

JAHANGIR TUTORIALS

**ECONOMIC,
COMMERCIAL &
INTELLECTUAL
PROPERTY
LAWS**

(New Syllabus)

PROF ZUBAIR JAHANGIR

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Lesson 1 - Law relating Foreign Exchange Management

June 2023

1. Elaborate briefly the pre-requisites for compounding process under Foreign Exchange Management Act (FEMA), 1999

Ans

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

1. **Three-Year Limit for Compounding Similar Contraventions:**
 - Contraventions committed by a person within three years of compounding a similar contravention will not be compounded.
 - Subsequent contraventions after three years will be treated as a first contravention.
2. **Non-Compounding of Transactions without Proper Approvals:**
 - Contraventions involving transactions without proper approvals from the Government or relevant statutory authorities cannot be compounded.
 - Compounding is contingent upon obtaining required approvals from the concerned authorities.
3. **Referral for Serious Contraventions:**
 - Cases involving suspected money laundering, terror financing, or threats to national sovereignty will not be compounded.
 - Failure to pay the compounded sum within the specified period triggers referral to the Directorate of Enforcement for further investigation and action under FEMA, 1999.
4. **Reserve Bank's Role in Identifying Contraventions:**
 - The Reserve Bank determines the nature of contraventions identified through sources other than the compounding application.
 - Classifies contraventions as technical/minor, material for compounding, or serious/sensitive for referral to the Directorate of Enforcement.
5. **Effect of Self-Admission on Contravention Severity:**
 - Contraventions identified through a self-filed compounding application are not considered technical or minor.
 - The compounding process is initiated as per Section 15(1) of FEMA, 1999, and Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

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2. Define the following terms as stated under Foreign Exchange Management Act, 1999:

- (a) **Automatic Route**
- (b) **Government Route**
- (c) **Foreign Portfolio Investment**
- (d) **Foreign Portfolio Investor.**

Ans –

- (a) 'Automatic Route' means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank of India or the Central Government.
- (b) 'Government Route' means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.
- (c) 'Foreign Portfolio Investment' means any investment made by a person resident outside India through capital instruments where such investment is less than ten percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than ten percent of the paid-up value of each series of capital instrument of a listed Indian company.
- (d) 'Foreign Portfolio Investor' (FPI)¹ means a person registered in accordance with the provisions of Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, as amended from time to time.

June 2022

(a) What do you mean by Compounding of Contraventions ?

Ans:-

1. Contravention Defined:

- Contravention refers to a violation of the provisions outlined in any Act, along with the rules, regulations, notifications, orders, directions, or circulars issued under that Act.

2. Compounding Process:

- Compounding is a voluntary process involving the admission of contravention, pleading guilty, and seeking redressal.
- The Reserve Bank of India, under Section 13 of the Foreign Exchange Management Act, 1999, is authorized to compound contraventions (except those under Section 3(a)) by imposing a specified sum after providing a personal hearing to the contravener.

3. Authority for Compounding:

- The Reserve Bank of India has the authority to compound contraventions under the Foreign Exchange Management Act, 1999, excluding those falling under Section 3(a).

4. Voluntary Compounding Process:

- Compounding is a voluntary process where individuals or corporations admit to contraventions, seeking comfort by minimizing transaction costs.

5. Exemption for Willful, Malafide, and Fraudulent Transactions:

- Willful, malafide, and fraudulent transactions are not eligible for compounding by the Reserve Bank, as these are viewed seriously.

6. Eligibility for Compounding:

- Any person contravening provisions of the Foreign Exchange Management Act, 1999 (except Section 3(a)), or violating rules, regulations, notifications, directions, or orders issued under the Act, or breaching conditions of an authorization issued by the Reserve Bank, can apply for compounding.

7. Application Process for Section 3(a) Contraventions:

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

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(b). What is the limit on possession and retention of foreign currency or foreign coins under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 ?

1. Limits on Possession and Retention of Foreign Currency:

- Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, outlines specific limits set by the Reserve Bank for the possession or retention of foreign currency and coins.

2. Possession Limits for Authorized Persons:

- Authorized persons, within the scope of their authority, are allowed unlimited possession of foreign currency and coins.

