loans where the borrower has defaulted in repayment or where the loan has been restructured, etc.

In terms of Sections 35-AA and 35-AB of the BR Act, 1949, the RBI has been specifically authorized to issue directions to banking companies for resolution of stressed assets. As a part of the supervisory power, the RBI has been empowered to inspect banking companies on its own or at the instance of Central Government under the provisions of the BR Act, 1949.

vii. Regulation and Supervision of NBFCs

The regulation and supervision of non-banking financial companies is one of the critical functions that the RBI has been entrusted with.

Section 45-IA of RBI Act mandates every NBFC to obtain a certificate of registration from the RBI and to maintain net owned fund as may be specified by the RBI in the Official Gazette, before commencing such non-banking financial business.

Further, as part of regulation and supervision of NBFCs, the RBI has been conferred with the statutory powers to regulate or prohibit issue of prospectus or advertisements soliciting deposits of money by NBFCs, power to determine policy and issue directions to nonbanking financial companies, etc.

As a part of the supervisory control over the NBFCs, the RBI has powers to inspect them under Section 45-N of RBI Act, 1934. The RBI shall exercise all these powers in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any NBFC being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of NBFC. This makes it clear that the power of RBI to regulate and supervise banking companies emanates from the provisions of BR Act whereas the powers to regulate and supervise NBFCs has the source from RBI Act.

viii. Regulation & Supervision of Co-operative banks

Regulation and supervision of urban co-operative banks is another area the RBI has been entrusted with. In terms of Article 246 of the Constitution of India, the exercise of legislative powers of the Union and the State are given in the Union List and the State List, i.e. List I and II respectively of the VII Schedule to the Constitution.

The entry relating to Cooperative Societies fall in State List whereas the entry relating to banking falls in the Union List. **These results in the duality of jurisdiction over cooperative banks both by the Reserve Bank of India, in terms of Banking Regulation Act, 1949, and the Registrar of Cooperative Societies, in terms of the respective State Cooperative Societies Act, of the State concerned.** Section 56 of the BR Act, 1949, makes it applicable to co-operative societies involved in the business of banking.

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

ix. Payment and Settlement Functions

The Parliament of India enacted the Payment and Settlement Systems Act, 2007 ('PSS Act, 2007') with an objective to provide for the regulation and supervision of payment systems in India and to designate RBI as the authority for that purpose and for matters connected therewith or incidental thereto.

Under Section 4 of the PSS Act, 2007, no person shall commence or operate a payment system except with an authorization issued by the RBI.

Similarly, under Section 8 of the PSS Act, 2007, RBI has the powers to revoke the authorization granted to any person if it contravenes any of the provisions of PSS Act or does not comply with the regulations or fails to comply with the orders or directions issued by the RBI or operates the payment system contrary to the conditions subject to which the authorization was issued.

x. Financial Inclusion and Development Functions

The mushrooming of unauthorized and unregulated money lenders in the financial system of the country necessitated the RBI to do something more than what has been provided in the Rule books.

India being a country with significant illiteracy, there remains an obligation on the part of the 'State' to educate the people and also to include them into the organised financial system of the country to get the benefits of professional banking system of the country. The amendment to the BR Act, 1949, inserting Section 26-A is a step towards achieving this objective, which makes it amply clear that the statute casts a responsibility on the RBI to focus towards achieving financial literacy in the country.

Not only the BR Act, 1949, even the RBI Act, 1934 , mandates the RBI to maintain expert staff to study various aspects of rural credit and development, which emphasizes the premier role to be played by RBI in promoting financial literacy and financial inclusion among the citizens living even in the remote areas of the country.

xi. Right to Issue Bank Notes

Management of currency is one of the core central banking functions of the Reserve Bank for which it derives the necessary statutory powers from Section 22 of the RBI Act, 1934.

Along with the Government of India, RBI is responsible for the design, production and overall management of the nation's currency, with the goal of ensuring an adequate supply of clean and genuine notes. In consultation with the Government, the Reserve Bank routinely addresses security issues and targets ways to enhance security features to reduce the risk of counterfeiting or forgery of currency notes.

xii. Denominations of Notes

The Indian Currency is called the Indian Rupee (abbreviated as Re. in singular and Rs. in plural), and its sub-denomination the Paisa (plural Paise). At present, notes in India are issued in the denomination of Rs. 5, Rs. 10, Rs. 20, Rs. 50, Rs. 100, Rs. 200, Rs. 500 and Rs. 2,000.

The printing of Rs. 1 and Rs. 2 denominations have been discontinued. However, notes in these denominations issued earlier are still valid and in circulation.

The Reserve Bank is also authorised to issue notes in the denominations of Rs. 5,000 and Rs. 10,000 or any other denomination, but not exceeding Rs. 10,000 that the Central Government may specify. Thus, in terms of Section 24 of RBI Act 1934, notes in denominations higher than ten thousand rupees cannot be issued.

The Central Government may, on the recommendation of the Central Board, direct the non-issue or the discontinuance of issue of bank notes of such denominational values as it may specify in this behalf.

xiii. Form of Bank Notes

The Department of Currency Management makes recommendations on design of bank notes to the Central Government, forecasts the demand for notes, and ensures smooth distribution of notes and coins throughout the country [Section 25].

It arranges to withdraw unfit notes, administers the provisions of the RBI (Note Refund) Rules, 2009 (these rules deal with the payment of value of the soiled or mutilated notes) and reviews/rationalises the work systems and procedures at the issue offices on an ongoing basis.

xiv. Legal tender character of notes

Section 24(1) states that subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in India in payment or on account for the amount expressed therein, and shall be guaranteed by the Central Government.

Sub-section (2) empowers the Central Government, on recommendation of the Central Board, by notification in the Gazette of India to declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination to cease to be legal tender save at such office or agency of the Bank and to such extent as may be specified in the notification.

xv. Currency Distribution

The Government of India on the advice of the Reserve Bank decides on the various denominations of the notes to be printed. The Reserve Bank coordinates with the Government in designing the banknotes, including their security features.

The printed notes received from Printing Press set up by Government and RBI are issued for circulation both through remittances to banks and also at the Reserve Bank counters.

xvi. Coin Distribution

The Indian Coinage Act, 1906 governs the minting of rupee coins, including small coins of the value of less than Re. 1. Coins are legal tender in India for unlimited amounts.

50 paisa coins are legal tender for any sum not exceeding Rs. 10 and smaller coins for any sum not exceeding Re. 1. The Reserve Bank acts as an agent of the Central Government for distribution, issue and handling of the coins and for withdrawing and remitting them back to Government as may be necessary.

xvii. Combating Counterfeiting

The Reserve Bank, in consultation with the Government of India, periodically reviews and upgrades the security features of the bank notes to deter counterfeiting. It also shares information with various law enforcement agencies to address the issue of counterfeiting. It has also issued detailed guidelines to banks and government treasury offices on how to detect and impound counterfeit notes.

xviii. Bank exempt from stamp duty on bank notes

The Bank is not liable to the payment of any stamp duty under the Indian Stamp Act, 1899, in respect of bank notes issued by it {Section 29}.

xix. Powers of Central Government to supersede Central Board

Section 30(1) states that if in the opinion of Central Government the Bank fails to carry out any of the obligations imposed on it by or under the Act, by notification in the Gazette of India, declare the Central Board to be superseded, and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency at the Central Government may determine, and such agency may exercise the powers and do all acts and things which may be exercised or done by the Central Board under the Act.

As per sub-section (2) when action is taken under this section the Central Government shall cause a full report of the circumstances leading to such action and of the action taken to be laid before Parliament at the earliest possible opportunity and in any case within 3 months from the issue of the notification superseding the Board.

xx. Issue of demand bills and notes

Section 31(1) states that no person in India other than the Bank, or, as expressly authorized by the Act the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person:

However, cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.

As per sub-section (2), no person in India other than the Bank or, as expressly authorized by the Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.

The Reserve Bank undertakes to float loans and manage them on behalf of the Governments. Besides, it arranges for investments of surplus cash balances of the Governments as a portfolio manager. The Reserve Bank also acts as adviser to Government, whenever called upon to do so, on monetary and banking related matters.

The banking functions for the governments are carried out by the Public Accounts Departments at the offices /branches of the Reserve Bank, while management of public debt including floatation of new loans is done at Public Debt Office at offices/branches of the Reserve Bank and by the Internal Debt Management Department at the Central Office.

xxi. Management of Public Debt

The Reserve Bank manages the public debt and issues new loans on behalf of the Central and State Governments. It involves issue and retirement of rupee loans, interest payment on the loan and operational matters about debt certificates and their registration.

The union budget decides the annual borrowing needs of the Central Government. Parameters, such as, interest rate, timing and manner of raising of loans are influenced by the state of liquidity and the expectations of the market. The Reserve Bank's debt management policy aims at minimising the cost of borrowing, reducing the roll-over risk, smoothening the maturity structure of debt, and improving depth and liquidity of Government securities markets by developing an active secondary market.

xxii. Reserve Bank as Banker to Banks

The Reserve Bank to fulfill this function, opens current accounts of banks with itself, enabling these banks to maintain cash reserves as well as to carry out inter-bank transactions through these accounts. Inter-bank accounts can also be settled by transfer of money through electronic fund transfer system, such as, the Real Time Gross Settlement System (RTGS).

In addition, the Reserve Bank has also introduced the Centralised Funds Management System (CFMS) to facilitate centralised funds enquiry and transfer of funds across Deposit Accounts Department (DADs). This helps banks in their fund management as they can access information on their balances maintained across different DADs from a single location.

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

The Reserve Bank also acts as the lender of last resort. It can come to the rescue of a bank that is solvent but faces temporary liquidity problems by supplying it with much needed liquidity when no one else is willing to extend credit to that bank. The Reserve Bank extends this facility to protect the interest of the depositors of the bank and to prevent possible failure of a bank, which in turn may also affect other banks and institutions and can have an adverse impact on financial stability and thus on the economy.

xxiii. Financial Regulation and Supervision

The Reserve Bank's regulatory and supervisory domain extends not only to the Indian banking system but also to the development financial institutions (DFIs), non-banking financial companies (NBFCs), primary dealers, credit information companies and select segments of the financial markets.

As the regulator and the supervisor of the banking system, the Reserve Bank has a critical role to play in ensuring the system's safety and soundness on an ongoing basis. The objective of this function is to protect the interest of depositors through an effective prudential regulatory framework for orderly development and conduct of banking operations, and to maintain overall financial stability through various policy measures.

xxiv. Prudential Norms for Banks

In order to strengthen the balance sheets of banks, the Reserve Bank has been prescribing appropriate prudential norms for them in regard to income recognition, asset classification and provisioning, capital adequacy, investments portfolio and capital market exposures, to name a few.

A brief description of these norms is furnished below:

- **Capital Adequacy:** The Reserve Bank has instructed banks to maintain adequate capital on a continuous basis. The adequacy of capital is measured in terms of Capital to Risk-Weighted Assets Ratio (CRAR). Under the recently revised framework, banks are required to maintain adequate capital for credit risk, market risk, operational risk and other risks.
- **Loans and Advances:** In order to maintain the quality of their loans and advances, the Reserve Bank requires banks to classify their loan assets as performing and non-performing assets (NPA), primarily based on the record of recovery from the borrowers.

  NPAs are further categorised into Sub-standard, Doubtful and Loss Assets depending upon age of the NPAs and value of available securities. Banks are also required to make appropriate provisions against each category of NPAs.

- **Investments:** The Reserve Bank requires banks to classify their investment portfolios into three categories for the purpose of valuation:
  - Held to Maturity (HTM),
  - Available for Sale (AFS) and
  - Held for Trading (HFT).

  The securities held under HFT and AFS categories have to be marked-to-market periodically and depreciation, if any, needs appropriate provisions by banks. Securities under HTM category must be carried at acquisition / amortised cost, subject to certain conditions.

xxv. Foreign Exchange Reserves Management

The Reserve Bank, as the custodian of the country's foreign exchange reserves, is vested with the responsibility of managing their investment.

The Reserve Bank's reserves management function has in recent years grown both in terms of importance and sophistication for two main reasons. First, the share of foreign currency assets in the balance sheet of the Reserve Bank has substantially increased. Second, with the increased volatility in exchange and interest rates in the global market, the task of preserving the value of reserves and obtaining a reasonable return on them has become challenging. The basic parameters of the Reserve Bank's policies for foreign exchange reserves management are safety, liquidity and returns.

Within this framework, the Reserve Bank focuses on:

- Maintaining market's confidence in monetary and exchange rate policies.
- Enhancing the Reserve Bank's intervention capacity to stabilise foreign exchange markets.

- Limiting external vulnerability by maintaining foreign currency liquidity to absorb shocks during times of crisis, including national disasters or emergencies.
- Providing confidence to the markets that external obligations can always be met, thus reducing the costs at which foreign exchange resources are available to market participants.
- Adding to the comfort of market participants by demonstrating the backing of domestic currency by external assets.

xxvi. Transactions in foreign exchange

Section 40 of the Act says that the Bank shall sell to or buy from any authorized person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi or Madras or at such of its branches as the Central Government may, by order, determine, foreign exchange at such rates of exchange and on such conditions as the Central Government may from time to time by general or special order determine, having regard so far as rates of exchange are concerned to its obligations to the International Monetary Fund:

xxvii. Market Operations

The Reserve Bank operationalises its monetary policy through its operations in government securities, foreign exchange and money markets.

- **Open Market Operations:** Open Market Operations (OMOs) are market operations conducted by RBI by way of sale/purchase of government securities to/from the market with an objective to adjust the rupee liquidity conditions in the market on a durable basis.

  If there is excess liquidity, RBI resorts to sale of securities and sucks out the rupee liquidity.

  Similarly, when the liquidity conditions are tight, RBI buys securities from the market, thereby releasing liquidity into the market.

  It is one of the quantitative (to regulate or control the total volume of money) monetary policy tools which is employed by the central bank of a country to control the money supply in the economy.

- **Liquidity Adjustment Facility Auctions:** A liquidity adjustment facility (LAF) is a tool used in monetary policy, primarily by the Reserve Bank of India (RBI), that allows banks to borrow money through repurchase agreements (repos) or for banks to make loans to the RBI through reverse repo agreements. This arrangement manages liquidity pressures and assures basic stability in the financial markets.
- **Market Stabilisation Scheme:** Market Stabilisation Scheme or MSS is a tool used by the Reserve Bank of India to suck out excess liquidity from the market through issue of securities like Treasury Bills, Dated Securities etc. on behalf of the government.

  The money raised under MSS is kept in a separate account called MSS Account and not parked in the government account or utilized to fund its expenditures.

xxviii. Payment and Settlement Systems

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

The Payment and Settlement Systems Act, 2007 provides for regulation and supervision of payment systems in India and designates the Reserve Bank as the authority for the purpose.

As per the Act, only payment systems authorised by the Reserve Bank can be operated in the country. The Act also provides for the settlement effected under the rules and procedures of the system provider to be treated as final and irrevocable.

The Reserve Bank has adopted a three-pronged strategy of consolidation, development and integration to establish a modern and robust payment and settlement system which is also efficient and secure. The consolidation revolves around expanding the reach of the existing products by introducing clearing process in new locations.

For settlement of trade in foreign exchange, Government securities and other debt instrument, it has set up the Clearing Corporation of India Limited (CCIL). This plays the role of a central counter party to transactions and guarantees settlement of trade, thus managing the counter party risk.

xxix. Monetary Policy Management

One of the most important functions of central banks is formulation and execution of monetary policy. In the Indian context, the basic functions of the Reserve Bank of India as enunciated in the Preamble to the RBI Act, 1934 are: —

> *"to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage."*

Thus, the Reserve Bank's mandate for monetary policy flows from its monetary stability objective. Essentially, monetary policy deals with the use of various policy instruments for influencing the cost and availability of money in the economy. As macroeconomic conditions change, a central bank may change the choice of instruments in its monetary policy. The overall goal is to promote economic growth and ensure price stability.

MONETARY POLICY

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

Instruments of Monetary Policy

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

- **Repo Rate:** Repo Rate, or repurchase rate, is the key monetary policy rate of interest at which the central bank or the Reserve Bank of India (RBI) lends short term money to banks, essentially to control credit availability, inflation, and the economic growth. Repo Rate in India is the primary tool in the RBI's Monetary and Credit Policy.
- **Reverse Repo Rate:** Reverse repo rate is the rate at which the central bank of a country (Reserve Bank of India in case of India) borrows money from commercial banks within the country. It is a monetary policy instrument which can be used to control the money supply in the country.

  An increase in the reverse repo rate will decrease the money supply and vice-versa, other things remaining constant. An increase in reverse repo rate means that commercial banks will get more incentives to park their funds with the RBI, thereby decreasing the supply of money in the market.
- **Marginal Standing Facility (MSF):** Marginal Standing Facility is a new Liquidity Adjustment Facility (LAF) window created by Reserve Bank of India in its credit policy of May 2011. MSF is the rate at which the banks are able to borrow overnight funds from RBI against the approved government securities.

  The question is – Banks are already able to borrow from RBI via Repo Rate, then why MSF is needed? We note here that this window was created for commercial banks to borrow from RBI in certain emergency conditions when inter-bank liquidity dries up completely and there is a volatility in the overnight interest rates. To curb this volatility, RBI allowed them to pledge G-secs and get more funds from RBI at a rate higher than the repo rate. Thus, overall idea behind the MSF is to contain volatility in the overnight inter-bank rates.
- **Bank Rate:** It is the rate at which the Reserve Bank is ready to buy or rediscount bills of exchange or other commercial papers. The Bank Rate is published under Section 49 of the Reserve Bank of India Act, 1934. This rate has been aligned to the MSF rate and, therefore, changes automatically as and when the MSF rate changes alongside policy repo rate changes.
- **Cash Reserve Ratio (CRR):** Cash Reserve Ratio (CRR) is a specified minimum fraction of the total deposits of customers, which commercial banks have to hold as reserves either in cash or as deposits with the central bank. CRR is set according to the guidelines of the central bank of a country.

  The amount specified as the CRR is held in cash and cash equivalents, is stored in bank vaults or parked with the Reserve Bank of India. The aim here is to ensure that banks do not run out of cash to meet the payment demands of their depositors. CRR is a crucial monetary policy tool and is used for controlling money supply in an economy.

- **Statutory Liquidity Ratio (SLR):** The ratio of liquid assets to net demand and time liabilities (NDTL) is called statutory liquidity ratio (SLR).

  Apart from Cash Reserve Ratio (CRR), banks have to maintain a stipulated proportion of their net demand and time liabilities in the form of liquid assets like cash, gold and unencumbered securities. Treasury bills, dated securities issued under market borrowing programme and market stabilisation schemes (MSS), etc. also form part of the SLR. Banks have to report to the RBI every alternate Friday their SLR maintenance, and pay penalties for failing to maintain SLR as mandated.

Constitution of Monetary Policy Committee

Section 45ZB of the Act states that: -

(1) The Central Government may, by notification in the Official Gazette, constitute a Committee to be called the Monetary Policy Committee of the Bank.

(2) The Monetary Policy Committee shall consist of the following Members: —

  (a) the Governor of the Bank—Chairperson, ex officio;

  (b) Deputy Governor of the Bank, in charge of Monetary Policy—Member, ex officio;

  (c) one officer of the Bank to be nominated by the Central Board—Member, ex officio; and

  (d) three persons to be appointed by the Central Government—Members.

(3) The Monetary Policy Committee shall determine the Policy Rate required to achieve the inflation target.

(4) The decision of the Monetary Policy Committee shall be binding on the Bank.

Meetings of Monetary Policy Committee

Section 45ZI of the Act states that: -

- The Bank shall organise at least 4 meetings of the Monetary Policy Committee in a year.
- The meeting schedule of the Monetary Policy Committee for a year shall be published by the Bank at least one week before the first meeting in that year.
- The meeting schedule may be changed only –
  - by way of a decision taken at a prior meeting of the Monetary Policy Committee; or
  - if, in the opinion of the Governor, an additional meeting is required or a meeting is required to be rescheduled due to administrative exigencies.
- Any change in meeting schedule shall be published by the Bank as soon as practicable.
- The quorum for a meeting of the Monetary Policy Committee shall be 4 Members, at least one of whom shall be the Governor and, in his absence, the Deputy Governor who is the Member of the Monetary Policy Committee.
- The meetings of the Monetary Policy Committee shall be presided over by the Governor, and in his absence by the Deputy Governor who is a Member of the Monetary Policy Committee.
- Each Member of the Monetary Policy Committee shall have one vote.
- All questions which come up before any meeting of the Monetary Policy Committee shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Governor shall have a second or casting vote.
- The Central Government may, if it considers necessary, convey its views in writing to the Monetary Policy Committee from time to time.

- The vote of each Member of the Monetary Policy Committee for a proposed resolution shall be recorded against such Member.
- Each Member of the Monetary Policy Committee shall write a statement specifying the reasons for voting in favour of, or against the proposed resolution.
- The procedure, conduct, code of confidentiality and any other incidental matter for the functioning of the Monetary Policy Committee shall be such as may be specified by the regulations made by the Central Board.
- The proceeding of the Monetary Policy Committee shall be confidential.

Monetary Policy Report

RBI shall, once in every six months, publish a document to be called the Monetary Policy Report, explaining —

(a) the sources of inflation; and

(b) the forecasts of inflation for the period between 6 to 18 months from the date of publication of the document.

PENALTIES

- Whoever in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes of any provisions of this Act, or

  any order, regulation or direction made or given thereunder or in any prospectus or advertisement issued for or in connection with the invitation by any person, of deposits of money from the public

  willfully makes a statement which is false in any material particular knowing it to be false or wilfully omits to make a material statement shall be punishable with imprisonment for a term which may extend to 3 years and shall also be liable to fine.
- If any person fails to produce any book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, it is his duty to produce or furnish or to answer any question put to him in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder,

  he shall be punishable with fine which may extend to Rs. 2,000 in respect of each offence and if he persists in such failure or refusal, with further fine which may extend to Rs. 100 for every day, after the first during which the offence continues.
- If any person discloses any credit information, the disclosure of which is prohibited, he shall be punishable with imprisonment for a term, which may extend to 6 months, or with fine, which may extend to Rs. 1,000, or with both.
- If any auditor fails to comply with any direction given or order made by the Bank, he shall be punishable with fine, which may extend to Rs. 5,000.
- If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act or of any order, regulation or direction made or given or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to Rs. 2,000 and where a contravention or default is a continuing one, with further fine which may extend to Rs. 100 for every day after the first, during which the contravention or default continues.

CHAPTER-2: FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (FEMA)

INTRODUCTION

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

- It extends to the whole of India.
- It shall apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.

SOME IMPORTANT DEFINITIONS

"Appellate Tribunal"	means Appellate Tribunal for Foreign Exchange to hear appeals against the orders of: - the adjudicating authorities and - Special Directors (Appeals) under the Act.
"Authorised person"	means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under Section 10(1) to deal in foreign exchange or foreign securities;
"Capital account transaction"	means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred in section 6(3);
"Currency"	includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, traveler's cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;
"Currency notes"	means and includes cash in the form of coins and bank notes;
"Current account transaction"	means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes — i. payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business, ii. payments due as interest on loans and as net income from investments, iii. remittances for living expenses of parents, spouse and children residing abroad, and

	iv. expenses in connection with foreign travel, education and medical care of parents, spouse and children;
"Export"	with its grammatical variations and cognate expressions, means — i. the taking out of India to a place outside India any goods, ii. provision of services from India to any person outside India.
"Foreign currency"	means any currency other than Indian currency;
"Foreign exchange"	means foreign currency and includes — i. deposits, credits and balances payable in any foreign currency, ii. drafts, traveler's cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, iii. drafts, traveler's cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;
"Foreign security"	means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;
"Import"	with its grammatical variations and cognate expressions, means bringing into India any goods or services;
"Indian currency"	means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one-rupee notes issued under section 28A of the RBI Act, 1934;
"Person resident in India"	means— i. a person residing in India for more than 182 days during the course of the preceding financial year but does not include— A. a person who has gone out of India or who stays outside India, in either case— (a) for or on taking up employment outside India, or (b) for carrying on outside India a business or vocation outside India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

	B. a person who has come to or stays in India, in either case, otherwise than— (a) for or on taking up employment in India, or (b) for carrying on in India a business or vocation in India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period; ii. any person or body corporate registered or incorporated in India, iii. an office, branch or agency in India owned or controlled by a person resident outside India, iv. an office, branch or agency outside India owned or controlled by a person resident in India;
"Person resident outside India"	means a person who is not resident in India;
"Repatriate to India"	means bringing into India the realised foreign exchange and— i. the selling of such foreign exchange to an authorised person in India in exchange for rupees, or ii. the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank, and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly.

SECTION 3: DEALING IN FOREIGN EXCHANGE, ETC.

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

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

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

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

SECTION 4: HOLDING OF FOREIGN EXCHANGE, ETC.

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

SECTION 5: CURRENT ACCOUNT TRANSACTIONS

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

However, Central Government may, in public interest and in consultation with RBI, impose such reasonable restrictions for current account transactions as may be prescribed.

FOREIGN EXCHANGE MANAGEMENT (CURRENT ACCOUNT TRANSACTIONS) RULES, 2000

Definition:

"Drawal" means drawal of foreign exchange from an authorised person and includes:

- opening of Letter of Credit or
- use of International Credit Card or
- International Debit Card or ATM Card or
- any other thing by whatever name called which has the effect of creating foreign exchange liability.

Rule 3: Prohibition on drawal of foreign exchange

Drawal of foreign exchange by any person for the following purpose is prohibited, namely: -

(a) a transaction specified in the Schedule I; or -

Transactions which are prohibited

1. Remittance out of lottery winnings.
2. Remittance of income from racing/riding, etc. or any other hobby.
3. Remittance for purchase of lottery tickets, banned/ prescribed magazines, football pools, sweepstakes, etc.
4. Payments of commission on exports made towards equity investment in JVs/WOSs abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.

6. Payment of commission of exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
7. Payment related to "Call Back Services" of telephones.
8. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

(b) a travel to Nepal and/ or Bhutan; or

(c) a transaction with a person resident in Nepal of Bhutan:

Provided that the prohibition in clause (c) may be exempted by RBI subject to such term and conditions as it may consider necessary to stipulate by special or general order.

Rule 4: Prior approval of Government of India

No person shall draw foreign exchange for a transaction included in the Schedule II without prior approval of the Government of India.

Transactions which require prior approval of the Central Government

1. Cultural Tours.
2. Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US$ 10,000) by a State Government and its Public Sector Undertakings.
3. Remittance of Freight of vessel chartered by a PSU.
4. Payment of import through ocean transport by a Government Department or a PSU on C.I.F. basis.
5. Multi-modal transport operators making remittance to their agents abroad.
6. Remittance of hiring charges of transponders by TV Channels and Internet Service Providers.
7. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping.
8. Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State Level sports bodies, if the amount involved exceeds US$ 1,00,000.
9. Remittance for membership of P&I Club.

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

Rule 5: Prior approval of Reserve Bank

Every drawal of foreign exchange for transactions included in Schedule III shall be governed as provided therein.

Facilities for individuals –
(LRS Scheme)

Facilities for persons other than individual -

1. The following remittances by persons other than individuals shall require prior approval of RBI.
   i. Donations exceeding 1% of their foreign exchange earnings during the previous 3 financial years or US$ 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 US$ 25,000 or 5% of the inward remittance whichever is more.
   iii. Remittances exceeding US$ 10,000,000 per project for any consultancy services in respect of infrastructure projects and US$ 1,000,000 per project, for other consultancy services procured from outside India.
   iv. Remittances exceeding 5% of investment brought into India or US$ 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses."

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

Rule 6: Payment from EEFC Account

(1) Nothing contained in rule 4 or rule 5 shall apply to drawal made out of funds held in Exchange Earners' Foreign Currency (EEFC) account of the remitter.

However, for certain items specified in Schedule II and III, drawal of foreign exchange from the Exchange Earners Foreign Currency (EEFC) account is restricted.

Rule 7: Use of International Credit Card while outside India -

Nothing contained in rule 5 shall apply to the use of International Credit Card for making payment by a person towards meeting expenses while such person is on a visit outside India.

However, the restrictions on the use of the card for prohibited items will continue.

SECTION 6: CAPITAL ACCOUNT TRANSACTIONS

(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify:
   (a) any class or classes of capital account transactions which are permissible;
   (b) the limit up to which foreign exchange shall be admissible for such transactions:
   (c) any conditions which may be placed on such transactions;

However, RBI shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

(2A) The Central Government may, in consultation with the RBI, prescribe:

(a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions; and

(c) any conditions which may be placed on such transactions.

(3) Without prejudice to the generality of the provisions of sub-section (2), RBI may, by regulations prohibit, restrict or regulate the following: —

(a) transfer or issue of any foreign security by a person resident in India;

(b) transfer or issue of any security by a person resident outside India;

(c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;

(d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;

(e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;

(f) deposits between persons resident in India and persons resident outside India;

(g) export, import or holding of currency or currency notes;

(h) transfer of immovable property outside India, other than a lease not exceeding 5 years, by a person resident in India;

(i) acquisition or transfer of immovable property in India, other than a lease not exceeding 5 years, by a person resident outside India;

(j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred—

i. by a person resident in India and owed to a person resident outside India; or

ii. by a person resident outside India.

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) RBI may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

FOREIGN EXCHANGE MANAGEMENT (PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS) REGULATIONS, 2000

Definitions

"Drawal " means drawal of foreign exchange from an authorised person and includes:

- opening of Letter of Credit or
- use of International Credit Card or
- International Debit Card or ATM card or
- any other thing by whatever name called which has the effect of creating foreign exchange liability.

"Transferable Development Rights" means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole;

'Derivative' means a financial contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables.

Regulation 3: Permissible Capital Account Transactions

(1) Capital account transactions of a person may be classified under the following heads:

A. transactions, specified in Schedule I, of a person resident In India;

Classes of Capital Account Transactions of Persons Resident in India

a) **Investment** by a person resident in India in foreign securities.

b) **Foreign currency loans** raised in India and abroad by a person resident in India.

c) **Transfer of immovable property** outside India by a person resident in India.

d) **Guarantees** issued by a person resident in India in favour of a person resident outside India.

e) Export, import and holding of **currency/currency notes.**

f) **Loans and overdrafts (borrowings)** by a person resident in India from a person resident outside India.

g) **Maintenance of foreign currency accounts in** India and outside India by a person resident in India.

h) Taking out of **insurance policy** by a person resident in India from an insurance company outside India.

i) **Loans and overdrafts** by a person resident in India to a person resident outside India.

j) **Remittance outside India of capital assets** of a person resident in India.

k) ~~Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India."~~
Undertake derivative contracts. (Substituted in Feb. 2019)

B. transactions, specified in Schedule II, of a person resident outside India.

Classes of Capital Account Transactions of Persons Resident outside India

(a) **Investment in India** by a person resident outside India, i.e.,
   i. issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
   ii. investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.

(b) **Acquisition and transfer of immovable property** in India by a person resident outside India.

(c) **Guarantee** by a person resident outside India in favour of, or on behalf of, a person resident in India.

(d) **Import and export of currency**/currency notes into/from India by a person resident outside India.

(e) **Deposits** between a person resident in India and a person resident outside India.

(f) **Foreign currency accounts** in India of a person resident outside India.

(g) **Remittance outside India of capital assets** in India of a person resident outside India.

(h) **Undertake derivative contracts.**

(2) Subject to the provisions of the Act or the rules or regulations or direction or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction specified in the Schedules;

Provided that the transaction is within the limit, if any, specified in the regulations relevant to the transaction.

Regulation 4: Prohibition

Save as otherwise provided in the Act, rules or regulations made thereunder,

(a) no person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction,

Provided that-

   i. subject to the provisions of the Act or the rules or regulations or directions or orders made or issued thereunder, a resident individual may, draw from an authorized person foreign exchange not exceeding US$ 250,000 per financial year or such amount as decided by RBI from time to time for a capital account transaction specified in Schedule I.
   ii. Where the drawal of foreign exchange by a resident individual for any capital account transaction specified in Schedule I exceeds US$ 250,000 per financial year, or as decided by RBI from time to time as the case may be, the limit specified

in the regulations relevant to the transaction shall apply with respect to such drawal.

Provided further that no part of the foreign exchange of US$ 250,000, drawn under proviso (a) shall be used for remittance directly or indirectly to countries notified as non-cooperative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by RBI to all concerned.

(b) no person resident outside India shall make investment in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage -

i. in the business of chit fund, or
ii. as Nidhi Company, or
iii. in agricultural or plantation activities or
iv. in real estate business, or construction of farm houses or
v. in trading in Transferable Development Rights (TDRs).

(c) No person resident in India shall undertake any capital account transaction which is not permissible by the Government of India, Ministry of External Affairs, with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea unless there is specific approval from the Central Government to carry on any transaction after an order issued regarding this dated April 21, 2017.

(d) The existing investment transactions, with any person who is, a citizen of or resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise in Democratic People's Republic of Korea, or any existing representative office or other assets possessed in Democratic People's Republic of Korea, by a person resident in India, which is not permissible in terms of Order April 21, 2017 shall be closed/liquidated/disposed/settled within a period of 180 days from the date of issue of this Notification, unless there is specific approval from the Central Government to continue beyond that period.

Regulation 5: Method of payment for investment

The payment for investment shall be made by remittance from abroad through normal banking channels or by debit to an account of the investor maintained with an authorised person in India in accordance with the regulations made by RBI under the Act.

Regulation 6: Declaration to be furnished

Every person selling or drawing foreign exchange to or from an authorised person for a capital account transaction shall furnish to RBI, a declaration in the form and within the time specified in the regulations relevant to the transaction.

SECTION 7: EXPORT OF GOODS AND SERVICES

(1) Every exporter of goods shall:

(a) furnish to RBI or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods 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 in a market outside India;

(b) furnish to RBI such other information as may be required by RBI for the purpose of ensuring the realisation of the export proceeds by such exporter.

(2) The RBI may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as RBI determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

(3) Every exporter of services shall furnish to RBI or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

SECTION 8: REALISATION AND REPATRIATION OF FOREIGN EXCHANGE

Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

SECTION 9: EXEMPTION FROM REALISATION AND REPATRIATION IN CERTAIN CASES

The provisions of sections 4 and 8 shall not apply to the following: —

(a) possession of foreign currency or foreign coins by any person up to such limit as RBI may specify;

(b) foreign currency account held or operated by such person or class of persons and the limit up to which RBI may specify;

(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by RBI;

(d) foreign exchange held by a person resident in India up to such limit as RBI may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom;

(e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as RBI may specify; and

(f) such other receipts in foreign exchange as RBI may specify.

Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015

Definitions

'To possess' or 'to retain' means to possess or to retain in physical form and the words 'possession' or 'retention' shall be construed accordingly.

Regulation 3: Limits for possession and retention of foreign currency or foreign coins

For the purpose of clause (a) and clause (e) of Section 9 of the Act, the Reserve Bank specifies the following limits for possession or retention of foreign currency or foreign coins, namely: -

i. Possession without limit of foreign currency and coins by an authorised person within the scope of his authority;

ii. Possession without limit of foreign coins by any person;

iii. **Retention by a person resident in India of foreign currency notes, bank notes and foreign currency traveler's cheques not exceeding US$ 2000 or its equivalent in aggregate,** provided that such foreign exchange in the form of currency notes, bank notes and traveler's cheques;

   (a) was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or

   (b) was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or

   (c) was acquired by him by way of honorarium or gift while on a visit to any place outside India; or

   (d) represents unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

Regulation 4: Possession of foreign exchange by a person resident In India but not permanently resident therein

A person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and traveler's cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the regulations made under the Act.

Explanation: For the purpose of this clause, 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed 3 years.

SECTION 10: AUTHORISED PERSON

(1) The RBI may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

(2) An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein.

(3) An authorisation granted above may be revoked by RBI at any time if RBI is satisfied that:

(a) it is in public interest so to do; or

(b) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder:

However, no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter.

(4) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as RBI may, from time to time, think fit to give, and, except with the previous permission of RBI, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.

(5) An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to RBI.

(6) Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5):

- does not use it for such purpose or
- does not surrender it to authorised person within the specified period or
- uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder

shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

SECTION 11: RESERVE BANK'S POWERS TO ISSUE DIRECTIONS TO AUTHORISED PERSON

(1) RBI may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder:

- give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.
- direct any authorised person to furnish such information, in such manner, as it deems fit.

(2) Where any authorised person contravenes any direction given by RBI under this Act or fails to file any return as directed by RBI, it may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to Rs. 10,000 and in the case of continuing contravention with an additional penalty which may extend to Rs. 2,000 for every day during which such contravention continues.

DIRECTORATE OF ENFORCEMENT

SECTION 36: DIRECTORATE OF ENFORCEMENT

(1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise

- Director of Enforcement or
- an Additional Director of Enforcement or
- a Special Director of Enforcement or
- a Deputy Director of Enforcement

to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

SECTION 37: POWER OF SEARCH, SEIZURE, ETC.

(1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

(2) The Central Government may also, by notification, authorise any officer or class of officers in the CG, SG or RBI, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

(3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.

SECTION 37A: SPECIAL PROVISIONS RELATING TO ASSETS HELD OUTSIDE INDIA IN CONTRAVENTION OF SECTION 4

(1) Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

(2) The order of seizure along with relevant material shall be placed before the Competent Authority, appointed by the Central Government, who shall be an officer not below the rank of Joint Secretary to the Government of India by the Authorised Officer within a period of 30 days from the date of such seizure.

(3) The Competent Authority shall dispose of the petition within a period of 180 from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person.

(4) The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under sub-section (1):

(5) Any person aggrieved by any order passed by the Competent Authority may prefer an appeal to the Appellate Tribunal.

SECTION 38: EMPOWERING OTHER OFFICERS

(1) The Central Government may authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be stated in the order.

(2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the income-tax authorities under the Income-tax Act, 1961, subject to such conditions and limitations as the Central Government may impose.

MISCELLANEOUS PROVISIONS

SECTION 42: CONTRAVENTION BY COMPANIES

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

(2) Where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation —For the purposes of this section—

i. "company" means any body corporate and includes a firm or other association of individuals; and

ii. "director", in relation to a firm, means a partner in the firm.

SECTION 43: DEATH OR INSOLVENCY IN CERTAIN CASES

Any right, obligation, liability, proceeding or appeal arising in relation to the provisions of section 13 shall not abate by reason of death or insolvency of the person liable under that section and upon such death or insolvency such rights and obligations shall devolve on the legal representative of such person or the official receiver or the official assignee, as the case may be.

SECTION 44: BAR OF LEGAL PROCEEDINGS

No suit, prosecution or other legal proceeding shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any other person exercising any power or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

FOREIGN EXCHANGE MANAGEMENT (REMITTANCE OF ASSETS) REGULATIONS, 2016

Definitions:

'Person of Indian Origin (PIO)' means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

(a) who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955; or

(b) who belonged to a territory that became part of India after the 15th day of August, 1947; or

(c) who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or

(d) who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

For the purpose of this sub-regulation, the expression **'Person of Indian Origin'** includes an **'Overseas Citizen of India cardholder'** within the meaning of Section 7(A) of the Citizenship Act, 1955.

'Remittance of asset' means remittance outside India of 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 there under;

Regulation 3: Prohibition on Remittance outside India of assets held in India

Save as otherwise provided in the Act or rules or regulations made or issued thereunder, no person, whether resident in India or not, shall make remittance of any asset held in India by him or by any other person:

However, RBI may for sufficient reasons, permit any person to make remittance of any asset held in India by him or by any other person.

Regulation 4: Permission for remittance of assets in certain cases

(1) A citizen of foreign state, not being a Person of Indian origin (PIO) or a citizen of Nepal or Bhutan, who

i. has retired from an employment in India, or

ii. has inherited the assets from a person referred to in Section 6(5) of the Act; or

iii. is a widow/ widower resident outside India and has inherited assets of the deceased spouse who was an Indian citizen resident in India, may remit through an authorised dealer an amount, not exceeding US$ 1,000,000 per financial year on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter.

However, for the purpose of arriving at annual ceiling of remittance, the funds representing sale proceeds of shares and immovable property owned or held by the citizen of foreign state on repatriation basis in accordance with the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2016 and Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 made under the Act, shall not be included.

Where the remittance is made in more than one instalment, the remittance of all instalments shall be made through the same authorised dealer.

iv. had come to India for studies/ training and has completed his studies/ training, may remit the balance available in his account, provided such balance represents funds derived out of remittances received from abroad through normal banking channels or rupee proceeds of foreign exchange brought by such person and sold to an authorised dealer or out of stipend/ scholarship received from the Government or any Organisation in India.

(2) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) may remit through an authorised dealer an amount, not exceeding US$ 1,000,000 per financial year,

i. out of the balances held in the Non-Resident (Ordinary) Accounts (NRO accounts)/ sale proceeds of assets/ the assets acquired by him by way of inheritance/ legacy on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter;

ii. Under a deed of settlement made by either of his parents or a relative (relative as defined in Section 2(77) of the Companies Act, 2013) and the settlement taking effect on the death of the settler, on production of the original deed of settlement;

(3) An authorised dealer in India may, also allow remittance out of the assets of Indian companies under liquidation under the provisions of the Companies Act, 2013, subject to the following conditions:

i. Authorised Dealer shall ensure that the remittance is in compliance with the order issued by a court in India/ order issued by the official liquidator or the liquidator in the case of voluntary winding up; and

ii. no remittance shall be allowed unless the applicant submits: -

(a) Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

(b) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 2013.

(c) In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

Regulation 5: Permission to an Indian entity to remit funds in certain cases

An entity in India may remit the amount being its contribution towards the provident fund/ superannuation/ pension fund in respect of the expatriate staff in its employment who are resident in India but not permanently resident therein.

Explanation:

For the purpose of this Regulation, -

(a) **'expatriate staff'** means a person whose provident/ superannuation/ pension fund is maintained outside India by his principal employer outside India;

(b) **'not permanently resident'** means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

Regulation 6: Permission for remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office)

(1) A branch or office established in India by a person resident outside India may, for making remittance of assets on closure or remittance of its winding up proceeds, apply to the Authorised Dealer concerned supported by the following documents:

A. A copy of the Reserve Bank's permission for establishing the branch/ office in India, wherever applicable;

B. Auditor's certificate:

i. indicating the manner in which the remittable amount has been arrived and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets;

ii. confirming that all liabilities in India including arrears of gratuity and other benefits to the employees etc., of the branch/ office have been either fully met or adequately provided for;

iii. confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India; and

iv. confirming that the branch/office has complied with all regulatory requirements stipulated by the Reserve Bank of India from time to time regarding functioning of such offices in India.

C. A confirmation from the applicant that no legal proceedings are pending in any Court in India and there is no legal impediment to the remittance; and

D. A report from the ROC regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the office in India.

(2) On consideration of the application made under sub-regulation (1), the authorized dealer concerned may permit the remittance subject to the directions issued by RBI in this regard, from time to time.

Regulation 7: Reserve Bank's prior permission in certain cases

(1) A person who desires to make a remittance of assets in the following cases, may apply to RBI, namely:

i. Remittance exceeding US$ 1,000,000 per financial year–

(a) on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India; and

(b) by a Non-Resident Indian (NRI) or Person of Indian Origin (PIO), out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.

ii. Remittance to a person resident outside India on the ground that hardship will be caused to such a person if remittance from India is not made;

(2) On consideration of the application made under sub-regulation (1), the Reserve Bank may permit the remittance, subject to such terms and conditions as it deem necessary.

Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015

Definitions:

'foreign exchange due' means the amount which a person has a right to receive or claim in foreign exchange;

'surrender' means the selling of foreign exchange to an authorised person in India in exchange of rupees;

Regulation 3: Duty of persons to realise foreign exchange due

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

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

Regulation 4: Manner of Repatriation

(1) On realisation of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and –

(a) sell it to an authorised person in India in exchange for rupees; or

(b) retain or hold it in account with an authorised dealer in India to the extent specified by RBI; or

(c) use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by RBI.

(2) A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.

Regulation 5: Period for surrender of realised foreign exchange

A person not being an individual resident in India shall sell the realised foreign exchange to an authorised person under Regulation 4(1)(a), within the period specified below: -

(1) foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift, **within 7 days from the date of its receipt;**

(2) in all other cases within a period of 90 days from the date of its receipt.

Regulation 6: Period for surrender in certain cases

(1) Any person not being an individual resident in India who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to an authorised person under Section 10(5) of the Act does not use it for such purpose or for any other purpose for which purchase or acquisition of foreign exchange is permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder, **shall surrender such foreign exchange or the unused portion thereof to an authorised person within a period of 60 days from the date of its acquisition or purchase by him.**

(2) Notwithstanding anything contained in sub-regulation (1), where the foreign exchange acquired or purchased by any person not being an individual resident in India from an authorised person is for the purpose of foreign travel, then, the unspent balance of such foreign exchange shall, save as otherwise provided in the regulations made under the Act, be surrendered to an authorised person -

(a) within 90 days from the date of return of the traveler to India, when the unspent foreign exchange is in the form of currency notes and coins; and

(b) within 180 days from the date of return of the traveler to India, when the unspent foreign exchange is in the form of traveler's cheques.

Regulation 7: Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals

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

Regulation 8: Exemption

Nothing in these regulations shall apply to foreign exchange in the form of currency of Nepal or Bhutan.

Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015

Regulation 3: Restriction on acquisition or transfer of immovable property outside India

Save as otherwise provided in the Act or in these regulations, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank.

Regulation 4: Exemptions

Nothing contained in these regulations shall apply to the property -

(a) held by a person resident in India who is a national of a foreign state;

(b) acquired by a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of RBI.

Regulation 5: Acquisition and Transfer of Immovable Property outside India

(1) A person resident in India may acquire immovable property outside India: -

(a) by way of gift or inheritance from a person:

- referred to in Section 6(4) of the Act i.e. by a person who had acquired such property when he was resident outside India or
- inherited from a person who was resident outside India or referred to in Regulation 4(b);

(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account;

(c) jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;

(2) A person resident in India may acquire immovable property outside India, by way of inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.

(3) A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by RBI from time to time.

Explanation:

For the purposes of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000

Definitions:

'a person of Indian origin' means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who

i. at any time, held Indian passport;

or

ii. who or either of whose father or whose grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955;

'repatriation outside India' means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through normal banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency.

Regulation 3: Acquisition and Transfer of Property in India by an Indian Citizen resident outside India

A person resident outside India who is a citizen of India may -

(a) acquire any immovable property in India other than agricultural/plantation/farm house, and

(b) transfer any immovable property in India to a person resident in India.

(c) transfer any immovable property other than agricultural or plantation property or farm house to a person resident outside India who is a citizen of India or to a person of Indian origin resident outside India.

Regulation 4: Acquisition and Transfer of Property in India by a Person of Indian origin

A person of Indian origin resident outside India may -

(a) acquire any immovable property other than agricultural land/farm house/ plantation property in India by purchase, **from out of**

- **funds received in India by way of inward remittance from any place outside India or**
- **funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by RBI under the Act;**

(b) acquire any immovable property in India other than agricultural land / farm house / plantation property **by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India;**

(c) acquire any immovable property in India **by way of inheritance from a person resident outside India who had acquired such property** in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or from a person resident in India;

(d) transfer any immovable property in India other than agricultural land/farm house/plantation property, by way of sale to a person resident in India;

(e) transfer agricultural land/farm house/ plantation property in India, by way of gift or sale to a person resident in India who is a citizen of India;

(f) transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India who is a citizen of India or to a person of Indian Origin resident outside India.

Regulation 5: Acquisition of Immovable Property for carrying on a permitted activity

A person resident outside India who has established in India a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may -

(a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity;

However,

i. all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and

ii. the person files with RBI a declaration in the form IPI annexed to these regulations, not later than 90 days from the date of such acquisition;

(b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).

Regulation 6: Repatriation of sale proceeds

(a) A person referred to in Section 6(5) of the Act, or his successor shall not, except with the prior permission of RBI, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section;

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

i. the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations;

ii. the sale takes place after 3 years from the date of acquisition of such immovable property or from the date of payment of final instalment of consideration for its acquisition, whichever is later; and;

iii. the amount to be repatriated does not exceed

- the amount 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 (FCNRA) or
- the foreign currency equivalent, as on the date of payment, of the amount paid where such payment was made from the funds held in Non-Resident External account (NRE) for acquisition of the property;

iv. in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

Regulation 7: Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Regulation 8: Prohibition on transfer of immovable property in India

Save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India.

Provided that the Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.

ADJUDICATION AND APPEAL

Appointment of Adjudicating Authority

Section 16 empowers the Central Government to appoint by notification in the Official Gazette as many Adjudicating Authorities as it may think fit for holding enquiries under Section 13. The Central Government is, however under obligation to specify the jurisdiction of the Adjudicating Authority.

The Adjudicating Authority has been empowered to hold any enquiry on a complaint made in writing by an officer authorised by a general or special order by the Central Government.

The Adjudicating Authority has discretion to demand from the persons against whom a complaint is made a bond or guarantee for any such amount as he thinks fit, if he is of the opinion that such persons likely to abscond or evade the payment of penalty, if imposed.

Appeal to Special Director (Appeals)

Section 17 of the Act provides for appointment of one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities. In this context, the Central Government has been empowered to appoint by notification Special Directors (Appeals) specifying their jurisdiction over matters and places.

An appeal to the Special Director (Appeals) may be made against the orders of the Assistant Director or Deputy Director of enforcement, acting as Adjudicating Authority.

The appeal against the order of Adjudicating Authority shall be made in the prescribed form along with requisite fee, within 45 days from the date of the receipt of the order by aggrieved person. The Special Director (Appeals) has however, been empowered to entertain appeal after the expiry of the said period of 45 days.

Establishment of Appellate Tribunal

Section 18 of the Act provides that the Appellate Tribunal constituted under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, shall be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Appeal to Appellate Tribunal

According to Section 19(1) the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in section 17(1), or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

However, any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

However, where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

Section 19 (2) states that every appeal under sub-section (1) shall be filed within a period of **45 days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government** and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

However, the Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.

As per Section 19(3), on receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

Section 19(4) provides that the Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be.

Section 19(5) states that the appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

However, where any appeal could not be disposed of within the said period of 180 days, the Appellate Tribunal shall record its reasons in writing for not disposing off the appeal within the said period.

As per Section 19(6) the Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

Appeal to High Court

According to Section 35 of the Act a right to appeal to High Court lies with the appellant who is aggrieved by the decision of the Tribunal. **Such appeal must be filed within 60 days from the date of communication of the decision or order of the Tribunal. The appeal to the High Court can be made on any question of law arising out of such order.** A relaxation for a maximum period of 60 days for making an appeal may be granted by the High Court, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the specified period.

COMPOUNDING OF CONTRAVENTIONS

Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/regulations/notification/orders/directions/circulars issued there under. **Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.**

RBI is empowered to compound any contraventions as defined under section 13 of FEMA, 1999 except the contravention under section 3(a), for a specified sum after offering an opportunity of personal hearing to the contravener.

It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs. **Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by RBI.**

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

Application for Compounding

- All applications for compounding may be submitted together with the prescribed fee by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the concerned Regional Office and by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at Mumbai for cases submitted to the Compounding Authority, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai.
- Along with the application in the prescribed format, the applicant may also furnish the details relating to FDI, ECB, ODI and Branch Office / Liaison Office, as applicable, a copy of the Memorandum of Association and latest audited balance sheet along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc. in order to complete the compounding process within the time frame.

- In case the application has to be returned where required approvals are not obtained from the authorities concerned or in case of incomplete application for any other reason, the application fees received along with the application will be returned by crediting the same to the applicant's account through NEFT and details of their bank account as furnished along with the application. The application will be treated as incomplete without these details.
- The applicants are also advised to bring to the notice of the compounding authority change, if any, in the address/ contact details of the applicant during the pendency of the compounding application with Reserve Bank.

Pre-requisite for Compounding Process

- In respect of a contravention committed by any person **within a period of 3 years** from the date on which a similar contravention committed by him was compounded under the Compounding Rules, **such contraventions would not be compounded and relevant provisions of the FEMA, 1999 shall apply.**

  Any second or subsequent contravention committed after the expiry of a period of 3 years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

- Contraventions relating to any transaction where proper approvals or permission from the Government or any statutory authority concerned, as the case may be, have not been obtained such contraventions would not be compounded unless the required approvals are obtained from the concerned authorities.
- **Cases of contravention such as those having serious contravention suspected of:**
  - **money laundering,**
  - **terror financing or**
  - **affecting sovereignty and integrity of the nation or**
  - **where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order,**

  shall be referred to the Directorate of Enforcement for further investigation and necessary action under FEMA, 1999 or to the authority instituted for implementation of the Prevention of Money Laundering Act 2002, or to any other agencies, for necessary action as deemed fit.
- In this connection, it is clarified that whenever a contravention is identified by RBI or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide:
  - whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice;
  - whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or
  - whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE).

Scope and Procedure for Compounding

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

Issue of the Compounding Order

- The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application on the basis of the averments made in the application as well as other documents and submissions made in this context by the contravener during the personal hearings.
- The time limit for this purpose would be reckoned from the date of receipt of the completed application for compounding by the Reserve Bank.
- If the applicant opts for appearing for the personal hearing, the Reserve Bank would encourage the applicant to appear directly for it rather than being represented / accompanied by legal experts / consultants, as compounding is only for admitted contraventions.
- The Compounding Order shall specify the provisions of the FEMA, 1999 or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999 in respect of which contravention has taken place along with details of the contravention.
- One copy of the compounding order shall be supplied to the applicant (the contravener) and also to the Adjudicating Authority, where the compounding of any contravention is made after making of a complaint under section 16(3) of the FEMA.
- To ensure more transparency and greater disclosure, it has been decided to host the compounding orders passed on the Reserve Bank's website.

CHAPTER-3: FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

The object of the Foreign Contribution (Regulation) Act, 2010 is to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

Definitions:

- **"association"** means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organisation, by whatever name called;
- **"candidate for election"** means a person who has been duly nominated as a candidate for election to any Legislature;
- **"foreign company"** means any company or association or body of individuals incorporated outside India and includes—
  - i. a foreign company as explained under Companies Act;
  - ii. a company which is a subsidiary of a foreign company;
  - iii. the registered office or principal place of business of a foreign company referred to in sub clause (i) or company referred to in sub-clause (ii);
  - iv. a multi-national corporation.

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

  (a) has a subsidiary or a branch or a place of business in two or more countries or territories; or

  (b) carries on business, or otherwise operates, in two or more countries or territories;
- **"foreign contribution"** means the donation, delivery or transfer made by any foreign source —
  - i. of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;
  - ii. of any currency, whether Indian or foreign;
  - iii. of any security as defined Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in Foreign Exchange Management Act, 1999.

  Explanation 1 — A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

  Explanation 2 — The interest accrued on the foreign contribution deposited in any bank referred to in section 17(1) or any other income derived from the foreign

contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

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

- **"foreign hospitality"** means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment;
- **"foreign source"** includes, —
  i. the Government of any foreign country or territory and any agency of such Government;
  ii. any international agency, **not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;**
  iii. a foreign company;
  iv. a corporation, not being a foreign company, incorporated in a foreign country or territory;
  v. a multi-national corporation;
  vi. a company within the meaning of the Companies Act, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following: —
    A. the Government of a foreign country or territory;
    B. the citizens of a foreign country or territory;
    C. corporations incorporated in a foreign country or territory;
    D. trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
    E. foreign company;
  vii. a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
  viii. a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;
  ix. a society, club or other association of individuals formed or registered outside India;
  x. a citizen of a foreign country;

- **"person"** includes—
  i. an individual;
  ii. Hindu undivided family;
  iii. an association;
  iv. a company registered under section 8 of the Companies Act, 2013;

- **"political party"** means—
  - i. an association or body of individual citizens of India—
    - A. to be registered with the Election Commission of India as a political party under the Representation of the People Act, 1951; or
    - B. which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;
  - ii. a political party as notified by the Election Commission of India;
- **"relative"** has the meaning assigned to it in Companies Act;

Section 3: Prohibition to accept foreign contribution

Ques. Which are the organisations/individuals specifically debarred from receiving foreign contribution?

(1) No foreign contribution shall be accepted by any—

(a) candidate for election;

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

(c) ~~Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government~~;

Public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;

~~Here, the expression "corporation" means a corporation owned or controlled by the Government and includes a Government company as defined in the Companies Act.~~

the expression "corporation" means a corporation owned or controlled by the Government and includes a Government company as defined in section 2(45) of the Companies Act, 2013

(d) member of any Legislature;

(e) political party or office-bearer thereof;

(f) organisation of a political nature as may be specified under Section 5(1) by the Central Government;

(g) association or company engaged in the production or broadcast of audio news or audio-visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in the Information Technology Act, 2000 or any other mode of mass communication;

(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

(2)

(a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

i. any political party or any person referred to in sub-section (1), or both; or

ii. any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency —

(a) to any person other than a person for which it was received, or

(b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.

Section 4: Persons to whom section 3 shall not apply

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 provisions of section 10 —

(a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

(b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or

(c) as an agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or

(d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or

(e) from his relative; or

(f) by way of remittance received, in the ordinary course of business through any official channel, post office, or any authorised person in foreign exchange under the Foreign Exchange Management Act,1999; or

(g) by way of any scholarship, stipend or any payment of like nature:

However, in case any foreign contribution received by any person specified under section 3, for any of the purposes other than those specified under this section, such contribution shall be deemed to have been accepted in contravention of the provisions of section 3.

Section 5: Procedure to notify an organization of a political nature

(1) The Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in Section 3(1)(f):

(2) Before making an order under sub-section (1), the Central Government shall give the organisation in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organisation of political nature under that sub-section:

(3) The organisation to whom a notice has been served under sub-section (2), may, with in a period of 30 days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation as an organisation under sub-section (1):

(4) The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.

(5) The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.

(6) Every order under sub-section (1) shall be made within a period of 120 days from the date of issue of notice under sub-section (2):

However, in case no order is made within the said period of 120 days, the Central Government shall, after recording the reasons therefor, make an order under sub-section (1) within a period of 60 days from the expiry of the said period of 120 days.

Section 6: Restriction on acceptance of foreign hospitality

No member of a Legislature or office- bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality:

However, it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within 1 month from the date of receipt of such hospitality an intimation to the CG as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him.

Section 7: Prohibition to transfer foreign contribution to other persons

No person who—

(a) is registered and granted a certificate or has obtained prior permission under this Act; and

(b) receives any foreign contribution,

shall transfer such foreign contribution to any other person.

Section 8: Restriction to utilize foreign contribution for administrative purpose

(1) Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution —

(a) shall utilise such contribution for the purposes for which the contribution has been received:

However, any foreign contribution or any income arising out of it shall not be used for speculative business:

Further the CG shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;

(b) shall not defray as far as possible such sum, not exceeding 20% ~~50%~~ of such contribution, received in a financial year, to meet administrative expenses:

However, administrative expenses exceeding 20% ~~50%~~ of such contribution may be defrayed with prior approval of the Central Government.

(2) The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred above shall be calculated.

Section 9: Power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases

The Central Government may —

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

(b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;

(c) require any person or class of persons not specified in section 11, to furnish intimation with in such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;

(d) require any person or class of persons, not specified in section 6, to furnish intimation, with in such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received:

However, no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially—

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

Section 10: Power to prohibit payment of currency received in contravention of the Act

Where the Central Government is satisfied, after making such inquiry as it may deem fit, that any person has in his custody or control any article or currency or security, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing with, in any manner whatsoever, such article or currency or security save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the prescribed manner, and there upon the provisions of Unlawful Activities (Prevention) Act, 1967 shall, so far as may be, apply to, or in relation to, such article or currency or security.

Section 11: Registration of certain persons with Central Government

(1) Save as otherwise provided in this Act, no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government:

Ques. Who can receive foreign contribution?

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

Provided that any association registered with the Central Government under section 6 or granted prior permission under that section of the Foreign Contribution (Regulation) Act, 1976, as it stood immediately before the commencement of this Act, shall be deemed to have been registered or granted prior permission, as the case may be, under this Act and such registration shall be valid for a period of 5 years from the date on which this section comes into force.

(2) Every person referred to in sub-section (1) may, if it is not registered with the Central Government under that sub section, accept any foreign contribution only after obtaining the prior permission of the Central Government and such prior permission shall be valid for the specific purpose for which it is obtained and from the specific source:

~~Provided that if the person referred to in sub-sections (1) and (2) has been found guilty of violation of any of the provisions of this Act or the Foreign Contribution (Regulation) Act, 1976, the unutilised or unreceived amount of foreign contribution shall not be utilised or received, as the case may be, without the prior approval of the Central Government.~~

"Provided that the Central Government, on the basis of any information or report, and after holding a summary inquiry, has reason to believe that a person who has been granted prior permission has contravened any of the provisions of this Act, it may, pending any further inquiry, direct that such person shall not utilise the unutilised foreign contribution or receive the remaining portion of foreign contribution which has

not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government:

Provided further that if the person referred to in sub-section (1) or in this sub-section has been found guilty"

(3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify —

i. the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or

ii. the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government; or

iii. the purpose or purposes for which the foreign contribution shall be utilised with the prior permission of the Central Government; or

iv. the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government.

Section 12: Grant of certificate of registration

(1) An application by a person, referred to in section 11 for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

(2) On receipt of an application under sub-section (1), the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.