3. Unlimited Possession of Foreign Coins:

- Any person is permitted to possess foreign coins without any specified limit.

4. Limits on Retention for Residents in India:

- Residents in India can retain foreign currency notes, bank notes, and travelers' cheques up to the aggregate value of US\$ 2000 or its equivalent.
- Such foreign exchange should be acquired during a visit outside India for non-business-related services, received from a non-resident on a visit to India, as honorarium or gift, settlement of lawful obligations, or as unspent amount from an authorized person for travel abroad.

5. Regulation 4: Possession by Non-Permanent Residents:

- Regulation 4 stipulates that a person resident in India but not permanently residing therein can possess foreign currency without any limit.
- The foreign currency should have been acquired, held, or owned during the period when the individual was a resident outside India and brought into India following the prevailing laws.

December 2021

Question 1: What is the object and scope of Foreign Exchange Management Act, 1999 ?

Solution: The Foreign Exchange Management Act, 1999 was enacted 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. In fact it is the central legislation that deals with inbound investments into India and outbound investments from India and trade and business between India and the other countries.

Foreign Exchange Management Act, 1999 extends to the whole of India. It shall also 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.

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December 2020

QUESTION 1: Discuss the provisions relating to mode of acquiring immovable property outside India by a person resident in India under the Foreign Exchange Management Act, 1999 (FEMA)

Solution: According to section 6(4) of the Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Non-Debt Instruments) Rules, 2019:

1. A resident can acquire immovable property outside India by way of gift or inheritance from:
 - (a) a person resident in India can hold, own, transfer or invest in any immovable property situated outside India if such property was acquired, held or owned by him/ her when he/ she was resident outside India or inherited from a person resident outside India.; or
 - (b) a person resident in India who had acquired such property on or before July 8, 1947 and continued to be held by him with the permission of the Reserve Bank.
 - (c) 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.
2. A resident can purchase immovable property outside India out of foreign exchange held in his/ her Resident Foreign Currency (RFC) account.
3. A resident can acquire immovable property outside India jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

Question 2: Explain briefly scope and procedure for compounding of contravention under Foreign Exchange Management Act, 1999

Solution:

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

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

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

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

On receipt of the application for compounding, the Reserve Bank shall examine the application based on the documents and submissions made in the application and assess whether contravention is quantifiable and, if so, the quantifiable amount of contravention.

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.

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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

JUNE 2021

Question 1: State the pre-requisites for compounding process in respect of contravention committed, under the Foreign Exchange Management (FEMA) Act, 1999.

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

- In respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded and relevant provisions of the FEMA, 1999 shall apply. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.
- 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 the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide:
 - Whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice;
 - Whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or
 - Whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE). However, once a compounding application is filed by the concerned entity suo moto, admitting the contravention, the same will not be considered as 'technical' or 'minor' in nature and the compounding process shall be initiated in terms of section 15 (1) of Foreign Exchange Management Act, 1999 read with Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

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Question 2: Enumerate the situations in which the drawal of foreign exchange is prohibited under the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Solution: Transactions which are prohibited under Foreign Exchange Management (Current Account Transaction) Rules are as under:

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 /proscribed magazines, football pools, sweepstakes, etc.
4. Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6. Payment of commission on 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.

December 2020

Question 1: State the rules relating to acquisition and transfer of immovable property in India by a Non Resident Indian (NRI).

Solution: Rule 24 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that a Non Resident Indian (NRI) may -

- (a) Acquire immovable property in India other than an agricultural land or farm house or plantation property.

Provided that the consideration, if any, for transfer, shall be made out of:

- Funds received in India through banking channels 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, rules or regulations framed thereunder:

Provided further that no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;

- (b) Acquire any immovable property in India other than agricultural land or farm house or plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in clause (77) of section 2 of the Companies Act, 2013;

- (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 rules ;or
 - from a person resident in India;
- (d) Transfer any immovable property in India to a person resident in India;
- (e) Transfer any immovable property other than agricultural land or farm house or plantation property to an NRI.