(3) If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within 90 days from the date of receipt of application, register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed:

However, in case the Central Government does not grant, with in the said period of 90 days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant:

Further a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

(4) The following shall be the conditions for the purposes of sub-section (3): —

(a) the person making an application for registration or grant of prior permission—

i. is not fictitious or benami;

ii. has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious' faith to another;

iii. has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;

iv. has not been found guilty or diversion or mis-utilisation of its funds;

v. is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve it sends;
vi. is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
vii. has not contravened any of the provisions of this Act;
viii. has not been prohibited from accepting foreign contribution;

(b) the person making an application for registration under sub-section (1) has under taken reasonable activity in its chosen filed for the benefit of the society for which the foreign contribution is proposed to be utilised;

(c) the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;

(d) in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;

(e) in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;

(f) the acceptance of foreign contribution by the person referred to in sub- section (1) is not likely to affect prejudicially—
i. the sovereignty and integrity of India; or
ii. the security, strategic, scientific or economic interest of the State; or
iii. the public interest; or
iv. freedom or fairness of election to any Legislature; or
v. friendly relation with any foreign State; or
vi. harmony between religious, racial, social, linguistic, regional groups, castes or communities;

(g) the acceptance of foreign contribution referred to in sub-section (1) —
i. shall not lead to incitement of an offence;
ii. shall not endanger the life or physical safety of any person.

(5) Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefore and furnish a copy thereof to the applicant:

However, CG may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this section in cases where is no obligation to give any information nor documents or records or papers under the Right to Information Act, 2005.

(6) The certificate granted under sub-section (3) shall be valid for a period of 5 years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.

Section 12A: Power of Central Government to require Aadhaar number, etc., as identification document.

Notwithstanding anything contained in this Act, the Central Government may require that any person who seeks prior permission or prior approval under section 11, or makes an application for grant of certificate under section 12, or, as the case may be, for renewal of certificate under section 16, shall provide as identification document, the Aadhaar number of all its office bearers or Directors or other key functionaries, by whatever name called, issued under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, or a copy of the Passport or Overseas Citizen of India Card, in case of a foreigner.

Section 13: Suspension of certificate

(1) Where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of canceling the certificate on any of the grounds mentioned in section 14(1), it is necessary so to do, it may, by order in writing, suspend the certificate ~~for such period not exceeding 180 days as may be specified~~ for a period of 180 days, or such further period, not exceeding 180 days, as may be specified in the order.

(2) Every person whose certificate has been suspended shall—

(a) not receive any foreign contribution during the period of suspension of certificate:

However, CG, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify;

(b) utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.

Section 14: Cancellation of certificate

(1) The Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if —

(a) 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

(b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or

(c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or

(d) the holder of certificate has violated any of the provisions of this Act or rules or order made there under; or

(e) 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.

(2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given are as on able opportunity of being heard.

(3) 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 3 years from the date of cancellation of such certificate.

Section 14A: Surrender of Certificate

On a request being made in this behalf, the Central Government may permit any person to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, it is satisfied that such person has not contravened any of the provisions of this Act, and the management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in section 15(1).

Section 15: Management of foreign contribution of person whose certificate has been cancelled or surrendered

(1) The foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 **or surrendered under Section 14A** shall vest in such authority as may be prescribed.

(2) The authority may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct and such authority may utilise the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity.

(3) The authority shall return the foreign contribution and the assets vested upon it under that sub-section to the person referred to in the said sub- section if such person is subsequently registered under this Act.

Section 16: Renewal of certificate

(1) Every person who has been granted a certificate under section 12 shall have such certificate renewed within 6 months before the expiry of the period of the certificate.

"Provided that the Central Government may, before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in sub-section (4) of section 12.

(2) The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.

(3) The Central Government shall renew the certificate, ordinarily within 90 days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of 5 years:

However, in case the Central Government does not renew the certificate within the said period of 90 days, it shall communicate the reasons there for to the applicant:

ACCOUNTS, INTIMATION, AUDIT AND DISPOSAL OF ASSETS, ETC.

Section 17: Foreign contribution through scheduled bank

~~(1) Every person who has been granted a certificate or given prior permission under section 12 shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate:~~

~~However, such person may open one or more accounts in one or more banks for utilising the foreign contribution received by him:~~

~~Further no funds other than foreign contribution shall be received or deposited in such account or accounts.~~

~~(2) Every bank or authorized person in foreign exchange shall report to such authority as may be specified—~~

~~(a) prescribed amount of foreign remittance;~~

~~(b) the source and manner in which the foreign remittance was received; and~~

~~(c) other particulars, in such form and manner as may be prescribed.~~

(1) Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf:

Provided that such person may also open another "FCRA Account" in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his "FCRA Account" in the specified branch of State Bank of India at New Delhi:

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his "FCRA Account" in the specified branch of the State Bank of India at New Delhi or kept by him in another "FCRA Account" in a scheduled bank of his choice:

Provided also that no funds other than foreign contribution shall be received or deposited in any such account.

(2) The specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified,—

(a) the prescribed amount of foreign remittance;

(b) the source and manner in which the foreign remittance was received; and

(c) other particulars,

in such form and manner as may be prescribed.

Section 18: Intimation

(1) Every person who has been granted a certificate or given prior approval under this Act shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government, and such other authority as may be specified by the Central

Government, as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received, and the purposes for which, and the manner in which such foreign contribution was utilised by him.

(2) Every person receiving foreign contribution shall submit a copy of a statement indicating therein the particulars of foreign contribution received duly certified by officer of the bank or authorised person in foreign exchange and furnish the same to the Central Government along with the intimation under sub-section (1).

Section 19: Maintenance of accounts

Every person who has been granted a certificate or given prior approval under this Act shall maintain, in such form and manner as may be prescribed —

(a) an account of any foreign contribution received by him; and

(b) a record as to the manner in which such contribution has been utilised by him.

Section 20: Audit of accounts

Where any person who has been granted a certificate or given prior permission, fails to furnish any intimation under this Act within the time specified therefore or the intimation so furnished is not in accordance with law or if, after inspection of such intimation, the Central Government has any reasonable cause to believe that any provision of this Act has been, or is being, contravened, the Central Government may, by general or special order, authorize such gazetted officer, holding a Group A post under the Central Government or any other officer or authority or organisation, as it may think fit, to audit any books of account kept or maintained by such person and there upon every such officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of auditing the said books of account:

Section 21: Intimation by candidate for election

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

Section 22: Disposal of assets created out of foreign contribution

Where any person who was permitted to accept foreign contribution under this Act, ceases to exist or has become defunct, all the assets of such person shall be disposed off in accordance with the provisions contained in any law for the time being in force under which the person was registered or incorporated, and in the absence of any such law, the Central Government may, having regard to the nature of assets created out of foreign contribution received under this Act, by notification, specify that all such assets shall be disposed off by such authority, as it may specify, in such manner and procedure as may be prescribed.

Section 23: Inspection of accounts or records

If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been or is being, contravened by—

(a) any political party; or
(b) any person; or
(c) any organisation; or
(d) any association,

It may, by general or special order, authorize such gazette officer, holding a Group A post under the Central Government or such other officer or authority or organisation, as it may think fit (hereinafter referred to as the inspecting officer), to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such inspecting officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record.

Section 24: Seizure of accounts or records

If, after inspection of an account or record referred to in section 23, the inspecting officer has any reasonable cause to believe that any provision of this Act or of any other law relating to foreign exchange has been, or is being, contravened, he may seize such account or record and produce the same before the court, authority or tribunal in which any proceeding is brought for such contravention:

However, the authorized officer shall return such account or record to the person from whom it was seized if no proceeding is brought within 6 months from the date of such seizure for the contravention disclosed by such account or record.

ADJUDICATION

Section 29: Adjudication of confiscation

(1) Any confiscation referred to in section 28 may be adjudged —
  (a) without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and
  (b) subject to such limits as may be prescribed, by such officer, not below the rank of an Assistant Sessions Judge, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) When an adjudication under sub-section (1) is concluded by the Court of Session or Assistant Sessions Judge, as the case may be, the Sessions Judge or Assistant Sessions Judge may make such order as he thinks fit for the disposal by confiscation or delivery of seized article or currency or security, as the case may be, to any person claiming to be entitled to possession thereof or otherwise, or which has been used for the commission of any offence under this Act.

Section 30: Procedure for confiscation

No order of adjudication of confiscation shall be made unless a reasonable opportunity of making a representation against such confiscation has been given to the person from who many article or currency or security has been seized.

Section 31: Appeal

(1) Any person aggrieved by any order made under section 29 may prefer an appeal—

(a) where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or

(b) where the order has been made by any officer specified under section 29(1)(b), to the Court of Session within the local limits of whose jurisdiction such order of adjudication of confiscation was made, within 1 month from the date of communication to such person of the order:

Provided that the appellate court may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of 1 month, allow such appeal to be preferred within a further period of 1 month, but not thereafter.

(2) Any organization referred to in section 3(1)(f),or any person or association referred to in section 6 or section 9, aggrieved by an order made in pursuance of section 5 or by an order of the Central Government refusing to give permission under this Act, or by any order made by the Central Government under section 12(2)(4), or section 14(1), as the case may be, may, within 60 days from the date of such order, prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organisation or association, the principal office of such organization or association is located.

OFFENCES AND PENALTIES

Section 34: Penalty for article or currency or security obtained in contravention of section 10

If any person, on whom any prohibitory order has been served under section 10, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or currency or security, whether Indian or foreign, in contravention of such prohibitory order, he shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both; and the court trying such contravention may also impose on the person convicted an additional fine equivalent to the market value of the article or the amount of the currency or security in respect of which the prohibitory order has been contravened by him or such part there of as the court may deem fit.

Section 35: Punishment for contravention of any provision of the Act

Whoever accepts, or assists any person, political party or organization in accepting, any foreign contribution or any currency or security from a foreign source, in contravention of any provision of this Act or any rule or order made thereunder, shall be punished with imprisonment for a term which may extend to 5 years, or with fine, or with both.

Section 39: Offences by companies

(1) Where an offence under this Act or any rule or order made there under has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

However, nothing contained in this sub-section shall render such person liable to any punishment if he proves that the offence was committed without this knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Where an offence under this Act or any rule or order made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attribute able to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation — For the purposes of this section —

(a) "company" means anybody corporate and includes a firm, society, trade union or other association of individuals; and

(b) "director", in relation to a firm, society, trade union or other association of individuals, means a partner in the firm or a member of the governing body of such society, trade union or other association of individuals.

Section 41: Compounding of certain offences

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) Nothing in sub-section (1) shall apply to an offence committed by an individual or association or its officer or other employee within a period of 3 years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation — For the purposes of this section, any second or subsequent offence committed after the expiry of a period of 3 years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) Every officer or authority referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government.

(4) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

CHAPTER-4: FOREIGN INVESTMENT IN INDIA

INTRODUCTION

The Foreign Exchange Management Act, 1999 (FEMA) empowers the Reserve Bank to frame regulations to prohibit, restrict or regulate transfer or issue of any security by a person resident outside India. These regulations are notified as Foreign Exchange Management (Transfer or Issue of Security by a Person resident Outside India) Regulations, 2017.

A person resident outside India may hold, own, transfer or invest in a security in India if such security was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India. Such investment will be held by such person on a non-repatriable basis.

DEFINITIONS

'Capital Instruments' are equity shares, debentures, preference shares and share warrants issued by an Indian company.

'Convertible Note' is an instrument issued by a startup company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company, within a period not exceeding 5 years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.

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

'E-commerce entity' are the following entities conducting the e-commerce business:

- a company incorporated under the Companies Act, 1956 or the Companies Act, 2013 or
- a foreign company covered under Companies Act, 2013 or
- an office, branch or agency in India owned or controlled by a person resident outside India.

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

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

Foreign investment is not permitted in Inventory based model of e-commerce.

'Foreign Direct Investment' (FDI) is the investment through capital instruments by a person resident outside India:

(a) in an unlisted Indian company; or

(b) in 10 % or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

If an existing investment by a person resident outside India in capital instruments of a listed Indian company falls to a level below 10% of the post issue paid-up equity capital on a fully diluted basis, the investment will continue to be treated as FDI.

Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised.

'Foreign Portfolio Investment' is any investment made by a person resident outside India in capital instruments where such investment is: (a) less than 10% of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company or (b) less than 10% of the paid-up value of each series of capital instruments of a listed Indian company.
'Foreign Portfolio Investor (FPI)' is a person registered in accordance with the provisions of SEBI (Foreign Portfolio Investors) Regulations, 2014.
'Foreign Investment' is any investment made by a person resident outside India on a repatriable basis in capital instruments of an Indian company or to the capital of an LLP. If a declaration is made by persons as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.
'Group company' is two or more enterprises which, directly or indirectly, are in a position to (a) exercise 26%, or more of voting rights in other enterprise; or (b) appoint more than 50% of members of board of directors in the other enterprise.
'Investment' is to subscribe, acquire, hold or transfer any security or unit issued by a person resident in India. Investment will include acquisition, holding or transfer of depository receipts issued outside India, the underlying of which is a security issued by a person resident in India.
'Overseas Citizen of India (OCI)' is an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.
'Resident Indian citizen' is an individual who is a person resident in India and is citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955.
'Real estate business' is dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships. Earning of rent income on lease of the property, not amounting to transfer, will not amount to real estate business. Real estate broking services is excluded from the definition of "real estate business" and 100% foreign investment is allowed in real estate broking services under automatic route.
'Sectoral cap' is the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in capital instruments of a company or the capital of an LLP, as the case may be, and indirect foreign investment, unless provided otherwise. This shall be the composite limit for the investee Indian entity. FCCBs and DRs having underlying of instruments being in the nature of debt shall not be included in the sectoral cap. Any equity held by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned under the sectoral cap.
'Unit' is the beneficial interest of an investor in an investment vehicle.

ELIGIBLE INVESTORS UNDER FDI

***A* non-resident entity** can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited.

- *A citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route.*
- *A citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.*
- **NRIs resident in Nepal and Bhutan** as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.
- ***A* company, trust and partnership firm incorporated outside India** and owned and controlled by NRIs can invest in India with the special dispensation as available to NRIs under the FDI Policy.
- **Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI)** may invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI.
- ***A* SEBI registered Foreign Venture Capital Investor (FVCI)** may contribute up to 100% of the capital of an Indian company engaged in any activity mentioned in Schedule, including startups irrespective of the sector in which it is engaged, under the automatic route.
- ***A* Non- Resident Indian** may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable.

ELIGIBLE INVESTEE ENTITIES

FDI in an Indian Company

Indian companies can issue capital against FDI.

FDI in Partnership Firm/Proprietary Concern

i. ***A* Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India** can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis provided;
   - Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks.

- The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.
- Amount invested shall not be eligible for repatriation outside India.

ii. **Investments with repatriation option:** NRIs/PIO may seek prior permission of RBI for investment in sole proprietorship concerns/partnership firms with repatriation option. The application will be decided in consultation with the Government of India.

iii. **Investment by non-residents other than NRIs/PIO:** A person resident outside India other than NRIs/PIO may make an application and seek prior approval of RBI for making investment in the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

iv. **Restrictions:** An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business or print media.

FDI in Trusts

FDI is not permitted in Trusts other than in Venture Capital Fund (VCF) registered and regulated by SEBI and 'Investment vehicle'.

FDI in Limited Liability Partnerships (LLPs)

FDI in LLPs is permitted subject to the following conditions:

i. FDI is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions.

ii. An Indian company or an LLP having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.

Conversion of an LLP having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions into a company is permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions, into an LLP is permitted under automatic route. FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.

FDI in Investment Vehicle

An entity being "investment vehicle" registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose is permitted to receive foreign investment from a person resident outside India (other than an individual who is citizen of or any other entity which is registered / incorporated in Pakistan or Bangladesh), including a Registered Foreign Portfolio Investor (RFPI) or a non-resident Indian (NRI).

FDI in Startup Companies

Start-ups can issue equity or equity linked instruments or debt instruments to FVCI against receipt of foreign remittance, as per the FEMA Regulation. In addition, start-ups can issue convertible notes to person resident outside India subject to the following conditions:

1. A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered/incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of Rs. 25 lakh or more in a single tranche.

'Startup Company' means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification issued by the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, and as amended from time to time.

2. A startup company engaged in a sector where foreign investment requires Government approval may issue convertible notes to a non-resident only with approval of the Government.
3. A startup company issuing convertible notes to a person resident outside India shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE / FCNR (B) / Escrow account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time.

   However, an escrow account for the above purpose shall be closed immediately after the requirements are completed or within a period of 6 months, whichever is earlier. However, in no case continuance of such escrow account shall be permitted beyond a period of 6 months.
4. NRIs may acquire convertible notes on non-repatriation basis.
5. A person resident outside India may acquire or transfer, by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the pricing guidelines as prescribed by RBI. Prior approval from the Government shall be obtained for such transfers in case the startup company is engaged in a sector which requires Government approval.

PROHIBITED SECTORS/ PERSONS

Investment by a person resident outside India is prohibited in the following sectors:

1. Lottery Business including Government/ Private Lottery, Online Lotteries.
2. Gambling and Betting including Casinos.
3. Chit funds.
4. Nidhi company.
5. Trading in Transferable Development Rights (TDRs).
6. Real Estate Business or Construction of Farm Houses.
7. Manufacturing of Cigars, cheroots and cigarettes, of tobacco or of tobacco substitutes.
8. Activities/ sectors not open to private sector investment viz.,
   - Atomic energy and
   - Railway operations
9. Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities

Important Note:

Any investment by a person who is a citizen of Bangladesh or Pakistan or is an entity incorporated in Bangladesh or Pakistan requires prior Government approval.

A person who is a citizen of Pakistan or an entity incorporated in Pakistan can, only with the prior Government approval, invest in sectors/ activities other than defence, space, atomic energy and sectors/ activities prohibited for foreign investment.

CAPITAL INSTRUMENTS

An Indian company is permitted to receive foreign investment by issuing capital instruments to the investor. The capital instruments are:

- equity shares,
- debentures,
- preference shares and
- share warrants

issued by the Indian company.

(1) **Equity shares:** Equity shares are those issued in accordance with the provisions of the Companies Act, 2013 and will include equity shares that have been partly paid.

(2) **Partly paid shares:** Partly paid shares issued on or after July 8, 2014 will be considered as capital instruments.

- Partly paid shares that have been issued to a person resident outside India should be fully called-up within 12 months of such issue.
- 25% of the total consideration amount (including share premium, if any), has to be received upfront and the balance consideration towards fully-paid equity shares should be received within a period of 12 months from the date of issue of partly-paid shares.
- The time period of 12 months for receipt of the balance consideration need not be insisted upon where the issue size exceeds Rs. 500 crore and the issuer comply with SEBI (Issue of Capital and Disclosure Requirements (ICDR)) Regulations, 2009 regarding monitoring agency.
- In case of an unlisted Indian company, the balance consideration amount can be received after 12 months where the issue size exceeds Rs. 500 crores.
- In case of non-payment of call money, the forfeiture of the amount paid upfront will be in accordance with the provisions of the Companies Act, 2013 and the Income Tax provisions, as applicable.

(3) **Share warrants:** Share warrants issued on or after July 8, 2014 will be considered as capital instruments.

- Share Warrants are those issued by an Indian Company in accordance with the Regulations issued by SEBI in this regard.
- At least 25% of the consideration has to be received upfront and the balance amount within 18 months of issuance of share warrants.
- In case of non-payment of balance consideration, the forfeiture of the amount paid upfront will be in accordance with the provisions of the Companies Act, 2013 and the Income Tax provisions, as applicable

(4) The deferment of payment of consideration amount by the foreign investors or shortfall in receipt of consideration amount as per applicable pricing guidelines will not be treated as subscription to partly paid shares and warrants.

(5) **Debentures:** Debentures are fully, compulsorily and mandatorily convertible debentures.

(6) **Preference shares:** Preference shares are fully, compulsorily and mandatorily convertible preference shares.

CONDITIONS OF FDI IN MAJOR SECTOR

FDI IN E-COMMERCE ACTIVITIES

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

- **E-commerce** means buying and selling of goods and services including digital products over digital & electronic network.
- **E-commerce entity** means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2(v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.
- **Inventory based model of e-commerce** means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.
- **Marketplace based model of e-commerce** means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

Other Conditions of Investment

- 100% FDI under automatic route is permitted in marketplace model of e-commerce.
- **FDI is not permitted in inventory-based model of e-commerce.**
- Digital & electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, mobiles etc.
- Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.
- E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
- E-commerce entity providing a marketplace will not exercise ownership over the inventory i.e. goods purported to be sold. Such an ownership over the inventory will render the business into inventory-based model.
- An e-commerce entity will not permit more than 25% of the sales value on financial year basis affected through its marketplace from one vendor or their group companies.
- **In marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.**
- In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.

- In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller.
- E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field.
- Guidelines on cash and carry wholesale trading of FDI Policy will apply on B2B e-commerce.
- Subject to the conditions of FDI policy on services sector and applicable laws/regulations, security and other conditionalities, sale of services through e-commerce will be under automatic route.

FDI in Single Brand Product Retail Trading

In Single Brand product retail trading, 49% FDI is allowed under Automatic route and beyond 49% under Government route.

1) Foreign Investment in Single Brand product retail trading is aimed at:
   - attracting investments in production and marketing,
   - improving the availability of such goods for the consumer,
   - encouraging increased sourcing of goods from India, and
   - enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.

2) FDI in Single Brand product retail trading would be subject to the following conditions:
   (a) Products to be sold should be of a 'Single Brand' only.
   (b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.
   (c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.
   (d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single-brand product retail trading in India.
   (e) In respect of proposals involving foreign investment beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of foreign investment for the purpose of carrying out single-brand product retail trading.

(f) Subject to the conditions, a single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.

3) Application seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the **Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion**. The applications would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of FDI up to 49%, the list of products/product categories proposed to be sold except food products would be provided to the RBI.

FDI in Multi Brand Retail Trading

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

1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:

i. Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.

ii. Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million.

iii. At least 50% of total FDI brought in the first tranche of US $ 100 million, shall be invested in 'backend infrastructure' within 3 years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. **Expenditure on land cost and rentals, if any, will not be counted for purposes of backend infrastructure.** Subsequent investment in backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.

iv. At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US $ 2 million. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category.

v. Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census or any other cities as per the decision of the respective State Governments, and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.

vi. Government will have the first right to procurement of agricultural products.

vii. The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The list of States/Union Territories which have conveyed their agreement is at (2) below. The establishment of the retail sales outlets will be in compliance of applicable State/Union Territory laws/ regulations, such as the Shops and Establishments Act etc.

viii. Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading.

2) List of States/Union Territories is:

- Andhra Pradesh
- Assam
- Delhi
- Haryana
- Himachal Pradesh
- Jammu & Kashmir
- Karnataka
- Maharashtra
- Manipur
- Rajasthan
- Uttarakhand
- Daman & Diu and Dadra and Nagar Haveli (Union Territories)

FDI IN ASSET RECONSTRUCTION COMPANIES

100 % FDI allowed in 'Asset Reconstruction Company' (ARC). 'Asset Reconstruction Company' (ARC) means a company registered with the RBI under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

Conditions for Investment in ARC:

Persons resident outside India can invest in the capital of ARCs registered with RBI, up to 100% on the automatic route.

Investment limit of a sponsor in the shareholding of an ARC will be governed by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended from time to time. Similarly, investment by institutional / non-institutional investors will also be governed by the said Act, as amended from time to time.

The total shareholding of an individual FII/FPI shall be below 10% of the total paid-up capital.

ENTRY ROUTES AND PERMITTED SECTORS

Entry Routes

Automatic Route is the entry route through which investment by a person resident outside India does not require the prior Reserve Bank approval or Government approval.

Government Route is the entry route through which investment by a person resident outside India requires prior Government approval. Foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

'Government approval' is approval from the erstwhile Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India and/ or the erstwhile Foreign Investment Promotion Board (FIPB) and/ or any of the ministry/ department of the Government of India, as the case may be.

Aggregate Foreign Portfolio Investment up to 49 percent of the paid-up equity capital on a fully diluted basis or the sectoral/ statutory cap, whichever is lower, will not require Government approval or compliance of sectoral conditions as the case may be, if such investment does not result in transfer of ownership and control of the resident Indian company from resident Indian citizens or transfer of ownership or control to persons resident outside India. Other investments by a person resident outside India will be subject to conditions of Government approval and compliance of sectoral conditions.

Sectoral caps

- Sectoral cap for the sectors/ activities is the limit indicated against each sector. The total foreign investment shall not exceed the sectoral/ statutory cap.
- Wherever there is a requirement of minimum capitalization, it will include premium received along with the face value of the capital instrument, only when it is received by the company upon issue of such instruments to a person resident outside India.
- The onus of compliance with the sectoral/ statutory caps on foreign investment and attendant conditions if any, will be on the company receiving foreign investment.
- Wherever the person resident outside India who has made foreign investment specifies a particular auditor/ audit firm having international network for the audit of the Indian investee company, then audit of such investee company should be carried out as joint audit wherein one of the auditors is not part of the same network.

Permitted Investments by persons resident outside India

Unless otherwise specifically stated, any investment made by a person resident outside India shall be subject to the entry routes, sectoral caps or the investment limits, as the case may be, and the attendant conditionalities for making such investment.

A person resident outside India may make investment as stated hereinafter:

- Subscribe/ purchase/ sale of capital instruments of an Indian company is permitted as per the directions.
- Purchase/ sale of capital instruments of a listed Indian company on a recognised stock exchange in India by Foreign Portfolio Investors is permitted as per the directions.

- Purchase/ sale of Capital Instruments of a listed Indian company on a recognised stock exchange in India by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis is permitted as per the directions.
- Purchase/ sale of Capital Instruments of an Indian company or Units or contribution to capital of a LLP or a firm or a proprietary concern by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on a Non-Repatriation basis is permitted as per the directions.
- Purchase/ sale of securities other than capital instruments by a person resident outside India is permitted as per the directions.
- Investment in a Limited Liability Partnership (LLP) is permitted as per the directions.
- Investment by a Foreign Venture Capital Investor (FVCI) is permitted as per the directions.
- Investment in an Investment Vehicle is permitted as per the directions.
- Issue/ transfer of eligible instruments to a foreign depository for the purpose of issuance of depository receipts by eligible person(s) is permitted as per the directions.
- Purchase/ sale of Indian Depository Receipts (IDRs) issued by Companies Resident outside India is permitted as per directions.
- **Acquisition through rights issue or bonus issue:**
    - A person resident outside India having investment in an Indian company is permitted to invest in the capital instruments issued by such company as a rights issue or a bonus issue subject to the following conditions:
        - ✓ The offer made by the Indian company is in compliance with the provisions of the Companies Act, 2013;
        - ✓ The issue does not result in a breach of the sectoral cap applicable to the company;
        - ✓ The shareholding on the basis of which the rights issue or the bonus issue has been made must have been acquired and held as per the provisions of FEMA;
        - ✓ The capital instruments (other than share warrants) acquired by the person resident outside India as bonus or rights issue will be subject to the same conditions including restrictions in regard to repatriability as applicable to the original holding against which rights or bonus issue has been made;
        - ✓ In case of an unlisted Indian company, the rights issued to persons resident outside India should not be at a price less than the price offered to persons resident in India;
        - ✓ The amount of consideration may be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016;
        - ✓ If the original investment has been made on a non-repatriation basis, the amount of consideration may also be paid by debit to the NRO account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

- Renunciation of rights
  - ✓ A person resident in India and a person resident outside India may subscribe for additional shares over and above the shares offered on rights basis by the company and also renounce the shares offered either in full or part thereof in favour of a person named by them.
  - ✓ The capital instruments to be acquired on renunciation of rights shall be subject to the same conditions including restrictions in regard to repatriability as applicable to the original holding against which rights issue has been made.

- **Issue of Employees' Stock Options Scheme (ESOP) and Sweat Equity Shares**

  An Indian company is permitted to issue "employees' stock option" and/ or "sweat equity shares" to its employees/ directors or employees/ directors of its holding company or joint venture or wholly owned overseas subsidiary/ subsidiaries who are resident outside India, subject to the following conditions:

  1. The ESOP is drawn either in terms of regulations issued under the Securities and Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 under the Companies Act 2013;
  2. The "employee's stock option"/ "sweat equity shares" are in compliance with the sectoral cap applicable to the said company;
  3. Issue of "employee's stock option"/ "sweat equity shares" in a company where investment by a person resident outside India is under the approval route requires prior Government approval;
  4. Issue of "employee's stock option"/ "sweat equity shares" to a citizen of Bangladesh/ Pakistan requires prior Government approval.

- **Issue of Convertible Notes by an Indian startup company**
  - A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered/ incorporated in Pakistan or Bangladesh), is permitted to invest in convertible notes issued by an Indian startup company for an amount of Rs. 25 lakh or more in a single tranche.
  - A startup company, engaged in a sector where investment by a person resident outside India requires Government approval, can issue convertible notes to a person resident outside India only with such approval.
  - Issue of equity shares against such convertible notes should be in compliance with the entry route, sectoral caps, pricing guidelines and other attendant conditions for foreign investment.
  - The payment consideration can be received by inward remittance through banking channels or by debit to the NRE/ FCNR (B)/ Escrow account maintained. The escrow account maintained for this purpose should be closed immediately after the requirements are completed or within a period of 6 months, whichever is earlier.
  - A person resident outside India can acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines laid down in this Master Direction.

- **Merger or demerger or amalgamation of Indian companies**
  1. In case a Scheme of merger or amalgamation of 2 or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company has been approved by the National Company Law Tribunal (NCLT)/ Competent Authority, the transferee company or the new company, as the case may be, can issue capital instruments to the existing holders of the transferor company who are resident outside India, subject to the following conditions:
     i. The transfer or issue should comply with entry routes, sectoral caps or investment limits, as the case may be, and the attendant conditionalities of foreign investment.
     ii. In case the foreign investment is likely to breach the Sectoral caps or the attendant conditionalities, the transferor company or the transferee or the new company should obtain necessary Government approval.
     iii. The transferor company or the transferee company or the new company should not be in a sector prohibited for foreign investment.
  2. In case a Scheme of Arrangement for an Indian company has been approved by National Company Law Tribunal (NCLT)/ Competent Authority, the Indian company can issue non-convertible redeemable preference shares or non-convertible redeemable debentures to shareholders who are resident outside India, including depositories that act as trustees for the ADR/ GDR holders, out of its general reserves by way of distribution as bonus.

REMITTANCE AND REPATRIATION

Remittance of sale proceeds:

i. Sale proceeds of shares and securities and their remittance is 'remittance of asset' governed by the Foreign Exchange Management (Remittance of Assets) Regulations, 2000 under FEMA.

ii. AD Category-I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC/tax clearance certificate from the Income Tax Department has been produced.

Remittance on Winding Up/Liquidation of Companies:

AD Category-I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up under the provisions of the Companies Act, as applicable. AD Category-I banks shall allow the remittance provided the applicant submits:

a. No objection or Tax clearance certificate from Income Tax Department for the remittance.

b. Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

c. Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, as applicable.

d. In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceeding spending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

Repatriation of Dividend and Interest:

i. Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be).

ii. Interest on fully, mandatorily & compulsorily convertible debentures is also freely repatriable without any restrictions (net of applicable taxes).