Question 2: Explain various modes of acquiring property outside India by a Resident Indian

Solution: According to Section 6(4) of the Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Non-debt Instruments) Rules, 2019:

A person resident in India can hold, own, transfer or invest in any immovable property situated outside India if such property was acquired, held or owned by him/ her when he/ she was resident outside India or inherited from a person resident outside India.

A resident can acquire immovable property outside India by way of gift or inheritance.

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

— A resident can acquire immovable property outside India jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

Lesson 2 - Foreign Direct Investments – Regulations & Policy

June 2022

(a) **What are the penalties for contravention of Foreign Direct Investment Regulations?**

Ans - If a person violates/contravenes any Foreign Direct Investment 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 Foreign Exchange Management Act, 1999 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 two lakh where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

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 (company means any body corporate and includes a firm or other individuals as defined in the Companies Act), 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 stated above, 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 property in respect of which the contravention has taken place shall be confiscated to the Central Government.

December 2020

QUESTION 1: State the obligations of an Indian person who has made direct investment outside India, under the provisions of the Foreign Exchange Management Act, 1999

Solution: An Indian Party which has made direct investment outside India is required to comply with the following:-

- i. Receive share certificates or any other documentary evidence of investment in the foreign Joint Venture(JV)/ Wholly Owned Subsidiary(WOS) as an evidence of investment and submit the same to the designated Authorised Dealer within 6 months;
- ii. Repatriate to India, all dues receivable from the foreign JV / WOS, like dividend, royalty, technical fees etc.
- iii. Submit to the Reserve Bank through the designated Authorized Dealer, every year, an Annual Performance Report in respect of each JV or WOS outside India set up or acquired by the Indian party.

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Question 2: Discuss various modes of payment allowed for receiving Foreign Direct Investment (FDI) to an Indian Company

Solution: Modes of payment allowed for receiving Foreign Direct Investment to an Indian company are as under:

- a) Inward remittance through normal banking channels;
- b) Debit to NRE/ FCNR (B) account of a person concerned maintained with an Authorised Dealer (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 the a non-resident entity up to a limit of five percent 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 competent authority;
- 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
- h) Swap of capital instruments, provided where the Indian investee company is
- i) engaged in a Government route sector, prior Government approval shall be required.

JUNE 2021

Question 1: State the penalties, which may be imposed on a person, who contravenes the foreign direct investment regulations.

Solution:

1. **Nature of Violations:** The violations in question pertain to breaches, non-adherence, non-compliance, or contravention of any rule, regulation, notification, press note, press release, circular, direction, or order issued under the powers granted by FEMA.
2. **Penalties for Individuals:** Individuals found guilty of such contraventions, upon adjudication, may be liable to a penalty. The penalty amount can be up to three times the sum involved in the contravention if quantifiable. If the amount is not quantifiable, the penalty may be up to two lakh Rupees. For continuing contraventions, an additional penalty of up to five thousand Rupees for every day beyond the first day of the violation may be imposed.
3. **Penalties for Companies:** If the entity committing the contravention is a company (which includes any body corporate and also a firm or other association of individuals as defined in the Companies Act), both the company itself and every person who, at the time of the contravention, was in charge of and responsible for the conduct of the business of the company shall be deemed guilty of the contravention. Such individuals and the company can be proceeded against and punished accordingly.

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Lesson 3 - Overseas Direct Investment

June 2023

1. **Discuss the terms and conditions for overseas direct investment by a proprietorship concern/unregistered partnership firm in India.**

Ans - The proposal for overseas direct investment (or financial commitment), by a proprietorship concern / unregistered partnership firm in India to be considered by the Reserve Bank under the approval route are subject to following terms and conditions:

1. **Status Holder Classification:** The proprietorship concern or unregistered partnership firm in India seeking overseas direct investment must be classified as a 'Status Holder' according to the Foreign Trade Policy issued by the Ministry of Commerce and Industry, Government of India.
2. **Export Track Record:** The entity should have a proven track record, with the export outstanding not exceeding 10% of the average export realization of the preceding three years. A consistently high export performance is also required.
3. **KYC Compliance:** The Authorised Dealer bank must be satisfied that the proprietorship concern or unregistered partnership firm is KYC (Know Your Customer) compliant, engaged in the proposed business, and has the indicated turnover.
4. **No Adverse Notices:** The entity should not have come under adverse notice from any Government agency, including the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc. Additionally, it should not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India.
5. **Investment Limits:** Any overseas investment by the sole proprietorship or unregistered partnership firms should be made by the proprietor or individual partners within their limit available under the Liberalized Remittance Scheme (LRS) in accordance with schedule III of the Foreign Exchange Management (Overseas Investment) Rules, 2022.
6. **Strategic Sector Investments:** If the proposed investment is in a strategic sector, any application for making overseas investment in excess of the LRS limit may be made under the government approval route.

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2. What do you mean by “Financial Commitment” and “Indian Party” under Overseas Direct Investment?

Ans - “Financial Commitment” means the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment, debt other than Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made and shall include the non-fund-based facilities extended by such person to or on behalf of such foreign entity or entities;

“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”.

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June 2022

(a) **What are the conditions for Indian party to make investment in overseas joint venture or wholly owned subsidiaries ?**

Ans- An Indian Party has been permitted to make investment / undertake financial commitment in overseas Ventures (JV) / Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve from time to time.

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

- 100% of the amount of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS);
- 100% of the amount of other preference shares;
- 100% of the amount of loan;
- 100% of the amount of guarantee (other than performance guarantee) issued by the Indian Party;
- 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the India Party provided the bank guarantee is backed by a counter guarantee/collateral by the Indian Party;
- 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 financial commitment in force, prior permission of the Reserve Bank is to be obtained before executing remittance beyond the limit prescribed for the financial commitment;
- Funding for Overseas Direct Investment can be made by one or more of the permissible sources.

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Question 1: What are the permissible sources for the funding of Overseas Direct Investment?

Solution: Permissible Sources for Funding of Overseas Direct Investment are as under:

- Drawal of foreign exchange from an Authorised Dealer(AD) bank in India;
- Capitalisation of exports;
- Swap of shares;
- Proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
- In exchange of American Depository Receipts(ADRs) / Global Depository Receipts(GDRs) issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued thereunder from time to time by the Government of India;
- Balances held in Exchange Earners Foreign Currency (EEFC) account of the Indian Party maintained with an authorised dealer and
- Proceeds of foreign currency funds raised through ADR / GDR issues.

December 2020

Question : Can a resident individual acquire/sell foreign securities without prior approval of Reserve Bank of India ? Comment.

Solution: A Resident individuals can acquire/sell foreign securities without prior approval of Reserve Bank of India 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; and
- vi. By way of bonus/rights shares on the foreign securities already held by them.
- vii. 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.

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Lesson 4 - External Commercial Borrowings (ECB)

June 2023

1. In which manner External Commercial Borrowings (ECB) proceeds are permitted to be parked abroad as well as domestically?

Ans - External Commercial Borrowing (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.

Parking of ECB proceeds domestically: ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

June 2022

- (a) Who are recognized lenders in External Commercial Borrowing Framework ?

Ans- Recognised lender should be resident of Financial Action Task Force (FATF) or International Organisation of Securities commission's (IOSCO) compliant country, including on transfer of External Commercial Borrowing. 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 foreign currency ECB (except FCCBs and FCEBs). Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market maker/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/ subsidiaries of Indian banks for issuances by Indian banks will not be allowed.

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(b) How hedging is regulated under External Commercial Borrowing framework?

Ans- The entities raising External Commercial Borrowing (ECB) are required to follow the guidelines for hedging issued, if any, by the 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 mandate 70 per cent of their ECB exposure in case the average maturity of the ECB is less than 5 years. The designated Authorised Dealer (AD) Category-I bank shall verify

that 70 per cent hedging requirement is complied with during the currency of 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 financial hedges. The financial hedge for all exposures on account of ECB should start from 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 rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point 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 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.

QUESTION 1: Explain the procedure for raising external commercial borrowings under approval route of RBI by the borrower.

Solution: Procedure of raising External Commercial Borrowings under approval route of RBI are as under:

- 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.
- ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank.
- The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee.

December 2020

Question 1: What is the procedure of raising external commercial borrowings ? Explain.

Solution:

Lesson 5 - Foreign Trade Policy & Procedure

June 2023

What mandatory documents are required to be submitted for export and import of goods from/into India?