MODES OF PAYMENT ALLOWED FOR RECEIVING FDI IN AN INDIAN COMPANY

An Indian company issuing shares/ convertible debentures to a person resident outside India shall receive the amount of consideration by:

(a) inward remittance through normal banking channels;

(b) debit to NRE/ FCNR (B) account of a person concerned maintained with an AD Category I bank;

(c) debit to non-interest bearing escrow account in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category-I bank on behalf of residents and non-residents towards payment of share purchase consideration;

(d) conversion of royalty/ lump sum/ technical know-how fee due for payment or conversion of ECB;

(e) conversion of pre-incorporation/ pre-operative expenses incurred by a non-resident entity up to a limit of 5% of its capital or USD 500,000 whichever is less;

(f) conversion of import payables/ pre incorporation expenses/ can be treated as consideration for issue of shares with the approval of FIPB;

(g) against any other funds payable to a person resident outside India, the remittance of which does not require the prior approval of the Reserve Bank or the Government of India: and

If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE/ FCNR (B)/ escrow account, the amount shall be refunded.

Further, Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund/ allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.

REPORTING OF FDI

Reporting of Inflow

i. An Indian company receiving investment from outside India for issuing shares/convertible debentures/preference shares under the FDI Scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank not later than 30 days from the date of receipt in the Advance Reporting Form (ARF).

ii. Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares/convertible debentures, through an AD Category-I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor from the overseas bank remitting the amount. The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.

Explanation: An Indian company issuing partly paid equity shares, shall furnish a report not later than 30 days from the date of receipt of each call payment.

Reporting of issue of shares

i. After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP and against Convertible Notes)/fully, mandatorily & compulsorily convertible debentures/fully, mandatorily & compulsorily convertible preference shares, the Indian company has to file Form FC-GPR, not later than 30 days from the date of issue of shares.

ii. Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorized Dealer of the company, who will forward it to the Reserve Bank. The following documents have to be submitted along with the form:

a. A certificate from the Company Secretary of the company certifying that:

A. all the requirements of the Companies Act, as applicable, have been complied with;

B. terms and conditions of the Government of India approval, if any, have been complied with;

C. the company is eligible to issue shares under the regulations; and

D. the company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.

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

b. A certificate from SEBI registered Merchant Banker or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

c. The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.

Note: An Indian company issuing partly paid equity shares shall file a report in form FC-GPR to the extent they become paid up.

d. Annual return on Foreign Liabilities and Assets should be filed on an annual basis by the Indian company, directly with the Reserve Bank. This is an annual return to be submitted by 15th of July every year, pertaining to all investments by way of direct/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years. The details of the investments to be reported would include all foreign investments made into the company which is outstanding as on the balance sheet date. The details of overseas investments in the company both under direct/portfolio investment may be separately indicated.

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

Reporting of transfer of shares

- Reporting of transfer of shares between residents and non-residents and vice- versa is to be done in Form FC-TRS.
- The Form FC-TRS should be submitted to the AD Category-I bank, within 60 days from the date of receipt of the amount of consideration.
- The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.
- However, in cases where the NR investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the investee company would have to file form FC-TRS with the AD Category-I bank. The AD Category-I bank, would forward the same to its link office. The link office would consolidate the Form FC-TRS and submit a monthly report to the Reserve Bank.

Reporting of Non-Cash

Details of issue of shares against conversion of ECB have to be reported to the Regional Office concerned of the RBI, as indicated below:

i. In case of **full conversion** of ECB into equity, the company shall report the conversion in Form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in Form ECB - to the Department of Statistics and Information Management (DSIM), Reserve Bank of India ***within 7 working days from the close of month to which it relates.***

ii. In case of **partial conversion** of ECB, the company shall report the converted portion in Form FC-GPR to the Regional Office concerned as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion." The words "ECB partially converted to equity" shall be indicated on top of the Form ECB-2. In the subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM.

Reporting of FCCB/DR Issues

The domestic custodian shall report the issue/transfer of sponsored/unsponsored depository receipts as per DR Scheme 2014 in 'Form DRR' within 30 days of close of the issue/ program.

PENALTIES

- If a person violates/contravenes any FDI Regulations, by way of breach/non-adherence/non-compliance/contravention of any rule, regulation, notification, press note, press release, circular, direction or order issued in exercise of the powers under FEMA or contravenes any conditions subject to which an authorization is issued by the Government of India/ Reserve Bank of India, **he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to Rs. 2 lakh where the amount is not quantifiable,** and **where such contraventions is a continuing one, further penalty which may extend to Rs. 5,000 for every day after the first day during which the contraventions continue.**
- Where a person committing a contravention of any provisions of this Act or of any rule, direction or order made there under is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Any Adjudicating Authority adjudging any contraventions may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government.

ADJUDICATION AND APPEALS

For the purpose of adjudication of any contravention of FEMA, the Ministry of Finance as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 **appoints officers of the Central Government as the Adjudicating Authorities for holding an enquiry** in the manner prescribed. A reasonable opportunity has to be given to the person alleged to have committed contraventions against whom a complaint has been made for being heard before imposing any penalty.

The Central Government may appoint as per the provisions contained in the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, **an Appellate Authority/ Appellate Tribunal to hear appeals against the orders of the adjudicating authority.**

COMPOUNDING PROCEEDINGS

Under the Foreign Exchange (Compounding Proceedings) Rules 2000, the Central Government may appoint 'Compounding Authority' an officer either from Enforcement Directorate or Reserve Bank of India for any person contravening any provisions of the FEMA.

- The Compounding Authorities are authorized to compound the amount involved in the contravention to the Act made by the person.
- No contravention shall be compounded unless the amount involved in such contravention is quantifiable.

- Any second or subsequent contravention committed after the expiry of a period of 3 years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.
- The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings.
- The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerns as expeditiously as and not later than 180 days from the date of application made to the Compounding Authority.

ESTABLISHMENT OF BRANCH OFFICE (BO)/ LIAISON OFFICE (LO)/ PROJECT OFFICE (PO) IN INDIA

Establishment of branch office/ liaison office / project office or any other place of business in India by foreign entities is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 and amended from time to time.

Branch Office

Branch office in relation to a company, means any establishment described as such by the company.

Permitted activities for a branch office in India of a person resident outside India:

Normally, the branch office should be engaged in the activity in which the parent company is engaged in:

i. Export/import of goods.
ii. Rendering professional or consultancy services.
iii. Carrying out research work in which the parent company is engaged.
iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
v. Representing the parent company in India and acting as buying/ selling agent in India.
vi. Rendering services in Information Technology and development of software in India.
vii. Rendering technical support to the products supplied by parent/group companies.
viii. Representing a foreign airline/shipping company.

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 or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

Permitted activities for a liaison office in India of a person resident outside India:

i. Representing the parent company / group companies in India.

ii. Promoting export / import from / to India.

iii. Promoting technical/ financial collaborations between parent / group companies and companies in India.

iv. Acting as a communication channel between the parent company and Indian companies.

Project Office

Project office means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

Parameters of project office:

A foreign company may open project office/s in India provided it has secured from an Indian company, a contract to execute a project in India, and

i. the project is funded directly by inward remittance from abroad; or

ii. the project is funded by a bilateral or multilateral International Financing Agency; or

iii. the project has been cleared by an appropriate authority; or

iv. a company or entity in India awarding the contract has been granted term loan by a Public Financial Institution or a bank in India for the Project.

The Hon'ble Supreme Court vide its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the **Bar Council of India vs A.K. Balaji & Ors**., has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of LO in India. Hence, no foreign law firm shall be permitted to open any LO in India till further orders/notification in this regard.

However, foreign law firms which have been granted permission prior to the date of interim order for opening LOs in India may be allowed to continue provided such permission is still in force. No fresh permissions/ renewal of permission shall be granted by the Reserve Bank/AD Category-I banks respectively till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.

General criteria

i. Applications from foreign companies (a body corporate incorporated outside India, including a firm or other association of individuals) for establishing BO/ LO/ PO in India shall be considered by the AD Category-I bank as per the guidelines given by Reserve Bank of India (RBI). If the principal business of the entity resident outside India falls under sectors where 100% FDI is allowed and the entity seeks to open a BO/LO/PO, the AD Category-I bank may consider such applications under the delegated powers.

ii. An application from a person resident outside India for opening of a BO/LO/PO in India shall require prior approval of RBI in the following cases:

- The applicant is a citizen of or is registered/incorporated in Pakistan.
- The principal place of business of the applicant falls in the four sectors namely Defence, Telecom, private security and Information and Broadcasting.
- The applicant is a NGO, NPO, Body/Agency/Department of a Foreign Company.

- The applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands.

* In the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. No separate approval is required from RBI for such cases only.

iii. The non-resident entity applying for a BO/LO in India should have a financially sound track record viz:

Branch Office: A profit making track record during the immediately preceding 5 financial years in the home country and net worth of not less than US$ 100,000 or its equivalent.

Net Worth [*total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name called*].

Liaison Office: A profit making track record during the immediately preceding 3 financial years in the home country and net worth of not less than US$ 50,000 or its equivalent.

An applicant that is not financially sound and is a subsidiary of another company may submit a Letter of Comfort (LOC) from its parent/ group company, subject to the condition that the parent/ group company satisfies the prescribed criteria for net worth and profit.

Procedure for Establishment

i. The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC to a designated AD Category - I bank along with the prescribed documents.

Following are the prescribed documents:

(a) Copy of the Certificate of Incorporation / Registration; Memorandum of Association and Articles of Association attested by the Notary Public in the country of registration.

(b) Audited Balance sheet of the applicant company for the last 3/5 years in case of branch office/liaison office respectively.

(c) Bankers' Report from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.

(d) Power of Attorney in favour of signatory of Form FNC in case the Head of the overseas entity is not signing the Form FNC.

ii. However, before issuing the approval letter to the applicant, the AD Category-I bank shall forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, RBI, for allotment of UIN to each BO/LO.

After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India.

iii. The validity period of an LO is generally for 3 years, except in the case of (NBFCs) and those entities engaged in construction and development sectors, for whom the validity period is 2 years only. The validity period of the project office is for the tenure of the project.

iv. An applicant that has received permission for setting up of a BO/LO/PO shall inform the designated AD Category-I bank as to the date on which the BO/LO/PO has been set up. The AD Category-I bank in turn shall inform Reserve Bank accordingly.

v. The approval granted by the AD Category-I bank should include a proviso to the effect that in case the BO/LO/PO for which approval has been granted is not opened within 6 months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of 6 months for setting up the office. Any further extension of time shall require the prior approval of RBI in this regard.

vi. All applications for establishing a BO/LO in India by foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation (DBR), Reserve Bank of India, Central Office and the Insurance Regulatory and Development Authority (IRDA), respectively.

No UIN for such representative offices is required from the Foreign Exchange Department, Reserve Bank of India.

Opening of bank account by BO/LO/PO

i. An LO may approach the designated AD Category-I Bank in India to open an account to receive remittances from its Head Office outside India. It may be noted that an LO shall not maintain more than one bank account at any given time without the prior permission of RBI. The permitted Credits and Debits to the account shall be:

(a) Credits:

1. Funds received from Head Office through normal banking channels for meeting the expenses of the office.
2. Refund of security deposits paid from LO's account or directly by the Head Office through normal banking channels.
3. Refund of taxes, duties etc., received from tax authorities, paid from LO's bank account.
4. Sale proceeds of assets of the LO.

(b) Debits:

Only for meeting the local expenses of the office.

ii. A BO may approach any AD Category-I Bank in India to open an account for its operations in India. **Credits** to the account should represent the funds received from Head Office through normal banking channels for meeting the expenses of the office and any legitimate receivables arising in the process of its business operations. **Debits** to this account shall be for the expenses incurred by the BO and towards remittance of profit/winding up proceeds.

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

iv. AD Category – I banks can open non-interest bearing foreign currency account for POs in India subject to the following:

(a) The PO has been established in India, with the general / specific permission of RBI, having the requisite approval from the concerned Project Sanctioning Authority.

(b) The contract governing the project specifically provides for payment in foreign currency.

(c) Each PO can open two foreign currency accounts, usually one denominated in USD and other in-home currency of the project awardee, provided both are maintained with the same AD Category–I bank.

(d) The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority and remittances from parent/group company abroad or bilateral / multilateral international financing agency.

(e) The responsibility of ensuring that only the approved debits and credits are allowed in the foreign currency account shall rest solely with the AD Category–I bank. The foreign currency accounts have to be closed at the completion of the project.

Annual Activity Certificate by BO/LO/PO

i. The Annual Activity Certificate (AAC) as at the end of March 31 each year along with the required documents needs to be submitted by the following:

In case of a sole BO/ LO/PO, by the BO/LO/PO concerned;

In case of multiple BOs / LOs, a combined AAC in respect of all the offices in India by the nodal office of the BOs / LOs.

The LO/BO needs to submit the AAC to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi whereas the PO needs to submit the AAC only to the designated AD Category -I bank.

ii. The designated AD Category - I bank shall scrutinize the AACs and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given.

In the event of any adverse findings reported by the auditor or noticed by the designated AD Category-I bank, the same should immediately be reported to the General Manager, Reserve Bank of India, along with the copy of the AAC and their comments thereon.

Extension of validity period of the approval of LO and PO

i. Requests for extension of time for LOs may be submitted before the expiry of the validity of the approval, to the AD Category-I bank concerned under whose jurisdiction the LO/nodal office is located. The designated AD Category - I bank may extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval / extension granted if the applicant has complied with the following conditions and the application is otherwise in order:

   (a) The LO should have submitted the Annual Activity Certificates for the previous years and

   (b) The account of the LO maintained with the designated AD Category – I bank is being operated in accordance with the terms and conditions stipulated in the approval letter. Such extension has to be granted, as expeditiously as possible as and in any case not later than one month from the receipt of the request under intimation to the General Manager, RBI quoting the reference number of the original approval letter and the UIN. Reserve Bank shall update the information on its website immediately.

ii. Further, entities engaged in construction and development sectors and NBFCs are permitted to open a liaison office for two years only. No further extension would be considered for liaison offices of entities which are NBFCs and those engaged in construction and development sectors (excluding infrastructure development companies). **Upon expiry of the validity period, the offices shall have to either close down or be converted into a JV / WOS in conformity with the extant Foreign Direct Investment policy**.

Registration with police authorities

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to register with the state police authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs for necessary action and record.

Application for additional offices and activities

i. Requests for establishing additional BOs / LOs may be submitted to the AD Category-I bank in a fresh FNC form. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.

   (a) If the number of offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s and it shall require prior approval of RBI.

   (b) The applicant may identify one of its offices in India as the Nodal Office, which will coordinate the activities of all of its offices in India.

   (c) Whenever the existing BO/LO is shifting to another city in India, prior approval from the AD Category-I bank is required. However, no permission is required if the LO/BO is shifted to another place in the same city subject to the condition that the new address is intimated to the designated AD Category-I bank. Changes

in the postal address may be intimated to the RBI by the AD Category-I bank at the earliest.

ii. Requests for undertaking activities in addition to what has been permitted initially by Reserve Bank of India/ AD Category-I bank may be submitted by the applicant to the Reserve Bank through the designated AD Category -I bank justifying the need.

Remittance of profit/surplus

BOs are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the AD category-I bank:

1. A certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year; and
2. A Chartered Accountant's certificate.

AD Category-I bank can permit remittances by POs pending winding up/ completion of the project provided they are satisfied with the bonafides of the transaction, subject to the following:

1. Submits an Auditors/ Chartered Accountants' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax etc;
2. An undertaking from the PO that the remittance will not, in any way, affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad

Closure of BO/LO/PO

i. Requests for closure of the BO / LO/ PO and allowing the remittance of winding up proceeds of BO / LO/ PO may be submitted to the designated AD Category - I bank by the BO/ LO/ PO or their nodal office, as the case may be. The application for winding up may be submitted along with the following documents:

   a. Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the BO/ LO/ PO.
   b. Auditor's certificate:
      - indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant and indicating the manner of disposal of assets;
      - confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for; and
      - confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.
   c. Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the BO / LO/ PO and there is no legal impediment to the remittance.
   d. A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the BO /LO in India, wherever applicable.

e. The designated AD Category - I banks has to ensure that the BO / LO/ PO had filed their respective AACs.
f. Any other document/s, specified by Reserve Bank of India/AD Category-I bank while granting approval.

ii. Designated AD Category-I bank may allow remittance of winding up proceeds in respect of offices of banks and insurance companies, after obtaining copies of permission of closure from the sectoral regulators along with the documents mentioned above.

Transfer of assets of BO/LO/PO

Proposals for transfer of assets may be considered by the AD Category-I bank only from BOs/LOs/POs who are adhering to the operational guidelines such as submission of AACs (up to the current financial year) at regular annual intervals with copies endorsed to DGIT (International Taxation); have obtained PAN from IT Authorities and have got registered with ROC under the Companies Act 2013, if necessary. Also,

i. Transfer of assets by way of sale to the JV/WoS be allowed by AD Category-I bank only when the non-resident entity intends to close their BO/LO/PO operations in India.
ii. A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or written down value (WDV) and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.
iii. The assets should have been acquired by the BO/LO/PO from inward remittances and no intangible assets such as goodwill, pre-operative expenses should be included. No revenue expenses such as lease hold improvements incurred by the BO/LO can be capitalised and transferred to JV/WOS.
iv. AD Category-I bank must ensure payment of all applicable taxes while permitting transfer of assets.
v. Credits to the bank accounts of BO/LO/PO on account of such transfer of assets will be treated as permissible credits.
vi. Donation by BO/LO/PO of old furniture, vehicles, computers and other office items etc. to NGOs or other not-for-profit organisations may be permitted by the AD category-I banks after satisfying itself about the bonafide of the transaction.

CHAPTER-5: DIRECT INVESTMENT BY RESIDENTS IN JOINT VENTURE (JV) / WHOLLY OWNED SUBSIDIARY (WOS) ABROAD

Direct investments by residents in Joint Venture (JV) and Wholly Owned Subsidiary (WOS) abroad are being allowed, in terms of Section 6(3)(a) of the Foreign Exchange Management Act, 1999.

PURPOSE OF ODI

Overseas investments (or financial commitment) in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognised as important avenues for promoting global business by Indian entrepreneurs.

- Joint Ventures are perceived as a medium of economic and business co-operation between India and other countries.
- Transfer of technology and skill, sharing of results of R&D, access to wider global market, promotion of brand image, generation of employment and utilisation of raw materials available in India and in the host country are other significant benefits arising out of such overseas investments (or financial commitment).
- They are also important drivers of foreign trade through increased exports of plant and machinery and goods and services from India and also a source of foreign exchange earnings by way of dividend earnings, royalty, technical know-how fee and other entitlements on such investments (or financial commitment).

Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 regulate acquisition and transfer of a foreign security by a person resident in India i.e., investment (or financial commitment) by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a person resident in India in shares and securities issued outside India.

Overseas Investment (or financial commitment) can be made under two routes viz.

(i) Automatic Route and
(ii) Approval Route

DEFINITIONS

- **"Financial Commitment"** means the amount of direct investment by way of contribution to equity, loan and 100% of the amount of guarantees and 50% of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary;
- **"Joint Venture (JV)"** means a foreign entity formed, registered or incorporated in **accordance** with the laws and regulations of the host country in which the Indian Party makes a direct investment;
- **"Wholly Owned Subsidiary (WOS)"** means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian Party;

GENERAL PERMISSION

General permission has been granted to persons residents in India for purchase / acquisition of securities in the following manner:

(a) out of the funds held in RFC account;
(b) as bonus shares on existing holding of foreign currency shares; and
(c) when not permanently resident in India, out of their foreign currency resources outside India.

General permission is also available to sell the shares so purchased or acquired.

DIRECT INVESTMENT (OR FINANCIAL COMMITMENT) OUTSIDE INDIA

Automatic Route

An Indian Party has been permitted to make investment / undertake financial commitment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by RBI from time to time.

With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet).

For the purpose of making investment / undertaking financial commitment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), the Indian Party should approach an AD Category - I bank with an application in Form ODI (Master Document on Reporting) and prescribed enclosures / documents for effecting such remittances.

"Indian Party" means a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, or a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008, making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank. When more than one such company, body or entity makes investment in the foreign JV / WOS, such combination will also form an "Indian Party".

FINANCIAL COMMITMENT

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

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

e. 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian Party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian Party.

f. 50% of the amount of performance guarantee issued by the Indian Party provided that if the outflow on account of invocation of performance guarantee results in the breach of the limit of the financial commitment in force, prior permission of RBI is to be obtained before executing remittance beyond the limit prescribed for the financial commitment.

METHOD OF FUNDING (PERMISSIBLE SOURCES FOR FUNDING OVERSEAS DIRECT INVESTMENT)

1) Investment (or financial commitment) in an overseas JV / WOS may be funded out of one or more of the following sources:
   i. drawal of foreign exchange from an AD bank in India;
   ii. capitalisation of exports;
   iii. swap of shares;
   iv. proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
   v. in exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares;
   vi. balances held in EEFC account of the Indian Party and
   vii. proceeds of foreign currency funds raised through ADR / GDR issues.
2) General permission has been granted to persons resident in India for purchase/ acquisition of securities in the following manner:
   i. out of funds held in RFC account;
   ii. as bonus shares on existing holding of foreign currency shares; and
   iii. when not permanently resident in India, out of their foreign currency resources outside India.

Investments (or financial commitment) in Financial Services Sector

An Indian Party seeking to make investment (or financial commitment) in an entity outside India, which is engaged in the financial sector, should fulfill the following additional conditions:

i. be registered with the regulatory authority in India for conducting the financial sector activities;
ii. has earned net profit during the preceding three financial years from the financial services activities;
iii. has obtained approval from the regulatory authorities concerned both in India and abroad for venturing into such financial sector activity; and
iv. has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

OVERSEAS INVESTMENTS BY PROPRIETORSHIP CONCERNS AND REGISTERED TRUST/ SOCIETY

1) The following terms and conditions are required to be complied with for considering the proposal of overseas direct investment (or financial commitment), by a proprietorship concern / unregistered partnership firm in India, by the Reserve Bank under the approval route:
   (a) The proprietorship concern / unregistered partnership firm in India is classified as 'Status Holder' as per the Foreign Trade Policy issued by the Ministry of Commerce and Industry, Govt. of India from time to time;
   (b) The proprietorship concern / unregistered partnership firm in India has a proven track record, i.e., the export outstanding does not exceed 10% of the average export realisation of the preceding three years and a consistently high export performance;
   (c) The Authorised Dealer bank is satisfied that the proprietorship concern / unregistered partnership firm in India is KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated;
   (d) The proprietorship concern / unregistered partnership firm in India has not come under the adverse notice of any Government agency like the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc. and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India; and
   (e) The amount of proposed investment (or financial commitment) outside India does not exceed 10 per cent of the average of last three years' export realisation or 200 per cent of the net owned funds of the proprietorship concern/ unregistered partnership firm in India, whichever is lower.
2) Registered Trusts and Societies engaged in manufacturing/ educational/ hospital sector are allowed to make investment (or financial commitment) in the same sector(s) in a JV/WOS outside India, with the prior approval of the Reserve Bank.

Eligibility Criteria:

(a) Trust

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

(b) Society

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

In addition to the registration, the AD Category – I bank should ensure that the special license / permission has been obtained by the applicant in case the activities require special license / permission either from the Ministry of Home Affairs, Government of India or from the relevant local authority, as the case may be.

3) An application in form ODI may be made to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building, 5th Floor, Fort, Mumbai 400 001, through the AD Category - I bank. AD Category - I banks may forward the application to the Reserve Bank, after ensuring the above terms and conditions along with their comments and recommendations, for consideration.

INVESTMENT BY MUTUAL FUNDS

Indian Mutual Funds registered with SEBI are permitted to invest within an overall cap of USD 7 billion in:

i. ADRs / GDRs of the Indian and foreign companies;
ii. equity of overseas companies listed on recognized stock exchanges overseas
iii. initial and follow on public offerings for listing at recognized stock exchanges overseas;
iv. foreign debt securities in the countries with fully convertible currencies, short- term as well as long-term debt instruments with rating not below investment grade by accredited/registered credit agencies;
v. money market instruments rated not below investment grade; repos in the form of investment, where the counter party is rated not below investment grade.
vi. government securities where the countries are rated not below investment grade;
vii. derivatives traded on recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;
viii. short-term deposits with banks overseas where the issuer is rated not below investment grade; and
ix. units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators.

OBLIGATIONS OF INDIAN PARTY (IP) AND RESIDENT INDIVIDUAL (RI)

1) An IP/ RI which has made direct investment abroad is under obligation to,

   i. receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months;

   ii. repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit: and

   iii. submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before December 31, an Annual Performance Report (APR) in Part II of Form ODI in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time.

Acquisition/Sale of Foreign Securities by Resident Individual in India

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

i. As a gift from a person resident outside India;
ii. By way of ESOPs issued by a company incorporated outside India under Cashless Employees Stock Option Scheme which does not involve any remittance from India;
iii. By way of ESOPs issued to an employee or a director of Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or of an Indian company irrespective of the percentage of the direct or indirect equity stake in the Indian company;
iv. As inheritance from a person whether resident in or outside India;
v. By purchase of foreign securities out of funds held in the Resident Foreign Currency Account maintained in accordance with the Foreign Exchange Management (Foreign Currency Account) Regulations, 2000; and
vi. By way of bonus/rights shares on the foreign securities already held by them.

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

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

Accordingly, resident individuals are permitted to remit funds under general permission for acquiring qualification shares for holding the post of a Director in the overseas company to the extent prescribed as per the law of the host country where the company is located and the limit of remittance for acquiring such qualification shares shall be within the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.

CHAPTER-6: LIBERALISED REMITTANCE SCHEME (LRS)

The captioned Scheme was introduced on February 4, 2004 as a liberalization measure to facilitate resident individuals to remit funds abroad for permitted current or capital account transactions or combination of both.

RBI issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/constituents with a view to implementing the regulations framed.

Ques. What is the Liberalised Remittance Scheme (LRS) of USD 2,50,000?

Ques. Are there any restrictions on the frequency of the remittance?

Liberalised Remittance Scheme (LRS) of USD 2,50,000 for resident individuals

(1) Under the LRS, Ads may freely allow remittances by resident individuals up to USD 2,50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both. The Scheme is not available to corporates, partnership firms, HUF, Trusts, etc.

(2) The Scheme is available to all resident individuals including minors. In case of remitter being a minor, the Form A2 must be countersigned by the minor's natural guardian.

Ques. Can remittances under the LRS facility be consolidated in respect of family members?

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

However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/ investment/property. Further, a resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.

(4) All other transactions which are otherwise not permissible under FEMA and those in the nature of remittance for margins or margin calls to overseas exchanges/ overseas counterparty are not allowed under the Scheme.

(5) 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-

- acquisition and holding shares of both listed and unlisted overseas company or debt instruments;
- acquisition of qualification shares of an overseas company for holding the post of Director;
- acquisition of shares of a foreign company towards professional services rendered or in lieu of Director's remuneration;
- investment in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes;

iv. setting up WOSs and JVs outside India for bonafide business subject to the terms & conditions;

Ques. What are the purposes under FEM (CAT) Amendment Rules, 2015, under which a resident individual can avail of foreign exchange facility?

(6) The limit of USD 2,50,000 per Financial Year (FY) under the Scheme also includes/subsumes remittances for current account transactions (viz. private visit; gift/donation; going abroad on employment; emigration; maintenance of close relatives abroad; business trip; medical treatment abroad; studies abroad) available to resident individuals under **Para 1 of Schedule III to Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015**. Release of foreign exchange exceeding USD 2,50,000 requires prior permission from the RBI.

(a) Private visits

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

Further, all tour related expenses including cost of rail/road/water transportation; cost of Euro Rail; passes/tickets, etc. outside India; and overseas hotel/lodging expenses shall be subsumed under the LRS limit. The tour operator can collect this amount either in Indian rupees or in foreign currency from the resident traveler.

(b) Gift/donation

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

(c) Going abroad on employment

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

(d) Emigration

A person wanting to emigrate can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 250,000. Remittance of any amount of foreign exchange outside India in excess of this limit may be allowed only towards meeting incidental expenses in the country of immigration and not for earning points or credits to become eligible for immigration by way of overseas investments in government bonds; land; commercial enterprise; etc.

(e) Maintenance of close relatives abroad

A resident individual can remit up-to USD 2,50,000 per FY towards maintenance of close relatives ['relative' as defined in Section 2(77) of the Companies Act, 2013] abroad.

(f) Business trip

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

However, if an employee is being deputed by an entity for any of the above and the expenses are borne by the latter, such expenses shall be treated as residual current account transactions outside LRS and may be permitted by the AD without any limit, subject to verifying the bonafide of the transaction.

(g) Medical treatment abroad

Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 or its equivalent per FY without insisting on any estimate from a hospital/doctor. For amount exceeding the above limit, Authorised Dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital/ doctor abroad. A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India.

In addition to the above, an amount up to USD 250,000 per financial year is allowed to a person for accompanying as attendant to a patient going abroad for medical treatment/check-up.

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

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

(7) Remittances under the Scheme can be used for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.

(8) The Scheme can be used for outward remittance in the form of a DD either in the resident individual's own name or in the name of beneficiary with whom he intends putting through the permissible transactions at the time of private visit abroad, against self-declaration of the remitter in the format prescribed.

(9) Individuals can also open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the Scheme without prior approval of RBI. The foreign currency accounts may be used for putting through all transactions connected with or arising from remittances eligible under this Scheme.

(10) Banks should not extend any kind of credit facilities to resident individuals to facilitate capital account remittances under the Scheme.

(11) The Scheme is not available for remittances for any purpose specifically prohibited under Schedule I or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transaction) Rules, 2000.

(12) The Scheme is not available for capital account remittances to countries identified by Financial Action Task Force (FATF) as non-co-operative countries and territories or as notified by RBI. Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks is also not permitted.

(13) Documentation by the remitter

The individual will have to designate a branch of an AD through which all the remittances under the Scheme will be made. The resident individual seeking to make the remittance should furnish Form A2 for purchase of foreign exchange under LRS.

(14) It is mandatory for the resident individual to provide his/her Permanent Account Number (PAN) to make remittance under the Scheme.

(15) Investor, who has remitted funds under LRS can retain, reinvest the income earned on the investments. At present, the resident individual is not required to repatriate the funds or income generated out of investments made under the Scheme. However, a resident individual who has made ODI in the equity shares; compulsorily convertible preference shares of a JV/WoS outside India, within the LRS limit, shall have to comply with the terms and conditions prescribed by the overseas investment guidelines.

IMPORTANT QUESTIONS

Ques. 1: What are the prohibited items under the Scheme?

Ans.

The remittance facility under the Scheme is not available for the following:

i. Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
ii. Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty.
iii. Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.
iv. Remittance for trading in foreign exchange abroad.
v. Capital account remittances, directly or indirectly, to countries identified by the Financial Action Task Force (FATF) as "noncooperative countries and territories", from time to time.
vi. Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

Ques. 2: Clarification on remittance by sole proprietor under LRS.

Ans.

In a sole proprietorship business, there is no legal distinction between the individual / owner and as such the owner of the business can remit USD up to the permissible limit under LRS. If a sole proprietorship firm intends to remit the money under LRS by debiting its current account then the eligibility of the proprietor in his individual capacity has to be reckoned. Hence, if an individual in his own capacity remits USD 250,000 in a financial year under LRS, he cannot remit another USD 250,000 in the capacity of owner of the sole proprietorship business as there is no legal distinction.

CHAPTER-7: EXTERNAL COMMERCIAL BORROWINGS (ECB) & TRADE CREDITS

Transactions on account of External Commercial Borrowings (ECB) and Trade Credit (TC) are governed by Section 6(3)(c) of the Foreign Exchange Management Act, 1999 (FEMA).

FATF compliant country:

A country that is a member of the Financial Action Task Force (FATF) or a member of a FATF-Style Regional Body; and should not be a country identified in the public statement of the FATF as:

i. a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism **deficiencies** to which counter measures apply; or

ii. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

Further, IOSCO Compliant Country means a country whose securities market regulator is a signatory to the International Organisation of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding or a signatory to bilateral Memorandum of Understanding with the SEBI for information sharing arrangements.

Foreign Currency Convertible Bonds (FCCBs):

A foreign currency convertible bond (FCCB) is a type of convertible bond issued in a currency different than the issuer's domestic currency. In other words, the money being raised by the issuing company is in the form of foreign currency. A convertible bond is a mix between a debt and equity instrument. It acts like a bond by making regular coupon and principal payments, but these bonds also give the bondholder the option to convert the bond into stock.

A bond is a debt instrument that provides income to investors in the form of regularly scheduled interest payments called coupons. At the maturity date of the bond, the investors are repaid the full-face value of the bond. Some corporate entities issue a type of bond known as convertible bonds.

A bondholder with a convertible bond has the option of converting the bond into a specified number of shares of the issuing company. Convertible bonds have a conversion rate at which the bonds will be converted to equity. However, if the stock price stays below the conversion price, the bond will not be converted. Thus, convertible bonds allow bondholders to participate in the appreciation of the issuer's underlying shares. There are various types of convertible bonds, one of which is the foreign currency convertible bond.

Foreign Currency Exchangeable Bonds (FCEBs):

- A bond expressed in foreign currency.
- The principal and the interest of which is payable in foreign currency.
- The issuer of the bond is an Indian company.
- The bonds are subscribed by a person resident outside India.

- The bonds are exchangeable into equity shares of another company which is also called the offered company.

It may be noted that issuing company is to be the part of promoter group of offered company and the offered company is to be listed and be eligible to receive foreign investment.

An FCEB involves three parties: The issuer company, offered company (OC) and an investor.

Under this option, an issuer company may issue FCEBs in foreign currency, and these FCEBs are convertible into shares of another company (offered company) that forms part of the same promoter group as the issuer company. For example, company ABC Ltd. issues FCEBs, then these FCEBs will be convertible into shares of company XYZ Ltd. that are held by company ABC Ltd. and where companies' ABC Ltd. and XYZ Ltd. form part of the same promoter group.

Thus, FCEBs are exchangeable into shares of offered company. They have an inherent advantage that it does not result in dilution of shareholding at the offered company level.

In other words, we can say that FCEBs are exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. Issuance of FCEBs shall also conform to other applicable regulations.

Foreign Equity Holder:

It means:

(a) direct foreign equity holder with minimum 25% direct equity holding in the borrowing entity,

(b) indirect equity holder with minimum indirect equity holding of 51%, or

(c) group company with common overseas parent.

PART I – EXTERNAL COMMERCIAL BORROWINGS FRAMEWORK

ECB Framework:

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

Sr. No.	Parameters	FCY denominated ECB	INR denominated ECB
1.	Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
2.	Forms of ECB	- Loans including bank loans; - Floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); - Trade credits beyond 3 years; - FCCBs; - FCEBs and - Financial Lease.	- Loans including bank loans; - Floating/ fixed rate notes/ bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); - Trade credits beyond 3 years; and - Financial Lease.
3.	Eligible borrowers	• All entities eligible to receive FDI. • Following entities are also eligible to raise ECB: - Port Trusts; - Units in SEZ; - SIDBI; and - EXIM Bank of India.	• All entities eligible to raise FCY ECB; and • Registered entities engaged in micro-finance activities, viz., - registered Not for Profit companies, - registered societies/ trusts/ cooperatives and - Non- Government Organisations.
4.	Recognised Lenders	The lender should be resident of FATF or IOSCO *(International Organization of Securities Commissions)* compliant country, including on transfer of ECB. However, a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs). Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas.	

<table>
<tr><td></td><td></td><td>However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.</td></tr>
<tr><td>5.</td><td>Minimum Average Maturity Period (MAMP)</td><td>MAMP for ECB will be 3 years. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:
<table>
<tr><th>S. No.</th><th>Category</th><th>MAMP</th></tr>
<tr><td>(a)</td><td>ECB raised by manufacturing companies up to US$ 50 million or its equivalent per financial year.</td><td>1 year</td></tr>
<tr><td>(b)</td><td>ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans.</td><td>5 years</td></tr>
<tr><td>(c)</td><td>ECB raised for:
i. working capital purposes or general corporate purposes
ii. on-lending by NBFCs for working capital purposes or general corporate purposes</td><td>10 years</td></tr>
<tr><td>(d)</td><td>ECB raised for:
i. repayment of Rupee loans availed domestically for capital expenditure
ii. on-lending by NBFCs for the same purpose</td><td>7 years</td></tr>
<tr><td>(e)</td><td>ECB raised for:
i. repayment of Rupee loans availed domestically for purposes other than capital expenditure
ii. on-lending by NBFCs for the same purpose</td><td>10 years</td></tr>
</table>
for the categories mentioned at (b) to (e) –
i. ECB cannot be raised from foreign branches / subsidiaries of Indian banks
ii. the prescribed MAMP will have to be strictly complied with under all circumstances.</td></tr>
<tr><td>6.</td><td>End-uses (Negative list)</td><td>The negative list, for which the ECB proceeds cannot be utilised, would include the following:
a) Real estate activities.
b) Investment in capital market.
c) Equity investment.</td></tr>
</table>

		d) Working capital purposes, except in case of ECB mentioned at 5(b) and 5(c) above. e) General corporate purposes, except in case of ECB mentioned at 5(b) and 5(c) above. f) Repayment of Rupee loans, except in case of ECB mentioned at 5(d) and 5(e) above. g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at 5(c), 5(d) and 5(e) above.

All-In-Cost Ceiling per Annum

All-in-cost ceiling per annum is the Benchmark rate plus 450 bps spread.

It may be noted that All-in-Cost includes rate of interest, other fees, expenses, charges, guarantee fees, ECA charges, whether paid in foreign currency or INR but will not include commitment fees and withholding tax payable in INR. In the case of fixed rate loans, the swap cost plus spread should not be more than the floating rate plus the applicable spread. Additionally, for FCCBs, the issue related expenses should not exceed 4 per cent of the issue size and in case of private placement, these expenses should not exceed 2 per cent of the issue size, etc. Under Trade Credit (TC) Framework, all-in-cost shall include rate of interest, other fees, expenses, charges, guarantee fees whether paid inforeign currency or INR. Withholding tax payable in INR shall not be a part of all-in-cost. Various components of all-in-cost have to be paid by the borrower without taking recourse to the drawdown of ECB/TC, i.e., ECB/TC proceeds cannot be used for payment of interest/charges.

Further, Benchmark rate in case of Foreign Currency ECB refers to 6-months LIBOR rate of different currencies or any other 6-month interbank interest rate applicable to the currency of borrowing, for eg., EURIBOR. Benchmark rate in case of Rupee denominated ECB/TC will be prevailing yield of the Government of India securities of corresponding maturity.

Other Costs

Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in cost ceiling.

End-uses (Negative list)

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- Real estate activities.
- Investment in capital market.
- Equity investment.
- Working capital purposes, except ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and except ECB raised for:
  i. working capital purposes or general corporate purposes
  ii. on-lending by Non-Banking Financial Companies (NBFCs) for working capital purposes or general corporate purposes.

- General corporate purposes, except in case of ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and except ECB raised for
    i. working capital purposes or general corporate purposes
    ii. on-lending by NBFCs for working capital purposes or general corporate purposes.
- Repayment of Rupee loans, except in case of ECB raised for
    i. repayment of Rupee loans availed domestically for capital expenditure
    ii. on-lending by NBFCs for the same purpose

  and except ECB raised for

    i. repayment of Rupee loans availed domestically for purposes other than capital expenditure
    ii. on-lending by NBFCs for the same purpose.
- On-lending to entities for the above activities, except in case of ECB raised by NBFCs for
    i. working capital purposes or general corporate purposes
    ii. on-lending by NBFCs for working capital purposes or general corporate purposes

  and

    i. repayment of Rupee loans availed domestically for capital expenditure
    ii. on lending by NBFCs for the same purpose

  and except ECB raised for

    i. repayment of Rupee loans availed domestically for purposes other than capital expenditure
    ii. on-lending by NBFCs for the same purpose.

Exchange rate

Change of currency of Foreign Currency ECB into Indian Rupee ECB can be at the exchange rate prevailing on the date of the agreement for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender.

For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.

Hedging Provision

The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Infrastructure space companies shall have a Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of the ECB and report the position to RBI through Form ECB 2.

The following operational aspects with respect to hedging should be ensured:

- **Coverage:** The ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower).
- **Tenor and rollover:** A minimum tenor of one year for the financial hedge would be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB.
- **Natural Hedge:** Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/ cash flow within the same accounting year. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as a natural hedge.

Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back-to-back basis.

Change of Currency of Borrowing

Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to Indian Rupee is freely permitted.

Change of currency from Indian Rupee to any freely convertible foreign currency is not permitted.

It may be noted that the ECB framework is not applicable in respect of investments in Non-Convertible Debentures in India made by Registered Foreign Portfolio Investors. Lending and borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

Limit and Leverage

All eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route.

Further, in case of Foreign Currency denominated ECB raised from direct foreign equity holder, ECB liability equity ratio for ECB raised under the automatic route cannot exceed 7:1.

However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent.

Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

Issuance of Guarantee, etc. by Indian banks and Financial Institutions

Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted.

Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or Non-Banking Financial Companies) shall not invest in Foreign Currency Convertible Bonds/ Foreign Currency Exchangeable Bonds in any manner whatsoever.

Parking of ECB proceeds

ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

Parking of ECB proceeds abroad: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets:

(a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's;
(b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above; and
(c) deposits with foreign branches/subsidiaries of Indian banks abroad.

Procedure of raising ECB

All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework.

For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form-ECB) for examination through their AD Category-I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals.

Entities desirous to raise ECB under the automatic route may approach an AD Category-I bank with their proposal along with duly filled in Form ECB.

Reporting Requirements

Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

- **Loan Registration Number (LRN):** Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to Reserve Bank of India. Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.
- **Changes in terms and conditions of ECB:** Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the DSIM *(Department of Statistics and Information Management)* through revised Form-ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form-ECB the changes should be specifically mentioned in the communication.

- **Monthly Reporting of actual transactions:** The borrowers are required to report actual ECB transactions through Form ECB-2 Return through the AD Category-I bank on monthly basis so as to reach DSIM within 7 working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in Form ECB-2 Return.
- **Late Submission Fee (LSF) for delay in reporting:** Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB-2 returns, by payment of late submission fees as detailed in the following matrix:

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1.	Form ECB-2	Up to 30 calendar days from due date of submission	Rs. 5,000
2.	Form ECB-2/Form ECB	Up to 3 years from due date of submission/date of drawdown	Rs. 50,000 per year
3.	Form ECB-2/Form ECB	Beyond 3 years from due date of submission/date of drawdown	Rs. 100,000 per year

Conversion of ECB into equity

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

i. The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.

ii. The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;

iii. Applicable pricing guidelines for shares are complied with;

iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:

   a. For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB-2 Return will be with suitable remarks, viz., "ECB partially converted to equity".

   b. For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB-2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB-2 Return is not required.

   c. For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB-2 Return will also be in phases.

v. If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;

vi. Consent of other lenders, if any, to the same borrower is available or at least information regarding conversions is exchanged with other lenders of the borrower.

vii. For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

Security for raising ECB

AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:

- the underlying ECB is in compliance with the extant ECB guidelines,
- there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/ issuance of corporate and/or personal guarantee, and
- No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Once the aforesaid stipulations are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB, subject to the following:

Creation of Charge on Immovable Assets: The arrangement shall be subject to the following:

- Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017, as amended from time to time.
- The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.
- In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

Creation of Charge on Movable Assets: In the event of enforcement/ invocation of the charge, the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic.

Creation of Charge over Financial Securities: The arrangements may be permitted subject to the following:

- Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.
- In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/ promoter can also be in the form of escrow arrangement or debt service reserve account.
- In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/ FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time.

Issue of Corporate or Personal Guarantee: The arrangement shall be subject to the following:

- A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.
- Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.
- Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.
- ECB can be credit enhanced / guaranteed / insured by overseas party/ parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

ECB facility for Oil Marketing Companies

Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging and individual limit requirements. The overall ceiling for such ECB shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECB.

All other provisions under the ECB framework will be applicable to such ECB.

ECB facility for Startups

AD Category-I banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

- **Eligibility:** An entity recognised as a Startup by the Central Government as on date of raising ECB.
- **Maturity:** Minimum average maturity period will be 3 years.

- **Recognised lender:** Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.
- **Forms:** The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.
- **Currency:** The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non-resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.
- **Amount:** The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.
- **All-in-cost:** Shall be mutually agreed between the borrower and the lender.
- **End uses:** For any expenditure in connection with the business of the borrower.
- **Conversion into equity:** Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.
- **Security:** The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a non-resident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.
- **Hedging:** The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis. Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.
- **Conversion rate:** In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.
- **Other Provisions:** Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework.

Borrowing by Entities under Investigation

All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of

such investigation / adjudication / appeal to the AD Category-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications/ appeals, the AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

ECB by entities under restructuring/ ECB facility for refinancing stressed assets

An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan. Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes. The applicable MAMP will have to be strictly complied with under all circumstances.

Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company.

CHAPTER-8: FOREIGN TRADE POLICY (FTP)

LEGAL FRAMEWORK AND TRADE FACILITATION

The Foreign Trade Policy, 2015-20, (as updated) w.e.f. 05.12.2017 is notified by Central Government, in exercise of powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 [FT (D&R) Act], as amended.

Duration of FTP

The Foreign Trade Policy (FTP), 2015-2020 (as updated) w.e.f. 05.12.2017 incorporating provisions relating to export and import of goods and services, shall come into force with effect from the date of notification and shall remain in force up to 31st March, 2020, unless otherwise specified. All exports and imports made upto the date of notification shall, accordingly, be governed by the relevant FTP, unless otherwise specified.

Hand Book of Procedures (HBP) and Appendices & Aayat Niryat Forms (AANF)

Director General of Foreign Trade (DGFT) may, by means of a Public Notice, notify Hand Book of Procedures, including Appendices and Aayat Niryat Forms or amendment thereto, if any, laying down the procedure to be followed by an exporter or importer or by any Licensing/Regional Authority or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and provisions of FTP.

Objective of Trade Facilitation

- To provide a stable and sustainable policy environment for foreign trade in merchandise and services.
- To link rules, procedures and incentives for exports and imports with other initiatives such as Make in India, Digital India, Skills India to make an Export Promotion mission for India.
- To promote the diversification of India's export basket by helping various sectors of the Indian economy to gain global competitiveness with a view to promoting exports.
- To provide a mechanism for regular appraisal in order to rationalize imports and reduce the trade imbalance.

DGFT as a facilitator of exports/imports

DGFT has a commitment to function as a facilitator of exports and imports. Focus is on good governance, which depends on efficient, transparent and accountable delivery systems. In order to facilitate international trade, DGFT consults various Export Promotion Councils as well as Trade and Industry bodies from time to time.

DEFINITIONS

"Act" means Foreign Trade (Development and Regulation) Act, 1992 [FT (D&R) Act] as amended from time to time.

"Actual User" is a person (either natural & legal) who is authorized to use imported goods in his/its own premise which has a definitive postal address.

(a) "Actual User (Industrial)" is a person (either natural & legal) who utilizes imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit which has a definitive postal address.

(b) "Actual User (Non-Industrial)" is a person (either natural & legal) who utilizes the imported goods for his own use in.

i. any commercial establishment, carrying on any business, trade or profession, which has a definitive postal address; or

ii. any laboratory, Scientific or Research and Development(R&D) institution, university or other educational institution or hospital which has a definitive postal address; or

iii. Any service industry which has a definitive postal address.

"Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control. Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.

"Component" means one of the parts of a subassembly or assembly of which a manufactured product is made up and into which it may be resolved. A component includes an accessory or attachment to another component.

"Consumables" means any item, which participates in or is required for a manufacturing process, but does not necessarily form part of end-product. Items, which are substantially or totally consumed during a manufacturing process, will be deemed to be consumables.

"Consumer Goods" means any consumption goods, which can directly satisfy human needs without further processing and includes consumer durable sand accessories thereof.

"Counter Trade" means any arrangement under which exports/imports from /to India are balanced either by direct imports/exports from importing/exporting country or through a third country under a Trade Agreement or otherwise.

"Developer" means a person or body of persons, company, firm and such other private or government undertaking, who develops, builds, designs, organises, promotes, finances, operates, maintains or manages a part or whole of infrastructure and other facilities in SEZ as approved by Central Government and also includes a co- developer.

"Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

ITC (HS) refers to Indian Trade Classification (Harmonized System) at 8 digits.

"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" 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.
"Manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, re-packing, polishing, labelling, Re-conditioning repair, remaking, refurbishing, testing, calibration, re-engineering. Manufacture, for the purpose of FTP, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.
"Manufacturer Exporter" means a person who exports goods manufactured by him or intends to export such goods.
"Merchant Exporter" means a person engaged in trading activity and exporting or in tending to export goods.
"NC" means the Norms Committee in the Directorate General of Foreign Trade for approval of adhoc input –output norms in cases where SION does not exist and recommend SION to be notified in DGFT.
"Project Exports" refers to export of engineering goods on deferred payment terms and execution of turnkey projects and civil construction contracts abroad collectively. Project Exports would encompass (i) Civil construction contracts; (ii) Turnkey Engineering contracts including supply of Capital Goods on deferred payment terms; (iii) Process and Engineering Consultancy Services; and (iv) Project Construction items (excluding Steel and Cement).

"Raw material" means input(s) needed for manufacturing of goods. These inputs may either be in a raw/natural/unrefined/unmanufactured or manufactured state.
"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 Authorisation.
"Services" include all tradable services covered under General Agreement on Trade in Services (GATS) and earning free foreign exchange.
"Service Provider" means a person providing: i. Supply of a 'service' from India to any other country; (Mode1- Cross border trade) ii. Supply of a 'service' from India to service consumer(s)of any other country in India; (Mode 2-Consumption abroad)

iii. Supply of a 'service' from India through commercial presence in any other country. (Mode 3 – Commercial Presence.) iv. Supply of a 'service' from India through the presence of natural persons in any other country (Mode 4- Presence of natural persons.)
"Ships" mean all types of vessels used for seaborne trade or coastal trade, and shall include second hand vessels.
"SION" means Standard Input Output Norms notified by DGFT.
"Spares" means a part or a sub-assembly or assembly for substitution that is ready to replace an identical or similar part or subassembly or assembly. Spares include a component or an accessory.
"Status holder" means an exporter recognized as One Star Trading House/ Two Star Trading House / Three Star Trading House/ Four Star Trading House/ Five Star Trading House by DGFT/Development Commissioner.
"Stores" means goods for use in a vessel or aircraft and includes fuel and spares and other articles of equipment, whether or not for immediate fitting.
(a) "Supporting Manufacturer" is one who manufactures goods/products or any part/accessories/components of a good/product for a merchant exporter or a manufacturer exporter under a specific Authorisation. (b) "Supporting Manufacturer" for the EPCG Scheme shall be one in whose premises/factory Capital Goods imported/ procured under EPCG Authorisation is installed.

GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

Exports and Imports – 'Free', unless regulated

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 (Harmonized System) [ITC (HS)] of Exports and Imports.

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

(a) ITC (HS) is a compilation of codes for all merchandise / goods for export/ import. Goods are classified based on their group or sub-group at 2/4/6/8 digits.

(b) ITC (HS) is aligned at 6 digits level with international Harmonized System goods nomenclature maintained by World Customs Organization. However, India maintains national Harmonized System of goods at 8 digits level which are available on DGFT official website.

(c) The import/export policies for all goods are indicated against each item in ITC (HS).

(d) Except where it is clearly specified, Schedule 1 of ITC (HS), Import Policy is for new goods and not for the Second Hand goods.

Importer-Exporter Code/e-IEC

An IEC is a 10-character alpha-numeric number allotted to a person that is mandatory for undertaking any export/import activities. With a view to maintain the unique identity of an entity (firm/company/LLP etc.), consequent upon introduction / implementation of GST, IEC will be equal to PAN and will be separately issued by DGFT based on an application.

(a) No export or import shall be made by any person without obtaining an IEC number unless specifically exempted. For services exports, IEC shall be necessary only when the service provider is taking benefits under the Foreign Trade Policy.

(b) Application process for IEC is completely online and IEC can be generated by the applicant as per the procedure detailed in the Handbook of Procedure.

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/ Lorry Receipt/ Railway Receipt/Postal Receipt
2. Commercial Invoice cum Packing List*
3. Shipping Bill/Bill of Export/ Postal Bill of Export

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

1. Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt.
2. Commercial Invoice cum Packing List*
3. Bill of Entry

[Note: * (i) As per CBEC Circulars issued under the Customs Act, 1962

(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) 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
(i) Relating to the importation or exportation of gold or silver.

Actual User Condition

Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, actual user alone may import such good(s) unless actual user condition is specifically dispensed with by DGFT.

Terms and Conditions of an Authorisation

Every Authorisation shall include either all or some of the following terms and conditions in addition to such other conditions as may be specified:

(a) Description, quantity and value of goods;
(b) Actual User condition;
(c) Export Obligation;
(d) Minimum Value addition to be achieved;
(e) Minimum export/import price;
(f) Bank guarantee/ Legal undertaking / Bond with Customs Authority/RA.
(g) Validity period of import/export as specified in Handbook of Procedures.

EXPORTS FROM INDIA SCHEMES

Exports from India Schemes

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).

Nature of Rewards

Duty Credit Scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for:

i. Payment of Basic Customs Duty and Additional Customs Duty specified under Customs Tariff Act, 1975 for import of inputs or goods, including capital goods, as per DoR Notification.
ii. Payment of Central excise duties on domestic procurement of inputs or goods.

MERCHANDISE EXPORTS FROM INDIA SCHEME (MEIS)

Objective

Objective of the Merchandise Exports from India Scheme (MEIS) is to promote the manufacture and export of notified goods/ products.

Entitlement under MEIS

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

Entitlement under MEIS for Export of goods through courier or foreign post offices Exports of goods through courier or foreign post office of FOB value upto Rs. 5,00,000 per consignment shall be entitled for rewards under MEIS. If the value of exports, is more than Rs. 5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB Value of Rs. 5,00,000 only.

Ineligible categories under MEIS

The following exports categories /sectors shall be ineligible for Duty Credit Scrip entitlement under MEIS:

i. Supplies made from DTA units to SEZ units
ii. Export of notified imported goods;
iii. Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India;
iv. Deemed Exports;
v. SEZ/ EOU /EHTP/ BTP /FTWZ products exported through DTA units;
vi. Export products which are subject to Minimum export price or export duty.
vii. Exports made by units in FTWZ.

SERVICE EXPORTS FROM INDIA SCHEME (SEIS)

Objective

Objective of Service Exports from India Scheme (SEIS) is to encourage and maximize export of notified Services from India.

Eligibility

(a) Service Providers of notified services, located in India, shall be rewarded under SEIS.

(b) Such service provider should have minimum net free foreign exchange earnings of US$15,000 in year of rendering service to be eligible for Duty Credit Scrip.

For Individual Service Providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US$10,000 in year of rendering service.

(c) Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of RBI.

(d) Net Foreign exchange earnings for the scheme are defined as under:

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

(e) If the IEC holder is a manufacturer of goods as well as service provider, then the foreign exchange earnings and total expenses / payment / remittances shall be taken into account for service sector only.

(f) In order to claim reward under the scheme, Service provider shall have to have an active IEC at the time of rendering such services for which rewards are claimed.

Ineligible categories under SEIS

Foreign exchange remittances other than those earned for rendering of notified services would not be counted for entitlement.

Entitlement under SEIS

Service Providers of eligible services shall be entitled to Duty Credit Scrip at notified rates (as given in Appendix 3D) on net foreign exchange earned.

Remittances through Credit Card and other instruments for MEIS and SEIS

Free Foreign Exchange earned through international credit cards and other instruments, as permitted by RBI shall also be taken into account for computation of value of exports.

STATUS HOLDER

(a) Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs.

(b) All exporters of goods, services and technology having an import export code (IEC) number shall be eligible for recognition as a status holder. **Status recognition will depend on export performance.** An applicant shall be categorized as status holder on achieving export performance during the current and previous 3 financial years (for Gems& Jewellery Sector the performance during the current and previous two financial years shall be considered for recognition as status holder) as indicated in Foreign Trade Policy. The export performance will be counted on the basis of FOB of export earning in freely convertible foreign currencies.

(c) For deemed export, FOR value of exports in Indian Rupees shall be converted in US$ at the exchange rate notified by CBEC, as applicable on 1st April of each Financial Year.

(d) For granting status, export performance is necessary in at least 2 out of 4 years.

Status Category

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

Grant of Double Weightage

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

i. Micro, Small & Medium Enterprises (MSME) as defined in Micro, Small & Medium Enterprises Development (MSMED) Act 2006.

ii. Manufacturing units having ISO/BIS.

iii. Units located in North Eastern States including Sikkim and Jammu & Kashmir.

iv. Units located in Agri Export Zones.

(b) Double Weightage shall be available for grant of One Star Export House Status category only. Such benefit of double weightage shall not be admissible for grant of status recognition of other categories namely Two Star Export House, Three Star Export House, Four Star export House and Five Star Export House.

(c) A shipment can get double weightage only once in any one of above categories.

Other conditions for grant of status

(a) Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder. Hence, calculation of exports performance based on disclaimer shall not be allowed.

(b) Exports made on re-export basis shall not be counted for recognition.

Privileges of Status Holders

A Status Holder shall be eligible for privileges as under:

(a) Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;

(b) Input-Output norms may be fixed on priority within 60 days by the Norms Committee; Special scheme in respect of Input Output Norms to be notified by DGFT from time to time, for specified status holder.

(c) Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP or HBP;

(d) Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.

(e) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.

(f) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

(g) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their IEM/IL/LOI) as originating from India with a view to qualify for preferential treatment under various agreement.

(h) Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India.

(i) Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit as below:

   i. Annual limit of 2% of average annual export realization during preceding 3 licensing years for all exporters (excluding the exporters of following sectors:
      - Gems and Jewellery Sector,
      - Articles of Gold and precious metals sector).

   ii. Annual limit of Rs. 1 Crore or 2% of average annual export realization during preceding 3 licensing years, whichever is lower. (for exporters of the following sectors-
      - Gems and Jewellery Sector,
      - Articles of Gold and precious metals sector).

The free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.

Important Points:

- Additional Customs duty or Central excise duty paid in cash or through debit under Duty Credit scrip shall be adjusted as CENVAT Credit or Duty Drawback as per DoR rules or notifications.
- Basic Custom duty paid in cash or through debit under Duty Credit scrip shall be adjusted for Duty Drawback as per DoR rules or notifications.
- Transfer of export performance from one IEC holder to another IEC holder shall not be permitted.
- However, MEIS, rewards can be claimed either by the supporting manufacturer or by the company/ firm who has realized the foreign exchange directly from overseas.

SCHEMES FOR EXPORTERS OF GEMS AND JEWELLERY

Import of Input

Exporters of gems and Jewellery can import / procure duty free input for manufacture of export product.

Items of Export

Following items, if exported, would be eligible:

(i) Gold jewellery, including partly processed jewellery and articles including medallions and coins (excluding legal tender coins), whether plain or studded, containing gold of 8 carats and above up to maximum limit of 22 carats.

Gold religious idols (only gods and goddess) of 8 carats and above (upto 24 carats) subject to the following conditions:

- Exports would be subject to 100% examination by the Approved Government Valuer.
- Foreign remittance has to be realised within a period of 3 months from the date of export.
- Exporters must submit confirmed export order before effecting export.
- Distinction must be made between a religious idol and simply moulded gold article/ idol.
- Exports may be allowed only by actual manufacturers of such idols.

(ii) Silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% silver by weight;

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

Schemes

The schemes are as follows:

(i) Advance Procurement / Replenishment of Precious Metals from Nominated Agencies;
(ii) Replenishment Authorisation for Gems;
(iii) Replenishment Authorisation for Consumables;
(iv) Advance Authorisation for Precious Metals.

Advance Procurement/ Replenishment of Precious Metals from Nominated Agencies

(i) Exporter of gold / silver / platinum jewellery and articles thereof including mountings and findings may obtain gold / silver / platinum as an input for export product from Nominated Agency, in advance or as replenishment after export in accordance with the procedure specified in this behalf.

(ii) The export would be subject to wastage norms and minimum value addition as prescribed in the Handbook of Procedures.

Value Addition

Minimum Value Addition norms for gems and jewellery sector are given in Handbook of Procedures. It would be calculated as under:

$$VA = \frac{A-B}{B} \times 100, \quad \text{where}$$

A = FOB value of the export realised/ FOR value of supply received.

B= Value of inputs (including domestically procured) such as gold/silver/platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplier.

DFIA not available

Duty Free Import Authorisation scheme shall not be available for Gems and Jewellery sector.

EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME

Objective

The objective of the EPCG Scheme is **to facilitate import of capital goods for producing quality goods and services and enhance India's manufacturing competitiveness.**

EPCG Scheme

a) EPCG Scheme allows import of capital goods (except those specified in negative list) for
   - pre-production,
   - production and
   - post-production at zero customs duty.

   Capital goods for the purpose of the EPCG scheme shall include:

   (i) Capital Goods as defined in Chapter 9 including in CKD/SKD condition thereof;
   (ii) Computer systems and software which are a part of the Capital Goods being imported;
   (iii) Spares, moulds, dies, jigs, fixtures, tools & refractories; and
   (iv) Catalysts for initial charge plus one subsequent charge.

b) Import of capital goods for Project Imports notified by Central Board of Excise and Customs is also permitted under EPCG Scheme.

c) Import under EPCG Scheme shall be subject to an **export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods, to be fulfilled in 6 years** reckoned from date of issue of Authorisation.

d) Authorisation shall be valid for import for 18 months from the date of issue of Authorisation. **Revalidation of EPCG Authorisation shall not be permitted.**

e) Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.

f) If the goods proposed to be exported under EPCG authorisation are restricted for export, the EPCG authorisation shall be issued only after approval for issuance of export authorisation from Exim Facilitation Committee at DGFT Headquarters.

Coverage

a) EPCG scheme covers manufacturer exporters with or without supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) and service providers.

b) EPCG Scheme also covers a service provider who is designated / certified as a Common Service Provider (CSP) by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence subject to provisions of FTP/Handbook of Procedures with the following conditions: -

(i) Export by users of the common service, to be counted towards fulfillment of EO of the CSP shall contain the EPCG Authorisation details of the CSP in the respective Shipping bills and concerned RA must be informed about the details of the Users prior to such export;

(ii) Such export will not count towards fulfillment of specific export obligations in respect of other EPCG Authorisations (of the CSP/User); and

(iii) Authorisation holder shall be required to submit Bank Guarantee (BG) which shall be equivalent to the duty saved. BG can be given by CSP or by any one of the users or a combination thereof, at the option of the CSP.

Actual User Condition

Imported capital goods shall be subject to Actual User condition till export obligation is completed and certificate is granted regarding that.

Export Obligation (EO)

Following conditions shall apply to the fulfilment of EO: -

a) EO shall be fulfilled by the authorisation holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorisation has been granted.

b) Shipments under Advance Authorisation, DFIA, Drawback scheme or other reward schemes under FTP; would also count for fulfillment of EO under EPCG Scheme.

c) Export shall be physical export.

d) EO can also be fulfilled by the supply of ITA-I items to DTA, provided realization is in free foreign exchange.

e) Royalty payments received by the Authorisation holder in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under EPCG.

f) Payment received in rupee terms for such notified services shall also be counted towards discharge of export obligation under the EPCG scheme.

LUT/Bond/BG in case of Agro units

LUT/Bond or 15% BG, as applicable, may be furnished for EPCG authorisation granted to units in Agri- Export Zones provided EPCG authorisation is taken for export of primary agricultural product(s) notified or their value-added variants.

Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier

A person holding an EPCG authorisation may source capital goods from a domestic manufacturer. Such domestic manufacturer shall be eligible for deemed export benefits and as may be provided under GST Rules under the category of deemed exports. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfilment of positive NFE by said EOU.

Calculation of Export Obligation

In case of direct imports, EO shall be reckoned with reference to actual duty saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duties saved on FOR value.

Incentive for early EO fulfilment

With a view to accelerating exports, in cases where Authorisation holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorisation redeemed by RA concerned. However, no benefit shall be permitted where incentive for early EO fulfillment has been availed.

Reduced EO for North East Region and Jammu & Kashmir

For units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Jammu & Kashmir, specific EO shall be 25% of the EO. There shall be no change in average EO imposed, if any.

Post Export EPCG Duty Credit Scrip(s)

a) Post Export EPCG Duty Credit Scrip(s) shall be available to exporters who intend to import capital goods on full payment of applicable duties, taxes and cess in cash and choose to opt for this scheme.
b) Basic Customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrip(s).
c) Specific EO shall be 85% of the applicable specific EO under the EPCG Scheme. However, average EO shall remain unchanged.
d) Duty remission shall be in proportion to the EO fulfilled.
e) All provisions for utilization of scrips issued under Chapter 3 of FTP shall also be applicable to Post Export EPCG Duty Credit Scrip (s).
f) All provisions of the existing EPCG Scheme shall apply insofar as they are not inconsistent with this scheme.

QUALITY COMPLAINTS AND TRADE DISPUTES

Objective

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

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

Quality Complaints/ Trade disputes

The following type of complaints may be considered:

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

(b) Complaints of importers against foreign suppliers in respect of quality of the products supplied; and

(c) Complaints of unethical commercial dealings categorized mainly as
- non-supply/ partial supply of goods after confirmation of order;
- supplying goods other than the ones as agreed upon;
- non-payment;
- non-adherence to delivery schedules, etc.

Obligation on the part of importer/ exporter

Rule 11 of the Foreign Trade (Regulation) Rules, 1993, requires that on the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962, **state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.** Violation of this provision renders the exporter liable for penal action.

Mechanism for handling of Complaints/ Disputes

(a) Committee on Quality complaints and Trade Disputes (CQCTD)

To deal effectively with the increasing number of complaints and disputes, a 'Committee on Quality Complaints and Trade Disputes' (CQCTD) will be constituted in the 22 offices of the Regional Authorities (RA's) of DGFT. Names of RAs, where CQCTD has been constituted and jurisdiction of CQCTD is given in the Handbook of Procedures.

(b) Composition of the CQCTD

The CQCTD would be constituted under the Chairpersonship of the Head of Office. The constitution of CQCTD is given in the Hand Book of Procedures.

(c) Functions of CQCTD

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/Commodity Boards or any other agency as considered appropriate for settlement of these disputes.

Proceedings under CQCTD

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.

Procedures to deal with complaints and trade disputes

The procedure for making an application for such complaints or trade disputes and the procedure to deal with such quality complaints and disputes is given in the Handbook of Procedures.

Corrective Measures

The Committee at RA level can authorize the Export Inspection Agency or any technical authority to assess whether there has been any technical failure of not meeting the standards, manufacturing/design defects, etc. for which complaints have been received.

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.

DUTY EXEMPTION /REMISSION SCHEMES

Objective

Schemes under this Chapter enable duty free import of inputs for export production, including replenishment of inputs or duty remission.

Schemes

(a) Duty Exemption Schemes.

The Duty Exemption schemes consist of the following:

- Advance Authorisation (AA) (which will include Advance Authorisation for Annual Requirement).
- Duty Free Import Authorisation (DFIA).

(b) Duty Remission Scheme.

Duty Drawback (DBK) Scheme, administered by Department of Revenue.

(c) Scheme for Rebate on State and Central Taxes and Levies (RoSCTL), as notified by the Ministry of Textiles on March 2019, and implemented by the DGFT.

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 / utilized 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;

OR

ii. On the basis of self-declaration as per Handbook of Procedures.

OR

iii. Applicant specific prior fixation of norm by the Norms Committee.

OR

iv. On the basis of Self Ratification Scheme.

Eligible Applicant / Export / Supply

(a) Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.

(b) Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.

(c) Advance Authorisation shall be issued for:

i. Physical export (including export to SEZ);
ii. Intermediate supply; and/or
iii. Supply of goods to the categories specified in FTP.
iv. Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

Eligibility Condition to obtain Advance Authorisation for Annual Requirement

i. Exporters having past export performance (in at least preceding 2 financial years) shall be entitled for Advance Authorisation for Annual requirement.
ii. Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and / or FOR value of deemed export in preceding financial year or Rs. 1 crore, whichever is higher.

Self-Ratification Scheme

i. Where there is no SION/valid Norms for an export product and where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self-declaration and self-ratification basis. RA may issue Advance Authorisations and such cases need not be referred to Norms Committees for ratification of norms. Application under this scheme shall be made along with a Certificate from Chartered Engineer in the prescribed format.
ii. A Certificate from a Chartered Engineer who has been not been penalised in the last 5 years under FT(D&R) Act 1992, Customs Act 1962, Central Excise Act 1944, GST Acts and allied acts and rules made there under shall only be accepted for grant of Authorisation under this scheme.
iii. Detailed procedure for administering the scheme shall be prescribed in the Handbook of Procedures.
iv. An exporter (manufacturer or merchant) who holds AEO Certificate under Common Accreditation Programme of CBEC is eligible to opt for this scheme.
v. The scheme shall not be available for the following export products.
   (a) Biotechnology items and related products; and
   (b) SCOMET items.
vi. The scheme shall not be available for the following inputs: -
   (a) All vegetable / edible oils and all types of oilseeds classified under ITC (HS) book;
   (b) All types of cereals classified under ITC (HS) book;
   (c) Horn, hoof and any other organ of animal;
   (d) Wild animal products, organs and waste thereof;
   (e) Honey;
   (f) All items with basic customs duty of 30% or more;
   (g) All types of fruits/ nuts/ vegetables classified under ITC (HS) book;
   (h) Acetic Anhydride, Ephedrine and Pseudoephedrine;
   (i) Vitamins;
   (j) Biotechnology items and related products;
   (k) Insecticides, Rodenticides, Fungicides, herbicides, Anti sprouting products, and plant growth regulators, disinfectants and similar products of all forms, types and grades;
   (l) Waste/Scrap of all types; and
   (m) Second hand goods.
vii. Inputs imported shall be subject to pre import condition and they shall be physically incorporated in the export product (making normal allowance for wastage).

viii. Wherever value of by-products and recoverable wastage generated during manufacturing process is more than 5% of CIF value, corresponding quantity of main input shall be reduced from the entitlement to the extent that value of disallowed quantity is equal to the value of byproducts and recoverable wastage generated during manufacturing process.

ix. DGFT or any person authorised by him may conduct audit of the manufacturer. The frequency and manner of audit shall be prescribed by DGFT in Handbook of Procedures.

x. DGFT or any person authorised by him may initiate special audit, considering the nature and complexity of the case and revenue of government, if he is of the opinion at any stage of scrutiny/enquiry/investigation that the norms have not been claimed correctly or the excess benefit has been availed. Special audit can be conducted even if the manufacturer has already been audited before.

xi. If the audit results in detection of misdeclaration and/or instances of claiming of inputs which are not used in manufacturing process or excess quantity of inputs than consumed, demand and recovery actions will be initiated in addition to initiation of action against the authorisation holder, manufacturer and Chartered Engineer.

xii. In cases where Chartered Engineer has not exercised due diligence or has willfully become party to misdeclaration, action will be initiated against such person under FT(D&R) Act 1992. In addition, such cases shall also be referred to 'The Institute of Engineers' India for taking action as warranted under the bylaws of the institute.

xiii. All the provisions applicable for Advance Authorisation Scheme shall be applicable to this scheme also in so far, they are not inconsistent with this scheme.

Value Addition

Value Addition for the purpose of this Chapter (except for Gems and Jewellery sector) shall be: -

$$VA = \frac{A-B}{B} \times 100, \quad \text{where}$$

A = FOB value of export realized/FOR value of supply received.

B = CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of DBK is claimed or intended to be claimed.

Minimum Value Addition

i. Minimum value addition required to be achieved under Advance Authorisation is 15%.

ii. Export Products where value addition could be less than 15% are given in Appendix 4D.

iii. In case of Tea, minimum value addition shall be 50%.

Details of Duties exempted

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable.

Imports under Advance Authorisation are also exempt from whole of the Integrated Tax and Compensation Cess leviable under section 3(7)(9) of the Customs Tariff Act, 1975 as may be provided in the notification issued by Department of Revenue, for making physical exports or domestic supplies.

Admissibility of Drawback

Drawback as per rate determined and fixed by Customs authority in terms of DoR Rules shall be available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product. For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation.

Actual User Condition for Advance Authorisation

(i) Advance Authorisation and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation.

However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed.

(ii) In case where CENVAT/ITC facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer).

(iii) Waste / Scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

Importability/Export ability of items that are Prohibited/Restricted/ STE

(i) No export or import of an item shall be allowed under Advance Authorisation / DFIA if the item is prohibited for exports or imports respectively. Export of a prohibited item may be allowed under Advance Authorisation provided it is separately so notified, subject to the conditions given therein.

(ii) Items reserved for imports by STEs cannot be imported against Advance Authorisation / DFIA. However, those items can be procured from STEs against ARO or Invalidation letter.

STEs are also permitted to issue "No Objection Certificate (NOC)" for import by Advance Authorisation / DFIA holder.

Authorisation Holder would be required to file Quarterly Returns of imports effected against such NOC to concerned STE and STE would submit half-yearly import figures of such imports to concerned administrative Department for monitoring with a copy endorsed to DGFT.

(iii) Items reserved for export by STE can be exported under Advance Authorisation / DFIA only after obtaining a 'No Objection Certificate' from the concerned STE.

(iv) Import of restricted items shall be allowed under Advance Authorisation/ DFIA.

(v) Export of restricted / SCOMET items however, shall be subject to all conditionalities or requirements of export authorisation or permission, as may be required.

Free of Cost Supply by Foreign Buyer

Advance Authorisation shall also be available where some or all inputs are supplied free of cost to exporter by foreign buyer. In such cases, notional value of free of cost input shall be added in the CIF value of import and FOB value of export for the purpose of computation of value addition. However, realization of export proceeds will be equivalent to an amount excluding notional value of such input.

Domestic Sourcing of Inputs

(i) Holder of an Advance Authorisation / Duty Free Import Authorisation can procure inputs from indigenous supplier/ State Trading Enterprise/EOU/EHTP/BTP/STP in lieu of direct import. Such procurement can be against Advance Release Order (ARO), or Invalidation Letter.

(ii) When domestic supplier intends to obtain duty free material for inputs through Advance Authorisation for supplying resultant product to another Advance Authorisation / DFIA / EPCG Authorisation, Regional Authority shall issue Invalidation Letter.

(iii) Regional Authority may issue Advance Release Order or Invalidation Letter at the time of issue of Authorisation simultaneously or subsequently.

(iv) Advance Authorisation holder under DTA can procure inputs from / SEZ units without obtaining Advance Release Order or Invalidation Letter.

(v) Validity of Advance Release Order / Invalidation Letter shall be in connection with validity of Authorisation.

Currency for Realisation of Export Proceeds

(i) Export proceeds shall be realized in freely convertible currency except otherwise specified.

(ii) Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit.

(iii) Export to SEZ Developers / Co-developers can also be taken into account for discharge of export obligation even if payment is realised in Indian Rupees.

(iv) Authorisation holder needs to file Bill of Export for export to SEZ unit / developer / codeveloper in accordance with the procedures given in SEZ Rules, 2006.

Re-import of exported goods under Duty Exemption / Remission Scheme

Goods exported under Advance Authorisation/ Duty Free Import Authorisation may be re-imported in same or substantially same form subject to such conditions as may be specified by Department of Revenue.

Authorisation holder shall also inform about such re-importation to the Regional Authority which had issued the Authorisation within 1 month from date of re-import.

DUTY FREE IMPORT AUTHORISATION SCHEME (DFIA)

DFIA Scheme

Duty Free Import Authorisation is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed / utilised in the process of production of export product, may also be allowed.

Duties Exempted

(i) Duty Free Import Authorisation shall be exempted only from payment of (BCD).

(ii) Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

Eligibility

(i) Duty Free Import Authorisation shall be issued on post export basis for products for which SIONs have been notified.

(ii) Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Bill of Export / Tax Invoice for export prescribed under the GST rules.

(iii) Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation.

(iv) No Duty-Free Import authorisation shall be issued for an input which is subjected to pre-import condition or where SION prescribes 'Actual User' condition.

Minimum Value Addition

Minimum value addition of 20% shall be required to be achieved.

Validity & Transferability of DFIA

(i) Applicant shall file online application to Regional Authority concerned before starting export under DFIA.

(ii) Export shall be completed within 12 months from the date of online filing of application and generation of file number.

(iii) While doing export/supply, applicant shall indicate file number on the export /supply documents viz. Shipping Bill / Bill of Export / Tax invoice for supply prescribed under GST rules.

(iv) Only such inputs may be permitted for import in the authorisation in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such generic input/alternative input.

(v) In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production and declared in Shipping Bill / Bill of Export / Tax invoice for supply prescribed under GST rules within overall quantity against such group of inputs.

(vi) Separate DFIA shall be issued for each SION.

(vii) Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by Regional Authority.

Sensitive Items under Duty Free Import Authorisation

a) In respect of following inputs, exporter shall be required to provide declaration with regard to technical characteristics, quality and specification in Shipping Bill:

"Alloy steel including Stainless Steel, Copper Alloy, Synthetic Rubber, Bearings, Perfumes / Essential Oil/ Aromatic Chemicals, Relevant Fabrics, Marble, Articles made of Paper and Paper Board, Insecticides, Citric Acid, Relevant Glass fibre reinforcement, etc.".

b) While issuing Duty Free Import Authorisation, Regional Authority shall mention technical characteristics, quality and specification in respect of above inputs in the Authorisation.

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

Introduction and Objective

a) Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the
   - Export Oriented Unit (EOU) Scheme,
   - Electronics Hardware Technology Park (EHTP) Scheme,
   - Software Technology Park (STP) Scheme or
   - Bio- Technology Park (BTP) Scheme

   for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. **Trading units are not covered under these schemes.**

b) Objectives of these schemes are to:
   - promote exports,
   - enhance foreign exchange earnings,
   - attract investment for export production and
   - employment generation.

Export and Import of Goods

a) An EOU/EHTP/STP/BTP unit may export all kinds of goods and services except items that are prohibited in ITC(HS).

   However, export of gold jewellery, including partly processed jewellery, whether plain or studded, and articles, containing gold of 8 carats and above upto a maximum limit of 22 carats only shall be permitted.

b) Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfilment of the conditions indicated in ITC (HS).

c) Procurement and supply of export promotion material like brochure / literature, pamphlets, hoardings, catalogues, posters etc. up to a maximum value limit of 1.5% of FOB value of previous years exports shall also be allowed.

d) State Trading regime shall not apply to EOU manufacturing units. However, in respect of Chrome Ore/Chrome concentrate, State Trading Regime as stipulated in export policy of these items, will be applicable to EOUs.

e) EOU/EHTP/STP/BTP units may import/procure from DTA, with or without payment of duties/taxes certain specified goods for creating a central facility. Software EOU/ DTA units may use such facility for export of software.

f) An EOU engaged in agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture may be permitted to remove specified goods in connection with its activities for use outside the premises of the unit.

g) Gems and jewellery EOUs may source gold / silver / platinum through nominated agencies on loan / outright purchase basis. Units obtaining gold / silver / platinum from nominated agencies, either on loan basis or outright purchase basis shall export gold / silver / platinum within 90 days from date of release.

h) EOU / EHTP / STP / BTP units, other than service units, may export to Russian Federation in Indian Rupees against repayment of State Credit/ Escrow Rupee Account of buyer subject to RBI clearance, if any.

Second hand Capital goods

Second hand capital goods, without any age limit, may also be imported with or without payment of duty/ taxes as may be provided.

Leasing of Capital Goods

a) An EOU/EHTP/STP/BTP unit may, on the basis of a firm contract between parties, source capital goods from a domestic/ foreign leasing company with or without payment of duties/taxes, as the case may be and in such a case, EOU/EHTP /STP / BTP unit and domestic/ foreign leasing company shall jointly file documents to enable import/ procurement of capital goods.

b) An EOU/EHTP/BTP/STP unit may sell capital goods and lease back the same from a NBFC, subject to the following conditions:

   (i) The unit should obtain permission from the jurisdictional Deputy /Assistant Commissioner of Customs for entering into transaction of 'Sale and Lease Back of Assets', and submit full details of the goods to be sold and leased back and the details of NBFC;

   (ii) The goods sold and leased back shall not be removed from the unit's premises;

   (iii) The unit should be NFE positive at the time when it enters into sale and lease back transaction with NBFC;

   (iv) A joint undertaking by the unit and NBFC should be given to pay duty on goods in case of violation or contravention of any provision of the notification under which these goods were imported or procured, read with Customs Act, 1962 or Central Excise Act, 1944.

Net Foreign Exchange Earnings

EOU / EHTP / STP / BTP unit shall be a positive net foreign exchange earner. NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production. Whenever a unit is unable to achieve NFE due to prohibition / restriction imposed on export of any product mentioned in LoP, the 5 years block period for calculation of NFE earnings may be suitably extended by BoA.

Further, wherever a unit is unable to achieve NFE due to adverse market condition or any grounds of genuine hardship having adverse impact on functioning of the unit, the 5 years block period for calculation of NFE earnings may be extended by BOA for a period of upto one year, on a case to case basis.

Applications & Approvals/Letter of Permission / Letter of Intent and Legal Undertaking

a)

(i) Application for setting up an EOU shall be considered by Unit Approval Committee (UAC)/ Board of Approval (BoA) as the case may be.

(ii) In case of units under EHTP / STP schemes, necessary approval / permission shall be granted by officer designated by Ministry of Communication and Information Technology, Department of Electronics & Information Technology, instead of DC, and by Inter-Ministerial Standing Committee (IMSC) instead of BOA.

(iii) Bio-Technology Parks (BTP) would be notified by DGFT on recommendations of Department of Biotechnology. In case of units in BTP, necessary approval / permission will be granted by designated officer of Department of Biotechnology.

(iv) On approval, a Letter of Permission (LoP) / Letter of Intent (LoI) shall be issued by DC / designated officer to EOU / EHTP / STP / BTP unit. The validity of LoP/LoI shall be given in the Hand Book of Procedures.

b) LoP / LoI issued to EOU / EHTP / STP / BTP units by concerned authority, subject to compliance of provisions, would be construed as an Authorisation for all purposes.

c) Failure to ensure positive NFE or to abide by any of the terms and conditions of LoP / LoI / IL / LUT shall render the unit liable to penal action under provisions of the FT (D&R) Act, as amended, and Rules and Orders made there under, without prejudice to action under any other law / rules and cancellation or revocation of LoP / LoI / IL.

Investment Criteria

Only projects having a minimum investment of Rs. 1 Crore in Plant & Machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in EHTP / STP/ BTP, and EOUs in Handicrafts /Agriculture/ Floriculture/ Aquaculture/Animal Husbandry /Information Technology, Services, Brass Hardware and Handmade jewellery sectors. BOA may allow establishment of EOUs with a lower investment criterion also.

DTA Sale of Finished Products / Rejects / Waste/ Scrap / Remnants and By-products

Entire production of EOU/EHTP/STP/BTP units shall be exported. However, the following are allowed as exceptions subject to the conditions specified.

a)

(i) Units, other than gems and jewellery units may sell finished goods manufactured by them as specified in LoP (including byproducts, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods) which are freely importable under FTP in DTA, subject to fulfillment of positive NFE, on payment of excise duty, if applicable, and/ or payment of GST and compensation cess along with reversal of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods. No DTA sale shall

be permissible in respect of, pepper & pepper products, marble and such other items as may be notified from time to time.

(ii) Such DTA sale shall also not be permissible to units engaged in activities of packaging / labeling / segregation / refrigeration / compacting / micronisation / pulverization / granulation / conversion of monohydrate form of chemical to anhydrous form or vice-versa.

(iii)

a) Sales made to a unit in SEZ shall also be taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Currency Account of SEZ unit.

b) Sale to DTA would also be subject to mandatory requirement of registration of pharmaceutical products (including bulk drugs).

b) For services, including software units, sale in DTA in any mode, including on line data communication, shall also be permissible up to 50% of FOB value of exports and /or 50% of foreign exchange earned, where payment of such services is received in foreign exchange.

c) Gems and jewellery units may sell upto 10% of FOB value of exports of the preceding year in DTA, subject to fulfillment of positive NFE.

d) Unless specifically prohibited in LoP, rejects may be sold in DTA. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.

e) Scrap / waste / remnants arising out of production process or in connection therewith may be sold in DTA, as per SION notified under Duty Exemption Scheme, on payment of applicable duties and/ or taxes and compensation cess. Such sales of scrap / waste / remnants shall not be subject to achievement of positive NFE.

f) There shall be no duties / taxes on scrap / waste, in case same are destroyed with permission of Customs authorities. The expression "no duties/ taxes" shall not include applicable taxes and cess under the GST laws.

g) By-products included in LoP may also be sold in DTA subject to achievement of positive NFE, on payment of excise duty, if applicable, and/or payment of GST and compensation cess along with reversal of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975, if availed on inputs.

h) In case of units manufacturing electronics hardware and software, NFE and DTA sale entitlement shall be reckoned separately for hardware and software.

Other Supplies

Following supplies effected from EOU / EHTP / STP / BTP units will be counted for fulfillment of positive NFE.

a) Supplies effected in DTA to holders of Advance Authorisation / DFIA under duty exemption / remission scheme / EPCG scheme. However, printing sector EOUs (or any other sector that may be notified in HBP), can't supply goods, where basic customs duty and CVD is nil or exempted otherwise, to holders of Advance Authorisation / Advance Authorisation for annual requirement.

b) Supplies effected in DTA against foreign exchange remittance received from overseas.

c) Supplies to other EOU / EHTP / STP / BTP / SEZ units, provided that such goods are permissible for procurement.

d) Supplies made to bonded warehouses set up under FTP and free trade and warehousing zones, where payment is received in foreign exchange.

e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF, as may be provided in HBP.

f) Supplies of Information Technology Agreement items and notified zero duty telecom / electronics items.

g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.

h) Supply of LPG produced in an EOU refinery to Public Sector domestic oil companies for being supplied to household domestic consumers at subsidized prices under the Public Distribution System (PDS) Kerosene and Domestic LPG Subsidy Scheme, 2002, as notified by the Ministry of Petroleum and Natural Gas (hereinafter referred to as PDS Scheme) subject to the following conditions:-

   (i) Only supply of such quantity of LPG would be eligible for which Ministry of Petroleum and Natural Gas declines permission for export and requires the LPG to be cleared in DTA; and

   (ii) The Ministry of Finance by a notification has permitted duty free imports of LPG for supply under the aforesaid PDS Scheme.

Other Entitlements

Other entitlements of EOU/EHTP/STP/BTP units are as under:

a) Exemption from industrial licensing for manufacture of items reserved for SSI sector.

b) Export proceeds will be realized within 9 months.

c) Units will be allowed to retain 100% of its export earnings in the EEFC account.

d) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where:

   (i) The unit has turnover of Rs. 5 crore or above;

   (ii) The unit is in existence for at least 3 years; and

   (iii) The unit:

      (1) has achieved positive NFE / export obligation wherever applicable;

      (2) has not been issued a show cause notice or a confirmed demand, during the preceding 3 years, on grounds other than procedural violations, under the penal provision of the Customs Act, the Central Excise Act, the Foreign Trade (Development & Regulation) Act, the Foreign Exchange Management Act, the Finance Act, 1994 covering Service Tax or any allied Acts or the rules made thereunder, on account of fraud / collusion / wilful mis-statement / suppression of facts or contravention of any of the provisions thereof;

e) 100% FDI investment permitted through automatic route similar to SEZ units.

f) The Units Approval Committee may consider on a case-to-case basis request for sharing of infrastructural facilities among EOUs and it shall forward its recommendation to the Board of Approval for its consideration. While accepting such proposals, the NFE obligations of the Units shall not be altered.

Inter Unit Transfer

a) Transfer of manufactured goods from one EOU/ EHTP/STP/BTP unit to another EOU / EHTP/ STP/ BTP unit is allowed on payment of applicable GST and compensation cess with prior intimation to concerned Development Commissioners of the transferor and transferee units as well as concerned Customs authorities.

b) Capital goods may be transferred or given on loan to other EOU / EHTP / STP / BTP / SEZ units, with prior intimation to concerned DC and Customs authorities on payment of applicable GST and compensation cess. Such transferred goods may also be returned by the second unit to the original unit in case of rejection or for any reason on payment of applicable GST and compensation cess.

c) Goods supplied by one unit of EOU/EHTP/STP/ BTP to another unit shall be on payment of applicable GST and compensation cess.

Sub-Contracting

(a)

(i) EOU/EHTP/STP /BTP units, including gems and jewellery units, may on the basis of annual permission from Customs authorities, sub - contract production processes to DTA through job work which may also involve change of form or nature of goods, through job work by units in DTA.

(ii) These units may sub – contract upto 50% of overall production of previous year in value terms in DTA with permission of Customs authorities.

(b)

(i) EOU may, with annual permission from Customs authorities, under take job work for export, on behalf of DTA exporter, provided that goods are exported directly from EOU and export document shall jointly be in name of DTA/ EOU. For such exports, DTA units will be entitled for refund of duty paid on inputs by way of brand rate of duty drawback. However, such brand rate of drawback shall be as per Customs and Central Excise Duties Drawback Rules, 2017 and shall be limited to Customs duties and Central Excise Duties (in respect of eligible items covered under Schedule IV of Central Excise Act, 1944).

(ii) Import of goods for execution of export order placed on EOU by foreign supplier on job work basis, would be allowed with or without payment of duties and/or taxes as provided under Para 6.01(d)(ii) above subject to condition that no DTA clearance shall be allowed.

(iii) Sub - contracting of both production and production processes may also be under taken without any limit through other EOU/EHTP/ STP/ BTP/ SEZ units, on the basis of records maintained in unit.

(iv) EOU/EHTP/STP/BTP units may sub - contract part of production process abroad and send intermediate products abroad as mentioned in LoP. No permission would be required when goods are sought to be exported from sub - contractor premises abroad. When goods are sought to be brought back, prior intimation to concerned DC and Customs authorities shall be given.

(c) Scrap/waste/remnants generated through job work may either be cleared from job worker's premises on payment of applicable duty and/or taxes, as provided under Para 6.08 above on transaction value or destroyed in presence of Customs authority or

returned to unit. Destruction shall not apply to gold, silver, platinum, diamond, precious and semi-precious stones.

(d) Sub - contracting/ exchange by gem sand jewellery EOUs through other EOUs or SEZ units or units in DTA, shall be as per procedure indicated in HBP.

Sale of Unutilized Material

(a) In case an EOU / EHTP/ STP/BTP unit is unable to utilize goods and services, imported or procured from DTA, it may be:
   (i) Transferred to another EOU / EHTP / STP / BTP / SEZ unit; or
   (ii) Disposed of in DTA with intimation to Customs authorities on payment of applicable duties and/ or taxes and compensation cess; or
   (iii) Exported.

   Such transfer from EOU/EHTP/ STP/ BTP unit to another such unit would be treated as import for receiving unit.

(b) Capital goods and spares that have become obsolete/ surplus, may be exported or transferred to SEZ unit, transferred to another EOU/EHTP/STP/BTP/on payment of applicable GST and compensation cess or disposed of in DTA on payment of applicable GST and compensation cess and duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975.

(c) In case of textile sector, disposal of left-over material/ fabrics upto 2% of CIF value or quantity of import, whichever is lower, on payment of duty on transaction value, may be allowed, subject to certification of Central Excise/Customs officers that these are left over items.

(d) Disposal of used packing material will be allowed on payment of duty on transaction value.

Reconditioning/Repair and Re - engineering

EOUs shall be set up with approval of UAC to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, upgradation of technology and re-engineering activities for export in foreign currency.

Exit from EOU Scheme

(a) With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable Excise and Customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force.

(b) If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

(c) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by DoC, at price to be determined by that agency.

(d) An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit from the scheme at any time on payment of applicable duties and taxes and compensation cess on capital goods under the prevailing EPCG Scheme for DTA Units. This will be subject to fulfillment of positive NFE criteria under EOU scheme, eligibility criteria under EPCG scheme and standard conditions indicated in HBP.

(e) Unit proposing to exit out of EOU scheme shall intimate DC and Customs authorities in writing. Unit shall assess duty liability arising out of exit and submit details of such assessment to Customs authorities. Customs authorities shall confirm duty liabilities on priority basis, subject to the condition that the unit has achieved positive NFE, taking into consideration the depreciation allowed. After payment of duty and clearance of all dues, unit shall obtain "No Dues Certificate" from Customs authorities. On the basis of "No Dues Certificate" so issued by the Customs authorities, unit shall apply to DC for final exit. In case there is no proceeding pending under FT (D&R) Act, as amended, DC shall issue final exit order within a period of 7 working days.

Conversion

(a) Existing DTA units may also apply for conversion into an EOU / EHTP / STP / BTP unit.
(b) Existing EHTP / STP units may also apply for conversion / merger to EOU unit and vice-versa. In such cases, units will avail exemptions in duties and taxes as applicable.
(c) Applications for conversion into an EOU / EHTP / STP / BTP unit from existing DTA units, having an investment of Rs. 50 crores and above in plant and machinery or exporting Rs. 50 crores and above annually, shall be placed before BOA for a decision.

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

(i) Export goods for holding/participating in Exhibitions abroad with permission of DC.
(ii) Personal carriage of gold / silver / platinum jewellery, precious, semiprecious stones, beads and articles.
(iii) Export goods for display / sale in permitted shops set up abroad.
(iv) Display / sell in permitted shops set up abroad, or in showrooms of their distributors / agents.
(v) Set up showrooms / retail outlets at International Airports.

Personal Carriage of Import / Export Parcels including through Foreign Bound Passengers

Import/ export through personal carriage of gems and jewellery items may be undertaken as per Customs procedure. However, export proceeds shall be realized through normal banking channel. Import/ export through personal carriage by units, other than gems and jewellery units, shall be allowed provided goods are not in commercial quantity. An authorized person of Gems & Jewellery EOU may also import gold in primary form, upto 10Kgs in a financial year through personal carriage, as per guidelines prescribed by RBI and DoR.

Export / Import by Post / Courier

Goods including free samples, may be exported/imported by air freight or through foreign post office or through courier, as per Customs procedure.

CHAPTER-9: NON-BANKING FINANCIAL COMPANIES (NBFCs)

INTRODUCTION

Non-Banking Financial Institutions (NBFIs) comprise a heterogeneous group of financial intermediaries. Those under the regulatory purview of the Reserve Bank consist of All-India Financial Institutions (AIFIs), Non-Banking Financial Companies (NBFCs) and Primary Dealers (PDs). AIFIs are apex institutions established during the development planning era to provide long-term financing/refinancing to specific sectors such as:

(i) agriculture and rural development;
(ii) trade;
(iii) small industries; and
(iv) housing.

NBFCs are dominated by joint stock companies, catering to niche areas ranging from personal loans to infrastructure financing. PDs play an important role as market makers for government securities.

Non-Banking Finance Companies (NBFCs) have played an important role in the Indian financial system by complementing and competing with banks, and by bringing in efficiency and diversity into financial intermediation. NBFCs have evolved considerably in terms of operations, asset quality and profitability, and regulatory architecture. Going forward, the growing systemic importance and interconnectedness of this sector calls for regulatory vigil.

The world over, non-banking financial entities complement the mainstream banking system in the process of financial intermediation. In emerging economies, they often play an important role because of their ability to:

(a) reach out to inaccessible areas; and
(b) act as not just complements but also substitutes to banks when the banks are confronted with stricter regulatory constraints.

Apart from widening the ambit of and access to financial services, they also enhance the resilience of the financial system by acting as backup institutions when banks come under stress.

REGULATORY ENVIRONMENT FOR NBFCS

Chapter III B of Reserve Bank of India Act, 1934 (Section 45-H TO 45QB) deals with provisions relating to non-banking institutions receiving deposits and financial institutions.

Section 45H: Chapter IIIB not to apply in certain cases

The provisions of this Chapter shall not apply to

- the State Bank or
- a banking company or
- a Regional Rural Bank or
- a co-operative bank or
- a primary agricultural credit society or
- a primary credit society:

Section 45I: Definition of NBFC under RBI Act

As per Section 45-I (bb) of the RBI Act, 1934, "Deposit" includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form, but does not include —

(i) amounts raised by way of share capital;

(ii) amounts contributed as capital by partners of a firm;

(iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in Banking Regulation Act, 1949;

(iv) any amount received from —

- a State Financial Corporation,
- any financial institution, or
- any other institution that may be specified by the Bank in this behalf;

(v) amounts received in the ordinary course of business, by way of—

(a) security deposit,
(b) dealership deposit,
(c) earnest money, or
(d) advance against orders for goods, properties or services;

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in any State; and

(vii) any amount received by way of subscriptions in respect of a chit.

It may be noted that as per Section 45-I (c) of the RBI Act, 1934, "Financial Institution" means any non-banking institution which carries on as its business or part of its business any of the following activities: —

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature;

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement;

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, but does not include any institution, which carries on as its principal business,—

(a) agricultural operations; or

(aa) industrial activity; or

(b) the purchase, or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

According to Section 45-I (e) of the Reserve Bank of India Act, 1934, "Non-banking institution" means a company, corporation or co-operative society;

According to Section 45-I (f) of the Reserve Bank of India Act, 1934, "Non-Banking Financial Company" means —

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as RBI may, with the previous approval of the CG and by notification in the Official Gazette, specify.

Section 45-IA: Registration and Net Owned Fund

- No NBFC shall commence or carry on the business of a NBFC without—
  - obtaining a certificate of registration issued under Chapter IIIB; and
  - having the net owned fund of Rs. 25 lakhs or such other amount, not exceeding Rs. 100 crores, as the Bank may specify:

  However, RBI may notify different amounts of net owned fund for different categories of NBFCs.
- RBI, for the purpose of considering the application for registration, may require to be satisfied by an inspection of the books of the NBFC or otherwise that the following conditions are fulfilled: —
  - that NBFC is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;
  - that the affairs of the NBFC are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;
  - that the general character of the management or the proposed management of the NBFC shall not be prejudicial to the public interest or the interests of its depositors;
  - that the NBFC has adequate capital structure and earning prospects;
  - that the public interest shall be served by the grant of certificate of registration to the NBFC to commence or to carry on the business of India;
  - any other condition, fulfilment of which in the opinion of the RBI, shall be necessary to ensure that the commencement of or carrying on of the business in India by a NBFC shall not be prejudicial to the public interest or in the interests of the depositors.
- RBI may, after being satisfied that the specified conditions are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

- **Cancellation of a Certificate of Registration**

  RBI may cancel a certificate of registration granted to a NBFC under this section, if such company —

  (i) ceases to carry on the business of a non-banking financial institution in India; or

  (ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

  (iii) at any time fails to fulfil any of the conditions such as adequate capital structure and earning prospects, public interest, monetary stability, and economic growth etc. or

  (iv) fails:

  - to comply with any direction issued by the RBI under the provisions of Chapter III B of RBI Act; or
  - to maintain accounts in accordance with the requirements of any law or any direction or order issued by the RBI under the provisions of Chapter III B of RBI Act; or
  - to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the RBI; or

  (v) has been prohibited from accepting deposit by an order made by the RBI under the provisions of Chapter III B of RBI Act and such order has been in force for a period of not less than 3 months.

- A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of 30 days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final.

Meaning of net owned funds

"Net Owned Fund" means–

(a) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the company after deducting therefrom –

  i. accumulated balance of loss;

  ii. deferred revenue expenditure; and

  iii. other intangible assets; and

(b) further reduced by the amounts representing–

  (1) investments of such company in shares of–

    i. its subsidiaries;

    ii. companies in the same group;

    iii. all other NBFCs; and

  (2) the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with –

    i. subsidiaries of such company; and

    ii. companies in the same group, to the extent such amount exceeds 10% per cent of (a) above

Section 45-IB: Maintenance of Percentage of Assets

- Every NBFC shall invest and continue to invest in India in **unencumbered approved securities,** valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than 5% or such higher percentage not exceeding 25% as the RBI may specify of the deposits outstanding at the close of business on the last working day of the second preceding quarter.

  Here,

  (i) **"approved securities"** means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government;

  (ii) **"unencumbered approved securities"** includes the approved securities lodged by the NBFC with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner;

  Further, RBI may specify different percentages of investment in respect of different classes of NBFCs.

- For the purpose of ensuring compliance, RBI may require every NBFC to furnish a return to it in such form, in such manner and for such period as may be specified by the RBI.
- If the amount invested by a NBFC at the close of business on any day falls below the specified rate, such company shall be liable to pay to the RBI, in respect of such shortfall, **a penal interest at a rate of 3% p.a. above the bank rate on such amount by which the amount actually invested falls short of the specified percentage,** and where the **shortfall continues in the subsequent quarters, the rate of penal interest shall be 5% p.a. above the bank rate on such shortfall for each subsequent quarter.**
- The penal interest payable by a NBFC mentioned above shall be payable within a period of 14 days from the date on which a notice issued by the RBI demanding payment of the same is served on the NBFC and, in the event of a failure of the NBFC to pay the same within such period, penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting NBFC is situated and such direction shall be made only upon an application made in this behalf to the court by RBI; and

  when the court makes a direction, it shall issue a certificate specifying the sum payable by the NBFC and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a suit.

Section 45-IC: Reserve Fund

- Every NBFC shall create a reserve fund and transfer therein a sum not less than 25% of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.
- Appropriation of any sum from the reserve fund shall not be made by NBFC except for the purpose as may be specified by RBI from time to time and every such appropriation shall be reported to RBI within 21 days from the date of such withdrawal:

Section 45-ID: Power of Reserve Bank of India to Remove Directors from Office

- Where RBI is satisfied that
  - in the public interest or
  - to prevent the affairs of a NBFC being conducted in a manner detrimental to the interest of the depositors or creditors, or financial stability or
  - for securing the proper management of such company, it is necessary so to do,

  RBI may, by order and for reasons to be recorded in writing, remove from office, a Director of such company, **other than Government owned NBFC** with effect from such date as may be specified in the said order.
- No order mentioned above shall be made unless the director concerned has been given a reasonable opportunity of making a representation to the Bank against the proposed order.

  However, it may be noted here that if, in the opinion of RBI, any delay will be detrimental to the interest of the said company or its depositors, RBI may, at the time of giving the aforesaid opportunity or at any time thereafter, by order direct that, pending the consideration of the representation, if any, the director, shall not, with effect from the date of such order: -

  (a) act as such director of that company;
  (b) in any way, whether directly or indirectly, be concerned with or take part in the management of that company.
- Where any order of removal is made in respect of a director of a company, he shall cease to be a director of that NBFC and shall not, in any way be concerned with, or take part in the management of any NBFC for such period not exceeding 5 years at a time as may be specified in the order.
- Where an order of removal has been made, RBI may, by order in writing, appoint a suitable person in place of the director, who has been so removed from his office, with effect from such date as may be specified in such order.
- Any person appointed above shall —

  (a) hold office during the pleasure of the RBI and subject thereto for a period not exceeding 3 years or such further periods not exceeding 3 years at a time;
  (b) not incur any obligation or liability by reason only of his being a director for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.
- It is to be noted here that on the removal of a director from office under this section, such director shall not be entitled to claim any compensation for the loss or termination from office.

Section 45-IE: Supersession of Board of Directors of NBFC

- Where the Reserve Bank is satisfied that
  - in the public interest or

- to prevent the affairs of a NBFC being conducted in a manner detrimental to the interest of the depositors or creditors, or of NBFC (other than Government Company), or
- for securing the proper management of such company or
- for financial stability, it is necessary so to do,

RBI may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such company for a period not exceeding 5 years as may be specified in the order, which may be extended from time to time, so, however, that the total period shall not exceed 5 years.

- RBI may, on supersession of the Board of Directors of NBFC, appoint a suitable person **as the Administrator** for such period as it may determine.
- RBI may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.
- Upon making the order of supersession of the BOD of a NBFC: —
  (a) the Chairman, Managing Director and other Directors shall from the date of supersession of the Board of Directors vacate their offices;
  (b) all the powers, functions and duties, which may be exercised and discharged by or on behalf of the Board of Directors of such NBFC or by a resolution passed in general meeting of such NBFC, shall until the Board of Directors of such company is reconstituted, be exercised and discharged by the Administrator.
- The Bank may constitute a committee consisting of 3 or more members who have experience in law, finance, banking, administration or accountancy to assist the Administrator in discharge of his duties.

Section 45J: RBI to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money

RBI may, if it considers necessary in the public interest so to do, by general or special order—

(a) regulate or prohibit the issue by any non-banking institution of any prospectus or advertisement soliciting deposits of money from the public, and
(b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.

Section 45JA: Power of Bank to Determine Policy and Issue Directions

If RBI is satisfied that,

- in the public interest or
- to regulate the financial system of the country to its advantage or
- to prevent the affairs of any NBFC being conducted in manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of NBFC,

it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the NBFCs relating to:

- income recognition,
- accounting standards,
- making of proper provision for bad and doubtful debts,
- capital adequacy based on risk weights for assets and

- credit conversion factors for off balance-sheet items and also relating to deployment of funds by a NBFC or a class of NBFCs or NBFCs generally, as the case may be,

and such NBFCs shall be bound to follow the policy so determined and the direction so issued.

Section 45K: Power of RBI to Collect Information from Non-Banking Institutions as to Deposits and to Give Directions

RBI may at any time direct that every non-banking institution shall furnish to RBI, in such form, at such intervals and within such time, such statements information or particulars relating to or connected with deposits received by the nonbanking institution, as may be specified by RBI by general or special order.

The statements, information or particulars to be furnished to RBI may relate to all or any of the matters, namely, **the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, they are received.**

RBI may, if it considers necessary in the public interest so to do, give directions to nonbanking institutions either generally or to any non-banking institution or group of non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received.

If any non-banking institution fails to comply with any direction given by RBI, it may prohibit the acceptance of deposits by that non-banking institution.

Every non-banking institution receiving deposits shall, if so required by RBI and within such time as RBI may specify, cause to be sent at the cost of the non-banking institution a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the non-banking institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by RBI.

Section 45L: Power of RBI to Call for Information from Financial Institutions and to Give Directions

If RBI is satisfied for the purpose of enabling it **to regulate the credit system of the country** to its advantage it is necessary so to do, it may—

(a) require financial institutions either generally or any group of financial institutions or financial institution in particular, to furnish to RBI in such form, at such intervals and within such time, such statements, information or particulars relating to the business of such financial institutions or institution, as may be specified by RBI by general or special order;

(b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as financial institutions or institution.

The statements, information or particulars to be furnished by a financial institution to RBI may relate to all or any of the following matters, namely, the paid-up capital, reserves or other liabilities, the investments whether in Government securities or otherwise, the persons to whom, and the purposes and periods for which, finance is provided and the terms and conditions, including the rates of interest, on which it is provided.

Section 45M: Duty of Non-Banking Institutions to Furnish Statements Required by Reserve Bank

It shall be the duty or every non-banking institution to furnish the statements, information or particulars called for, and to comply with any direction given to it, under the provisions of this Chapter.

Section 45MA: Powers and Duties of Auditors

- It shall be the duty of an auditor of a non-banking institution to inquire whether or not the non-banking institution has furnished to RBI such statements, information or particulars relating to or connected with deposits received by it, as are required to be furnished under this Chapter, and the auditor shall, except where he is satisfied on such inquiry that the non-banking institution has furnished such statements, information or particulars, make a report to RBI giving the aggregate amount of such deposits held by the non-banking institution.
- RBI may, on being satisfied that it is necessary so to do, in the public interest or in the interest of the depositors or for the purpose of proper assessment of the books of accounts, issue directions to any NBFC or any class of NBFCs or NBFCs generally or to the auditors of such non-banking financial company or companies relating to balance-sheet, profit and loss account, disclosure of liabilities in the books of accounts or any matter relating thereto.
- Where, in the case of a NBFC, the auditor has made, or intends to make, a report to RBI above, he shall include in his report under the Companies Act, the contents of the report which he has made or intends to make, to the Reserve Bank.
- Where RBI is of the opinion that it is necessary so to do:
  - in the public interest or
  - in the interest of the NBFC or
  - in the interest of depositors of such company

  it may at any time by order direct that a special audit of the accounts of the NBFC in relation to any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and RBI may appoint an auditor or auditors to conduct such special audit and direct the auditor or the auditors to submit the report to it.
- The remuneration of the auditors as may be fixed by RBI, having regard to the nature and volume of work involved in the audit and the expenses of or incidental to the audit, shall be borne by NBFC so audited.

Section 45MAA: Power to Take Action against Auditors

Where any auditor fails to comply with any direction given or order made by the Reserve Bank under section 45MA, RBI, may, if satisfied, remove or debar the auditor from exercising the duties as auditor of any of RBI regulated entities for a maximum period of 3 years, at a time.

Section 45MB: Power of RBI to Prohibit Acceptance of Deposit and Alienation of Assets

- If any NBFC violates the provisions of any section or fails to comply with any direction or order given by RBI under any of the provisions of this Chapter IIIB, **RBI may prohibit the NBFC from accepting any deposit.**
- RBI, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, NBFC against which an order prohibiting from accepting deposit has been issued, **not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the Reserve Bank for such period not exceeding 6 months from the date of the order.**

Section 45MBA: Resolution of NBFC

- RBI may, if it is satisfied, upon an inspection of the Books of a NBFC that it is in the public interest or in the interest of financial stability so to do for enabling the continuance of the activities critical to the functioning of the financial system, frame schemes which may provide for any one or more of the following:—
  (a) amalgamation with any other non-banking institution;
  (b) reconstruction of the NBFC;
  (c) splitting the NBFC into different units or institutions and vesting viable and non-viable businesses in separate units or institutions

  to preserve the continuity of the activities of that NBFC that are critical to the functioning of the financial system and for such purpose establish institutions called "Bridge Institutions".

  "Bridge Institutions" mean temporary institutional arrangement made under the scheme referred to in this sub-section, to preserve the continuity of the activities of a NBFC that are critical to the functioning of the financial system.

- The scheme referred above may provide for—
  (a) reduction of the pay and allowances of the CEO, MD, chairman or any officer in the senior management of the NBFC;
  (b) cancellation of all or some of the shares of the NBFC held by the CEO, MD, chairman or any officer in the senior management of the NBFC or their relatives;
  (c) sale of any of the assets of the NBFC.

Section 45MC: Power of RBI to File Winding Up Petition

RBI, on being satisfied that a NBFC—

(a) is unable to pay its debt; or
(b) has become disqualified to carry on the business of a non-banking financial institution; or
(c) has been prohibited by RBI from receiving deposit by an order and such order has been in force for a period of not less than 3 months; or
(d) the continuance of the NBFC is detrimental to the public interest or to the interest of depositors of the company,

may file an application for winding up of such NBFC under the Companies Act.

A NBFC shall be deemed to be unable to pay its debt if it has refused or has failed to meet within 5 working days any lawful demand made at any to its offices or branches and the Bank certifies in writing that such company is unable to pay its debt.

A copy of every application made by RBI shall be sent to RoC. All the provisions of the Companies Act, relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the Bank under this provision.

Section 45N: Inspection

RBI may, at any time, cause an inspection to be made by one or more of its officers or employees or other persons -

i. of any non-banking institution, including a financial institution,
   - for the purpose of verifying the correctness or completeness of any statement, information or particulars furnished to RBI or
   - for the purpose of obtaining any information or particulars which the non-banking institution has failed to furnish on being called upon to do so; or

ii. of any non-banking institution being a financial institution, if RBI considers it necessary or expedient to inspect that institution.

Section 45NA: Deposits not to be solicited by unauthorized person

No person shall solicit on behalf of any non-banking institution either by publishing or causing to be published any prospectus or advertisement or in any other manner deposits of money from the public unless-

(a) he has been authorised in writing by the said non-banking institution to do so and specifies the name of the institution which has so authorised him, and

(b) the prospectus or advertisement complies with any order made by RBI under section 45J and with any other provision of law for the time being in force, applicable to the publication of such prospectus or advertisement.

Section 45NAA: Power in Respect of Group Companies

RBI may, at any time, direct a NBFC to annex to its financial statements or furnish separately, within such time and at such intervals as may be specified by RBI, **such statements and information relating to the business or affairs of any group company of NBFC as RBI may consider necessary or expedient to obtain for the purposes of RBI Act.**

RBI may, at any time, cause an inspection or audit to be made of any group company of a NBFC and its books of account.

Section 45NB: Disclosure of Information

Section 45NB (1) states that any information relating to a NBFC —

(i) contained in any statement or return submitted by such company under the provisions of Chapter IIIB; or

(ii) obtained through audit or inspection or otherwise by RBI,

shall be treated as confidential and shall not, except otherwise provided in Section 45NB, be disclosed.

Section 45NB (2) provides that nothing in section 45NB shall apply to—

(a) the disclosure by any NBFC, with the previous permission of RBI, of any information furnished to RBI under sub-section (1);
(b) the publication by RBI, if it considers necessary in the public interest so to do, of any information collected by it under sub-section (1) in such consolidated form as it may think fit without disclosing the name of any NBFC or its borrowers;
(c) the disclosure or publication by the NBFC or by RBI of any such information to any other NBFC or in accordance with the practice and usage customary amongst such companies or as permitted or required under any other law:

Section 45NB (3) states that RBI, if it is satisfied that, in the public interest or in the interest of the depositors or the NBFC or to prevent the affairs of any NBFC being conducted in a manner detrimental to the interest of the depositors, it is expedient so to do, may, either on its own motion or on being requested, **furnish or communicate any information relating to the conduct of business by any NBFC to any authority constituted under any law.**

However, no court or tribunal or other authority shall compel RBI to produce or to give inspection of any statement or other material obtained by RBI under any provisions of Chapter IIIB.

Section 45NC: Power of Reserve Bank to Exempt

RBI, on being satisfied that it is necessary so to do, may declare by notification in the Official Gazette that any or all of the provisions of Chapter IIIB of the RBI Act shall not apply to a non-banking institution or a class of non-banking institutions or a non-banking financial company or to any class or non-banking financial companies either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose.

Chapter IIIB OF RBI Act to Override Other Laws

According to Section 45Q of the Reserve Bank of India Act, 1934, the provisions of this Chapter IIIB of RBI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

DIRECTIONS PERTAINING TO NBFCS ISSUED BY RBI

RBI in the public interest and to regulate the financial system to the advantage of the country and to prevent the affairs of any Non-Banking Financial Companies (NBFCs) from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such NBFCs issues Directions from time to time.

Following are the major Directions issued by Reserve Bank of India:

- Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016
- Non-Banking Financial Company –Non-Systemically Important Non-Deposit taking (Reserve Bank) Directions, 2016
- Core Investment Companies (Reserve Bank) Directions, 2016
- Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016
- Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016
- Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2016
- Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016
- Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016
- Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 2016
- Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017

CLASSIFICATION OF NBFCs BY ACTIVITY

NBFCs are classified on the basis of:

- their liability structures;
- the type of activities they undertake; and
- their systemic importance.

In the first category, NBFCs are further subdivided into

- NBFCs-D–which are authorized to accept and hold public deposits–and
- non-deposit taking NBFCs (NBFCs-ND)– which do not accept public deposits but raise debt from market and banks.

NBFCs can also be categorised on the basis of activities undertaken as they typically focus on niche segments and fulfil sector–specific requirements.

TYPE OF NBFC	ACTIVITY
Asset Finance Company (AFC)	An AFC is a company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive/economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general-purpose industrial machines. Principal business for this purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising therefrom is not less than 60% of its total assets and total income respectively.

Loan Company	LC means any company which is a financial institution carrying on as its principal business the providing of finance whether by making loans or advances or otherwise for any activity other than its own but does not include an Asset Finance Company.
Investment Company	IC means any company which is a financial institution carrying on as its principal business the acquisition of securities.
NBFC - Infrastructure Finance Company (NBFC-IFC)	IFC is a non-banking finance company • which deploys at least 75 per cent of its total assets in infrastructure loans, • has a minimum Net Owned Funds of Rs. 300 crores, • has a minimum credit rating of 'A 'or equivalent d) and a CRAR of 15%
NBFC-Systemically Important Core Investment Company (CIC-ND-SI)	CIC-ND-SI is an NBFC carrying on the business of acquisition of shares and securities which satisfies the following conditions: - • it holds not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, debt or loans in group companies; • its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Total Assets; • it does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment; • it does not carry on any other financial activity except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies. • Its asset size is Rs. 100 crore or above and • It accepts public funds.
Infrastructure Debt Fund-NBFC (IDF-NBFC)	IDF-NBFC is a company registered as NBFC to facilitate the flow of long-term debt into infrastructure projects. IDF-NBFC raise resources through issue of Rupee or Dollar denominated bonds of minimum 5 years maturity. Only Infrastructure Finance Companies (IFC) can sponsor IDF-NBFCs.
NBFC-Micro Finance Institution (NBFC-MFI)	NBFC-MFI is a non-deposit taking NBFC having not less than 85% of its assets in the nature of qualifying assets which satisfy the following criteria: • loan disbursed by an NBFC-MFI to a borrower with a rural household annual income not exceeding Rs. 1,00,000 or urban and semi-urban household income not exceeding Rs. 1,60,000; • loan amount does not exceed Rs. 50,000 in the first cycle and Rs. 1,00,000 in subsequent cycles; • total indebtedness of the borrower does not exceed Rs. 1,00,000;

	• tenure of the loan not to be less than 24 months for loan amount in excess of Rs. 15,000 with prepayment without penalty; • loan to be extended without collateral; • aggregate amount of loans, given for income generation, is not less than 50% of the total loans given by the MFIs; • loan is repayable on weekly, fortnightly or monthly instalments at the choice of the borrower.
NBFC-Factor	NBFC-Factor is a non-deposit taking NBFC engaged in the principal business of factoring. The financial assets in the factoring business should constitute at least 50% of its total assets and its income derived from factoring business should not be less than 50% of its gross income.
NBFC-Non-Operative Financial Holding Company (NOFHC)	It is a financial institution through which promoter / promoter groups will be permitted to set up a new bank .It's a wholly-owned Non-Operative Financial Holding Company (NOFHC) which will hold the bank as well as all other financial services companies regulated by RBI or other financial sector regulators, to the extent permissible under the applicable regulatory prescriptions.
Mortgage Guarantee Company (MGC)	MGC are financial institutions for which at least 90% of the business turnover is mortgage guarantee business or at least 90% of the gross income is from mortgage guarantee business and net owned fund is Rs. 100 crores.
NBFC-Account Aggregator (NBFC-AA)	NBFC Account Aggregator is a financial entity that function as an account aggregator (for NBFC customers), who provides information on various accounts held by a customer in different NBFC entities. The account information will be a consolidated, organised and retrievable data about the various types of financial engagement by a customer among different NBFC products (like insurance, mutual funds etc.)
NBFC–Peer to Peer Lending Platform (NBFCP2P)	It provides an online platform to bring lenders and borrowers together to help mobilise funds. "Peer to Peer Lending Platform" means an intermediary providing the services of loan facilitation via online medium or otherwise, to the participants. **Eligibility Criteria** • No non-banking institution other than a company shall undertake the business of Peer to Peer Lending Platform. • No NBFC-P2P shall commence or carry on the business of a Peer to Peer Lending Platform without obtaining a Certificate of Registration from the Bank. • Every company seeking registration with the Bank as an NBFC-P2P shall have a net owned fund of not less than Rs. 20 million or such higher amount as the Bank may specify.

Residuary Non-Banking Company	Residuary Non-Banking Company is a class of NBFC which is a company and has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner and not being Investment, Asset Financing, Loan Company. These companies are required to maintain investments as per directions of RBI, in addition to liquid assets. The functioning of these companies is different from those of NBFCs in terms of method of mobilization of deposits and requirement of deployment of depositors' funds as per Directions. Besides, Prudential Norms Directions are applicable to these companies also.

DEFINITIONS OF NBFCS UNDER VARIOUS DIRECTIONS ISSUED BY RESERVE BANK

"Systemically important non-deposit taking non-banking financial company", means a non-banking financial company not accepting / holding public deposits and having total assets of Rs. 500 crore and above as shown in the last audited balance sheet;

"Infrastructure Finance Company" means a non-deposit taking NBFC that fulfills the following criteria:

(a) a minimum of 75% of its total assets deployed in "infrastructure loans";
(b) Net owned funds of Rs. 300 crore or above;
(c) minimum credit rating 'A' or equivalent of CRISIL, FITCH, CARE, ICRA, Brickwork Rating India Pvt. Ltd. (Brickwork) or equivalent rating by any other credit rating agency accredited by the Bank;
(d) CRAR of 15 percent (with a minimum Tier I capital of 10%).

"Investment and Credit Company - (NBFC-ICC)" means any company which is a financial institution carrying on as its principal business - asset finance, the providing of finance whether by making loans or advances or otherwise for any activity other than its own and the acquisition of securities; and is not any other category of NBFC as defined by the Bank in any of its Master Directions

"Non-Banking Financial Company - Factor (NBFC-Factor)" means a nonbanking financial company as defined in section 45-I(f) of the RBI Act, 1934 which has its principal business as defined in paragraph 40 of these directions and has been granted a certificate of registration under section 3(1) of the Principal Business: An NBFC-Factor shall ensure that its financial assets in the factoring business constitute at Factoring Regulation Act, 2011. least 50% of its total assets and its income derived from factoring business is not less than 50% of its gross income.

"Non-Banking Financial Company – Micro Finance Institution (NBFC-MFI)" means a non-deposit taking NBFC (other than a company formed and registered under section 25 of the Companies Act, 1956) that fulfils the following conditions:

(a) Minimum Net Owned Funds of Rs. 5 crore. (For NBFC-MFIs registered in the North Eastern Region of the country, the minimum NOF requirement shall stand at Rs. 2 crore).

(b) Not less than 85% of its net assets are in the nature of "qualifying assets." (Only the assets originated on or after January 1, 2012 shall have to comply with the Qualifying Assets criteria.

As a special dispensation, the existing assets as on January 1, 2012 shall be reckoned towards meeting both the Qualifying Assets criteria as well as the Total Net Assets criteria. These assets shall be allowed to run off on maturity and shall not be renewed).

"Infrastructure Debt Fund-Non-Banking Financial Company" or "IDF-NBFC" means a non-deposit taking NBFC that has Net Owned Fund of Rs. 300 crore or more and which invests only in Public Private Partnerships (PPP) and post commencement operations date (COD) infrastructure projects which have completed at least one year of satisfactory commercial operation and becomes a party to a Tripartite Agreement.

Core Investment Company (CIC), that is to say, a non-banking financial company carrying on the business of acquisition of shares and securities and which satisfies the following conditions as on the date of the last audited balance sheet: -

i. it holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies;
ii. its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies and units of Infrastructure Investment Trust only as sponsor constitute not less than 60% of its net assets as mentioned in clause (i) above;

    Provided that the exposure of such CICs towards InvITs shall be limited to their holdings as sponsors and shall not, at any point in time, exceed the minimum holding of units and tenor prescribed in this regard by SEBI (Infrastructure Investment Trusts) Regulations, 2014, as amended from time to time.

iii. it does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
iv. it does not carry on any other financial activity referred to in Section 45I(c) and 45I (f) of the Reserve Bank of India Act, 1934 except
    (a) investment in
        - bank deposits,
        - money market instruments, including money market mutual funds and liquid mutual funds
        - government securities, and
        - bonds or debentures issued by group companies,
    (b) granting of loans to group companies and
    (c) issuing guarantees on behalf of group companies.

"Systemically important Core Investment Company (CIC-ND-SI)" means a core investment company having total assets of not less than Rs.100 crore either individually or in aggregate along with other CICs in the Group and which raises or holds public funds.

Residuary Non-Banking Company is a class of NBFC which is a company and has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner and not being Investment, Asset Financing, Loan Company. These companies are required to maintain investments as per directions of RBI, in addition to liquid assets. The functioning of

these companies is different from those of NBFCs in terms of method of mobilization of deposits and requirement of deployment of depositors' funds as per Directions. Besides, Prudential Norms Directions are applicable to these companies also.

DIFFERENCE BETWEEN BANKS & NBFCS

NBFCs lend and make investments and hence their activities are akin to that of banks; however, there are a few differences as given below:

i. NBFC cannot accept demand deposits;
ii. NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself;
iii. deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

RETURNS TO BE SUBMITTED BY DEPOSIT TAKING NBFCS

- **NBS-1** Quarterly Returns on deposits in First Schedule.
- **NBS-2** Quarterly return on Prudential Norms is required to be submitted by NBFC accepting public deposits.
- **NBS-3** Quarterly return on Liquid Assets by deposit taking NBFC.
- **NBS-4** Annual return of critical parameters by a rejected company holding public deposits.
- **NBS-6** Monthly return on exposure to capital market by deposit taking NBFC with total assets of Rs. 100 crore and above.
- **Half-yearly ALM return** by NBFC holding public deposits of more than Rs. 20 crores or asset size of more than Rs. 100 crores
- Audited Balance sheet and Auditor's Report by NBFC accepting public deposits.
- Branch Info Return.

RETURNS TO BE SUBMITTED BY NBFCS-ND-SI

- **NBS-7** A Quarterly statement of capital funds, risk weighted assets, risk asset ratio etc., for NBFC-NDSI.
- Monthly Return on Important Financial Parameters of NBFCs-ND-SI.
- ALM returns:
  - Statement of short-term dynamic liquidity in format **ALM [NBS-ALM1] -Monthly,**
  - Statement of structural liquidity in format **ALM [NBS-ALM2] Half yearly,**
  - Statement of Interest Rate Sensitivity in format **ALM -[NBS-ALM3], Half yearly**
- Branch Info return.

CHAPTER-10: SPECIAL ECONOMIC ZONE ACT, 2005

An Act to provide for the establishment, development and management of the SEZs for the promotion of exports and for matters connected therewith or incidental thereto.

Definitions

- "Authority" means a SEZ Authority;
- "Board" means the Board of Approval;
- "Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under section 3(10) and includes an Authority and a Co-Developer;
- "Domestic Tariff Area" means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the SEZ;
- "Entrepreneur" means a person who has been granted a letter of approval by the Development Commissioner under section 15(9);
- "Export" means –
  i. taking goods, or providing services, out of India, from a SEZ, by land, sea or air or by any other mode, whether physical or otherwise; or
  ii. supplying goods, or providing services, from the DTA to a Unit or Developer; or
  iii. supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different SEZ;
- "Free Trade and Warehousing Zone" means a SEZ wherein mainly trading and warehousing and other activities related thereto are carried on;
- "Import" means-
  i. bringing goods or receiving services, in a SEZ, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
  ii. receiving goods, or services by, Unit or Developer from another Unit or Developer of the same SEZ or a different SEZ;
- "Infrastructure facilities" means industrial, commercial or social infrastructure or other facilities necessary for the development of a SEZ or such other facilities which may be prescribed;
- "manufacture"
  - means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and
  - shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining;
- "Offshore Banking Unit" means a branch of a bank located in a SEZ and which has obtained the permission under section 23(1)(a) of the Banking Regulation Act, 1949;
- "Person" includes:
  - an individual, whether resident in India or outside India,
  - a Hindu undivided family,
  - co-operative society,

- a company, whether incorporated in India or outside India,
- a firm, proprietary concern, or
- an association of persons or body of individuals, whether incorporated or not,
- local authority or trust or
- any entity as may be notified by the Central Government and
- any agency, office or branch owned or controlled by such individual, Hindu undivided family, co-operative, association, body, authority, company, trust or entity;

- "Services" means such tradable services which -
  i. are covered under the General Agreement on Trade in Services;
  ii. may be prescribed by the Central Government for the purposes of this Act; and
  iii. earn foreign exchange;
- "Unit" means a Unit set up by an entrepreneur in a SEZ and includes:
  - an existing Unit,
  - an Offshore Banking Unit and
  - a Unit in an International Financial Services Centre,

  whether established before or established after commencement of this Act;

ESTABLISHMENT OF SEZ

Section 3: Procedure for making proposal to establish SEZ

- A SEZ may be established under this Act,
  - either jointly or severally by the Central Government, State Government, or
  - any person for manufacture of goods or rendering services or for both or
  - as a Free Trade and Warehousing Zone.
- **SEZ by person other than Government, through SG:**

  Any person, who intends to set up a SEZ, may, after identifying the area, make a proposal to the State Government concerned for the purpose of setting up the SEZ.
- **SEZ by person other than Government directly:**

  Any person, who intends to set up a SEZ, may, after identifying the area, at his option, make a proposal directly to the Board for the purpose of setting up the SEZ:

  However, where such a proposal has been received directly from a person under this sub-section, the Board may grant approval and after receipt of such approval, the person concerned shall obtain the concurrence of the State Government within the period, as may be prescribed.
- **SEZ by State Government:**

  In case a State Government intends to set up a SEZ, it may after identifying the area, forward the proposal directly to the Board for the purpose of setting up the SEZ:

  However, the Central Government may: -

  (a) after consulting the State Government concerned;
  (b) without referring the proposal for setting up the SEZ to the Board; and
  (c) after identifying the area;

  suo moto set up and notify the SEZ.

- The State Government may, on receipt of the proposal forward the same together with its recommendations to the Board within such period as may be prescribed.
- The Board may approve the proposal subject to such terms and conditions as it may deem fit to impose, or modify or reject the proposal.
- The Central Government may prescribe the following requirement for establishment of a SEZ, namely: -
  (a) the minimum area of land and other terms and conditions subject to which the Board shall approve, modify or reject any proposal received by it; and
  (b) the terms and conditions, subject to which the Developer shall undertake the authorised operations and his obligations and entitlements.

  However, different minimum area of land and other terms and conditions referred to in clause (a) above may be prescribed by the Central Government for a class or classes of SEZs.
- If the Board -
  (a) approves without any modification, the proposal received, it shall communicate the same to the Central Government;
  (b) approves with modifications the proposal received, it shall, communicate such modifications to the person or the State Government concerned and if such modifications have been accepted by such person or the State Government, the Board shall communicate the approval to the Central Government;
  (c) rejects the proposal, it shall record the reasons therefor and communicate the rejection to the Central Government which shall intimate to the State Government or the person concerned.
- The Central Government shall, on receipt of communication from the Board regarding approval of the proposal, grant, a letter of approval on such terms and conditions and obligations and entitlements as may be approved by the Board, to the Developer, being the person or the State Government concerned:
- Any person who, or a State Government which, intends to provide any infrastructure facilities in the identified area for which proposal was made above to Board, or undertake any authorised operation may, after entering into an agreement with the Developer, make a proposal for the same to the Board for its approval.
- Every person or a State Government referred in above point, whose proposal has been approved by the Board and who, or which, has been granted letter of approval by the Central Government, shall be considered as a Co-Developer of the SEZ.
- Subject to the provisions of this section and the letter of approval granted to a Developer, the Developer may allocate space or built up area or provide infrastructure services to the approved units in accordance with the agreement entered into by him with the entrepreneurs of such Units.

Section 4: Establishment of SEZ and approval and authorisation to operate to Developer

1. The Developer shall, after the grant of letter of approval from Central Government, submit the exact particulars of the identified area, to the Central Government and thereupon that Government may, **after satisfying that the requirements regarding minimum area of land and other terms and conditions are fulfilled, notify the specifically identified area in the State as a SEZ:**

   Further, the Central Government may, after notifying the SEZ, if it considers appropriate, notify subsequently any additional area to be included as a part of that SEZ.

2. After the appointed day, the Board may, authorise the Developer to undertake in a SEZ, such operations which the Central Government may authorise.

Section 5: Procedure for making proposal to establish SEZ

The Central Government, while notifying any area as a SEZ or an additional area to be included in the SEZ and discharging its functions under this Act, shall be guided by the following: -

Guidelines for notifying SEZ:

(a) generation of additional economic activity;
(b) promotion of exports of goods and services;
(c) promotion of investment from domestic and foreign sources;
(d) creation of employment opportunities;
(e) development of infrastructure facilities; and
(f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

Section 6: Processing and non-processing areas

The areas falling within the SEZs may be demarcated by the Central Government or any authority specified by it as-

(a) the processing area for setting up Units for activities, being the manufacture of goods, or rendering services; or
(b) the area exclusively for trading or warehousing purposes; or
(c) the non-processing areas for activities other than those specified under clause (a) or clause (b).

Section 7: Exemption from taxes, duties or cess

Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -

(i) a Unit in a SEZ; or

(ii) a Developer;

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

CONSTITUTION OF BOARD OF APPROVAL

Section 8: Constitution of Board of Approval

The Central Government shall, within 15 days of the commencement of this Act, by notification, constitute, for the purposes of this Act, a Board to be called the Board of Approval.

Section 9: Duties, powers and functions of Board

1. The Board shall have the duty to promote and ensure orderly development of the SEZs.
2. The powers and functions of the Board shall include –
   (a) granting of approval or rejecting proposal or modifying such proposals for establishment of the SEZs;
   (b) granting approval of authorised operations to be carried out in the SEZs by the Developer;
   (c) granting of approval to the Developers or Units for foreign collaborations and foreign direct investments in the SEZ for its development, operation and maintenance;
   (d) granting of approval or rejecting of proposal for providing infrastructure facilities in a SEZ or modifying such proposals;
   (e) granting a licence to an industrial undertaking referred to in Industries (Development and Regulation) Act, 1951 if such undertaking is established, as a whole or part thereof, or proposed to be established, in a SEZ;
   (f) suspension of the letter of approval granted to a Developer and appointment of an Administrator;
   (g) disposing of appeals preferred under section 15(4);
   (h) disposing of appeals preferred under section 16(4);
   (i) performing such other functions as may be assigned to it by the Central Government.
3. The Board may if so, required for purposes of this Act or any other law for the time being in force relating to SEZs, by notification, decide as to **whether a particular activity constitutes manufacture** and such decision of the Board shall be binding on all Ministries and Departments of the Central Government.
4. The Board may delegate such powers and functions as it may deem fit to one or more Development Commissioners for effective and proper discharge of the functions of the Board.

Section 10: Suspension of letter of approval and transfer of SEZ in certain cases

(1) If at any time the Board is of the opinion that a Developer -
   (a) is unable to discharge the functions or perform the duties imposed on him by or under the provisions of this Act or rules made thereunder; or
   (b) has persistently defaulted in complying with any direction given by the Board under this Act; or
   (c) has violated the terms and conditions of the letter of approval; or

(d) whose financial position is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him by the letter of approval, and the circumstances exist which render it necessary for it in public interest so to do, the Board may, on application, or with the consent of the Developer, or otherwise, for reasons to be recorded in writing, suspend the letter of approval, granted to the Developer for a whole or part of his area established as SEZ, **for a period not exceeding 1 year** and appoint an Administrator to discharge the functions of the Developer in accordance with the terms and conditions of the letter of approval and manage the SEZ accordingly.

(2) Consequent upon appointment of an Administrator, the management of the SEZ of the Developer shall vest in the Administrator.

(3) No letter of approval shall be suspended unless the Board has given to the Developer not less than 3 months' notice, in writing, stating the grounds on which it proposes to suspend the letter of approval, and has considered any cause shown by the Developer within the period of that notice, against the proposed suspension.

(4) The Board may, instead of suspending the letter of approval, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be complied with by the Developer and shall be of like force and effect as if they were contained in the letter of approval.

(5) In case the Board suspends a letter of approval under this section, it shall serve a notice of suspension upon the Developer and fix a date on which the suspension shall take effect.

(6) Where the Board has given notice for suspension of letter of approval above the Developer may, after prior approval of the Board, transfer his letter of approval to any person who is found eligible by the Board for grant of such approval.

(7) If at any time, it appears to the Board that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Board may cancel the order and thereupon the Administrator shall be divested of the management of the SEZ which shall, unless otherwise directed by the Board, again vest in the person, being the Developer, in whom it was vested immediately prior to the date of appointment of the Administrator.

(8) Where the Board suspends the letter of approval, under this section, in respect of any Developer, the following provisions shall apply: -

(a) the Board shall invite applications for transferring the letter of approval of the Developer, whose approval has been suspended and select the person or persons, in accordance with the procedure as may be prescribed, to whom the letter of approval of the Developer in the SEZ may be transferred;

(b) upon selection of person or persons under subsection (a), the Board may, by notice in writing, require the Developer to transfer his letter of approval in a SEZ to the person or the persons so selected and thereupon the Developer shall transfer his interests, rights and liabilities in the SEZ who has been selected by the Board on such terms and conditions and consideration as may be agreed upon between the Developer and the transferee;

(c) all the rights, duties, obligations and liabilities of the Developer, on and from the date of suspension of letter of approval or on and from the date, if earlier, on which his letter of approval in the SEZ of the Developer has been transferred to the transferee, shall cease absolutely except for any liabilities which have accrued prior to that date;

(d) the Board may make such interim arrangements in regard to the operation of the SEZ as may be considered appropriate;

(e) the Administrator shall exercise such powers and discharge such functions as the Board may direct.

DEVELOPMENT COMMISSIONER

Section 11: Development Commissioner

(1) The Central Government may appoint **any of its officers not below the rank of Deputy Secretary to the Government of India as the Development Commissioner of one or more SEZs.**

(2) The Central Government may appoint such officers and other employees as it considers necessary to assist the Development Commissioner in the performance of his functions in the SEZs established by a Developer (other than Central Government) under this Act on such terms and conditions as it deems fit.

Section 12: Functions of Development Commissioner

(1) Every Development Commissioner shall take all steps in order to discharge his functions under this Act to ensure speedy development of the SEZ and promotion of exports therefrom.

(2) Without prejudice to the generality of the foregoing provisions, the Development Commissioner shall-

(a) guide the entrepreneurs for setting up of Units in the SEZ;

(b) ensure and take suitable steps for effective promotion of exports from the SEZ;

(c) ensure proper co-ordination with the Central Government or State Government Departments concerned or agencies with respect to above mentioned purposes;

(d) monitor the performance of the Developer and the Units in a SEZ;

(e) discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force; and

(f) discharge such other functions as may be delegated to him by the Board.

(3) Every Development Commissioner shall be overall in charge of the SEZ and shall exercise administrative control and supervision over the officers and employees appointed under section 11(2) to discharge any of the functions under this Act.

(4) Every Development Commissioner shall discharge such functions and exercise such powers as may be delegated to him by a general or special order by the Central Government or the State Government concerned, as the case may be.

(5) Every Development Commissioner may call for such information from a Developer or Unit from time to time as may be necessary to monitor the performance of the Developer or the Unit, as the case may be.

(6) The Development Commissioner, may, delegate any or all of his powers or functions to any of the officers employed under him.

SINGLE WINDOW CLEARANCE

Section 13: Constitution of Approval Committee

The Central Government shall -

(a) in the case of existing SEZs, within 6 months from the date of commencement of this Act;

(b) in case of other SEZs established after the commencement of this Act, within 6 months from the date of establishment of such SEZ, by notification, constitute a Committee for every SEZ, to be called the Approval Committee to exercise the powers and perform the functions specified in section 14.

Section 14: Powers and functions of Approval Committee

- Every Approval Committee may discharge the functions and exercise the powers in respect of the following matters: -

(a) approve the import or procurement of goods from DTA, in the SEZ for carrying on the authorised operations by a Developer;

(b) approve the providing of services by a service provider, from outside India, or from the DTA, for carrying on the authorised operations by the Developer, in the SEZ;

(c) monitor the utilisation of goods or services or warehousing or trading in the SEZ;

(d) approve, modify or reject proposals for setting up Units for manufacturing or rendering services or warehousing or trading in the SEZ [other than the grant of licence under section 9(2)(e)];

However, where the Approval Committee is unable to decide whether a particular process constitutes manufacture or not, it shall refer the same to the Board of Approval for a decision.

(e) allow, on receipt of approval under clause (c) of subsection (2) of section 9, foreign collaborations and foreign direct investments (including investments by a person outside India) for setting up a Unit;

(f) monitor and supervise compliance of conditions subject to which the letter of approval or permission, if any, has been granted to the Developer or entrepreneur; and

(g) perform such other functions as may be entrusted to it by the Central Government or the State Government concerned, as the case may be.

Section 15: Setting up of Unit

(1) Any person, who intends to set up a Unit for carrying on the authorised operations in a SEZ, may submit a proposal to the Development Commissioner concerned in such form and manner containing such particulars as may be prescribed:

(2) On receipt of the proposal under sub-section (1), the Development Commissioner shall submit the same to the Approval Committee for its approval.

(3) The Approval Committee may, either approve the proposal without modification, or approve the proposal with modifications subject to such terms and conditions as it may deem fit to impose, or reject the proposal:

However, in case of modification or rejection of a proposal, the Approval Committee shall afford a reasonable opportunity of being heard to the person concerned and after recording the reasons, either modify or reject the proposal.

(4) Any person aggrieved, by an order of the Approval Committee, made under sub-section (3) may prefer an appeal to the Board within such time as may be prescribed.

(5) No appeal shall be admitted if it is preferred after the expiry of the time prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Board that he had sufficient cause for not preferring the appeal within the prescribed time.

(6) Every appeal made under sub-section (4) shall be in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(7) The procedure for disposing of an appeal shall be such as may be prescribed:

(8) The Central Government may prescribe -

(a) the requirements (including the period for which a Unit may be set up) subject to which the Approval Committee shall approve, modify or reject any proposal referred to in subsection (3);

(b) the terms and conditions, subject to which the Unit shall undertake the authorised operations and its obligations and entitlements.

(9) The Development Commissioner may, after approval of the proposal referred to in sub-section (3), grant a letter of approval to the person concerned to set up a Unit and undertake such operations which the Development Commissioner may authorise and every such operation so authorised shall be mentioned in the letter of approval.

Section 16: Cancellation of letter of approval to entrepreneur

(1) The Approval Committee may, at any time, if it has any reason or cause to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligations subject to which the letter of approval was granted to the entrepreneur, cancel the letter of approval:

(2) Where the letter of approval has been cancelled under subsection (1), the Unit shall not from the date of such cancellation, be entitled to any exemption, concession, benefit or deduction available to it, being a Unit, under this Act.

(3) The entrepreneur whose letter of approval has been cancelled under sub-section (1), shall remit, the exemption, concession, drawback and any other benefit availed by him in respect of the capital goods, finished goods lying in stock and unutilised raw materials relatable to his Unit, in such manner as may be prescribed.

(4) Any person aggrieved by an order of the Approval Committee made under sub-section (1), may prefer an appeal to the Board within such time as may be prescribed.

(5) No appeal shall be admitted if it is preferred after the expiry of the time prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Board that he had sufficient cause for not preferring the appeal within the prescribed time.

(6) Every appeal made under sub-section (4) shall be in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(7) The procedure for disposing of an appeal shall be such as may be prescribed:

Section 17: Setting up and operation of Offshore Banking Unit

(1) An application for setting up and operation of an Offshore Banking Unit in a SEZ may be made to RBI in such form and manner as may be prescribed.

(2) On receipt of an application under sub-section (1), RBI shall, if it is satisfied that the applicant fulfills all the conditions specified under sub-section (3), grant permission to such applicant for setting up and operation of an Off-shore Banking Unit.

(3) RBI may, by notification, specify the terms and conditions subject to which an Offshore Banking Unit may be set up and operated in the SEZ

Section 18: International Financial Services Centre (IFSC)

(1) The Central Government may approve the setting up of an IFSC in a SEZ and may prescribe the requirements for setting up and operation of such Center:

However, the Central Government shall approve only one IFSC in a SEZ.

(2) The Central Government may, subject to such guidelines as may be framed by RBI, SEBI, IRDA and such other concerned authorities, as it deems fit, prescribe the requirements for setting up and the terms and conditions of the operation of Units in an IFSC.

Section 19: Single application form, return, etc.

Notwithstanding anything contained in any other law for the time being in force, the Central Government may, if required, -

(a) prescribe a single application form for obtaining any licence, permission or registration or approval by a Developer, or an entrepreneur under one or more Central Acts;

(b) authorise the Board, the Development Commissioner or Approval Committee, to exercise the powers of the Central Government on matters relating to the development of a SEZ; or setting up and operation of units;

(c) prescribe a single form for furnishing returns or information by a Developer or an entrepreneur under one or more Central Acts.

Section 20: Agency to inspect

Notwithstanding anything contained in any other law for the time being in force, the Central Government may, by notification, specify any officer or agency to carry out surveys or inspections for securing of compliance with the provisions of any Central Act by a Developer or an entrepreneur, as the case may be, and such officer or agency shall submit verification and compliance reports, in such manner and within such time as may be specified in the said notification.

Single enforcement officer or agency for notified offences

Section 21 empowers the Central Government to specify by notification, any act or omission made punishable under any Central Act, as notified offence for purposes of the proposed legislation. It further empowers the Central Government to authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence committed in a

Special Economic Zone. Every officer or agency so authorised has been granted all the corresponding powers of investigation, inspection, search or seizure as provided under the relevant Central Act in respect of the notified offences.

Investigation, Inspection, Search or Seizure

Section 22 empowers the agency or officer, with prior intimation to the Development Commissioner concerned to carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reason to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone. However, no investigation, inspection, search or seizure is allowed to be carried out in a SEZ by any agency or officer other than those referred to in Section 21(2) or (3), without prior intimation or approval of the concerned Development Commissioner. It is further provided that an officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

Designated Courts to try suits and notified offences

Section 23 empowers the concerned State Government, in which SEZ is situated, to designate, with the concurrence of the Chief Justice of the High Court of that State, one or more Courts to try all suits of a civil nature arising out of offences committed in the Special Economic Zone. Section 23(2) provides that no court, other than the designated court shall try any suit or conduct the trial of any notified offence.

Appeal to High Court

Section 24 entitles any person aggrieved by any decision or order of the designated Court to file an appeal to the High Court within sixty days from the date of communication of the decision or order of the said court to him on any question of fact or law arising out of such orders. However, the High Court can, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the prescribed period of sixty days allow it to be filed within a further period not exceeding sixty days.

Offences by Companies

Section 25 dealing with offences by companies provides that where an offence has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, such person shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Section 25(2) provides that where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall, also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

SPECIAL FISCAL PROVISIONS FOR SEZS

Section 26: Exemptions, drawbacks and concessions to every Developer and entrepreneur

- Every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions: -
  - (a) exemption from any duty of **CUSTOMS** on goods imported into, or service provided in, a SEZ or a Unit, to carry on the authorised operations by the Developer or entrepreneur;
  - (b) exemption from any duty of **CUSTOMS** on goods exported from, or services provided, from a SEZ or from a Unit, to any place outside India:
  - (c) exemption from any duty of **EXCISE** on goods brought from Domestic Tariff Area to a SEZ or Unit, to carry on the authorised operations by the Developer or entrepreneur;
  - (d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the DTA into a SEZ or Unit or services provided in a SEZ or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;
  - (e) exemption from **SERVICE TAX** on taxable services provided to a Developer or Unit to carry on the authorised operations in a SEZ;
  - (f) exemption from **SECURITIES TRANSACTION TAX** in case the taxable securities transactions are entered into by a non-resident through the IFSC;
  - (g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

Application of the provisions of the Income Tax Act, 1961 with certain modifications in relation to Developers and entrepreneurs

Section 27 provides for application of the provisions of the Income Tax Act, 1961 to the Developer and entrepreneur for carrying on the authorised operations in the Special Economic Zones or Unit subject to modifications specified in the second schedule.

Duration of goods & services in Special Economic Zones

Section 28 empowers the Central Government to specify, the period during which any goods brought into, or services provided in, any Unit or Special Economic Zone without payment of taxes, duties, levies or cess, shall remain or continue to be provided in such Unit or Special Economic Zone.

Transfer of ownership and removal of goods

Section 29 allows the transfer of ownership in any goods brought into, or produced or manufactured in, any Unit or Special Economic Zone or removal thereof from such Unit or Zone, subject to such terms and conditions as specified by the Central Government.

Section 30: Domestic clearance by Units

Subject to the conditions specified in the rules made by the Central Government in this behalf: -

(a) any goods removed from a SEZ to the DTA shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a SEZ shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

SEZ AUTHORITY

Section 31: Constitution of Authority

(1) The Central Government shall, by notification in the Official Gazette, constitute, for every SEZ established by it before the commencement of this Act or which may be established by it after such commencement by the Central Government, an Authority to be called the …… (name of the SEZ) Authority to exercise the powers conferred on, and discharge the functions assigned to, it under this Act:

However, in respect of existing SEZ established by the Central Government, such Authority shall be constituted by the Central Government within 6 months from the date of commencement of this Act:

Further, until such Authority is constituted, the person or the authority including the Development Commissioner exercising control over such existing SEZs shall continue to exercise such control over the SEZs till the Authority is constituted.

(2) Every Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with a power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue and be sued.

Section 34: Functions of Authority

(1) It shall be the duty of each Authority to undertake such measures as it thinks fit for the development, operation and management of the SEZ for which it is constituted.

(2) The measures may provide for -

- (a) the development of infrastructure in the SEZ;
- (b) promoting exports from the SEZ;
- (c) reviewing the functioning and performance of the SEZ;
- (d) levy user or service charges or fees or rent for the use of properties belonging to the Authority;
- (e) performing such other functions as may be prescribed.

Directions by the Central Government

Section 38 empowers the Central Government to give directions to the authority and makes it binding for every Authority of the Special Economic Zone to carry out the directions issued from time to time in this regard.

Section 39: Returns and reports

(1) Every Authority shall furnish to the CG at such time and in such form and manner as may be prescribed or as the CG may direct, such returns and statements and such particulars in regard to the promotion and development of exports and the operation and maintenance of the SEZ and Units as the CG may, from time to time, require.

(2) Every Authority shall, as soon as possible, after the end of each financial year, submit to the Central Government a report in such form and before such date, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of every report received under sub-section (2) shall be laid, as soon as may be, after it is received, before each House of Parliament.

Section 40: Power to supersede Authority

(1) If at any time the CG is of the opinion that:

- an Authority is unable to perform, or
- has persistently made default in the performance of, the duty imposed on it by or under this Act or
- has exceeded or abused its powers, or
- has wilfully or without sufficient cause, failed to comply with any direction issued by the Central Government,

the Central Government may, by notification, supersede that Authority for such period not exceeding 6 months, as may be specified in the notification:

(2) Upon the publication of a notification above regarding superseding of the Authority -

(a) the Chairperson and other Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the CG may direct;

(c) all property vested in the Authority shall, during the period of supersession, vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may -

(a) extend the period of supersession for such further period not exceeding 6 months; or

(b) reconstitute the Authority in the manner provided in section 31.

MISCELLANEOUS

Section 42: Reference of dispute

(1) If-

(a) any dispute of civil nature arises among two or more entrepreneurs or two or more Developers or between an entrepreneur and a Developer in the SEZ; and

(b) the court or the courts to try suits in respect of such dispute had not been designated, such dispute shall be referred to arbitration:

However, no dispute shall be referred to the arbitration on or after the date of the designation of court or courts here.

(2) Where a dispute has been referred to arbitration above, the same shall be settled or decided by the arbitrator to be appointed by CG.

(3) The provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitration under this Act as if the proceedings for arbitration were referred in settlement or decision under provisions of the Arbitration and Conciliation Act, 1996.

Section 43 stipulates that the period of limitation in the case of any dispute which is required to be referred to arbitration shall be regulated by the provisions of the Limitation Act, 1963, as if the dispute was a suit and the arbitrator is civil court. Section 43(2), however, empowers the arbitrator to admit, a dispute after the expiry of the period of limitation, if the arbitrator is satisfied that the applicant had sufficient cause for not referring the dispute within specified period.

Section 45: Person to whom a communication may be sent under this Act

A communication by any competent authority or person under this Act may be sent to the person who has the ultimate control over the affairs of the SEZ or Unit or where the said affairs are entrusted to a manager, director, chairperson, or managing director, or to any other officer, by whatever name called, such communication may be sent to such manager, director, chairperson, or managing director, or any other officer.

Section 46: Identity Card

Every person, whether employed or residing or required to be present in a SEZ, shall be provided an identity card by every Development Commissioner of such SEZ, in such form and containing such particulars as may be prescribed.

Power of the Central Government to modify provisions of the Act or other enactments in relation to Special Economic Zones

Section 49 empowers the Central Government to direct, by notification in the Official Gazette, that any of the provision of the Act or any other Central Act, any rules or regulations made thereunder or any notification or order issued or direction given thereunder specified in the notification shall not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or shall apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones only with such exceptions, modification and adaptation, as may be specified in the notification. Sub section (2) requires a copy of every notification proposed to be issued to be laid in draft before each House of Parliament. The notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

Section 50: Power of State Government to grant exemption

The State Government may, for the purposes of giving effect to the provisions of this Act, notify policies for Developers and Units and take suitable steps for enactment of any law: -

(a) granting exemption from the State taxes, levies and duties to the Developer or the entrepreneur;
(b) delegating the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur.

Section 51: Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Section 53: SEZs to be ports, airports, inland container depots, land stations, etc., in certain cases

(1) A SEZ shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.
(2) A SEZ shall, with effect from such date as Central Government may notify, be deemed to be a port, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962:

Provided that for the purposes of this section, the Central Government may notify different dates for different SEZs.

Special Economic Zones Rules, 2006

Section 55 empowers the Central Government to make rules in respect of specified matters and requires that the same be published in the Official Gazette and be laid before each House of Parliament. In this context, the Central Government has notified the Special Economic Zones Rules, 2006 on February 10, 2006.

Rights of appellant to appear before the Board

According to Rules 61 of the Special Economic Zones Rules, 2006 every appellant may appear before the Board in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Board.

It may be noted that company secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.