Ans –

Mandatory documents required for export of goods from India are as under:

- Bill of Landing/Airways Bill
- Commercial Invoice cum Packing List
- Shipping Bill/Bill of Export

Mandatory documents required for import of goods into India are as under:

- Bill of Landing/Airways Bill
- Commercial Invoice cum Packing List
- Bill of Entry

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.

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.

JUNE 2021

Question 1: Which types of complaints and trade disputes may be raised against the exporters to maintain a good image of the country in abroad to promote export ?

Solution: Exporters need to project a good image of the country in 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.

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.

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December 20201

Question 1: What are the basic objectives of Present Foreign Trade Policy ? Explain

Solution: The basic objectives of India's Foreign Trade Policy (FTP) are as under:

- To provide a stable and sustainable policy environment for foreign trade in merchandise and services
- To link rules, procedures and incentives for exports and imports with other initiatives such as “Make in India”, “Digital India” and “Skills India” to create an “Export Promotion Mission” for India
- To promote the diversification of India's export basket by helping various sectors of the Indian economy to gain global competitiveness with a view to promoting exports
- To create an architecture for India's global trade engagement with a view to expanding its markets and better integrating with major regions, thereby increasing the demand for India's products and contributing to the government's flagship “Make in India” initiative
- To provide a mechanism for regular appraisal in order to rationalize imports and reduce the trade imbalance.

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Lesson 6 - Law relating to Special Economic Zones

June 2023

1. Explain the provisions with regard to setting up of unit under Section 15 of the Special Economic Zones Act, 2005.

Ans - Section 15 of the Special Economic Zones Act, 2005 entitles any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, to submit a proposal to the Development Commissioner concerned.

The Development Commissioner in turn place the proposal before the Approval Committee for its approval. The Approval Committee may, approve the proposal with or without modification, and subject to such terms and conditions as it may deem fit, or reject the same.

In case of modification or rejection of a proposal, the Approval Committee has been put under obligation to afford a reasonable opportunity of being heard to the person concerned and after recording the reasons therefor, either modify or reject the proposal.

A person aggrieved by an order of the Approval Committee, to make an appeal to the Board of Approvals, within the prescribed time and specified manner.

Section 15 empowers the Central Government to prescribe the requirements (including the period for which a unit may be set up) subject to which the Approval Committee may approve, modify or reject the proposal.

The Development Commissioner may, after the approval of the proposal, grant a letter of approval to the person concerned to set up a Unit and undertake in the Unit such operations which the Development Commissioner may authorise and every such operation so authorised is mentioned in the letter of approval.

June 2022

- (a) Explain the Guidelines for notifying Special Economic Zone

Ans- Section 5 of the Special Economic Zones Act, 2005 stipulates broader guidelines to be considered by the Central Government, while notifying any area as a Special Economic Zone or an area to be included in the SEZ and in discharging its functions under the Act. These include:

- a) Generation of additional economic activity;
- a) Promotion of exports of goods and services;
- b) Promotion of investment from domestic and foreign sources;
- c) Creation of employment opportunities;
- d) Development of infrastructure facilities; and
- e) Maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

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December 2020

QUESTION 1: Discuss the functions of Authority constituted under Special Economic Zone Act, 2005.

Answer: Section 34 of the Special Economic Zones Act, 2005 casts upon the Authority a duty to undertake such measures as it thinks fit for the development, operation and management of the respective Special Economic Zone. They are as under:

- a) the development of infrastructure in the Special Economic Zone;
- b) promoting exports from the Special Economic Zone;
- c) reviewing the functioning and performance of the Special Economic Zone;
- 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.

JUNE 2021

Question 1: What is meant by Special Economic Zone (SEZ) ? State the purpose and salient features of the Special Economic Zones Act, 2005.

Solution: Special Economic Zone (SEZ) is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.

In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, the Government enacted Special Economic Zones Act, 2005.

The salient features and purposes of the Special Economic Zones Act, 2005 are as under:—

- i. Matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;
- ii. Matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;
- iii. The fiscal regime for developers of Special Economic Zones and units set up therein;
- iv. Single window clearance mechanism at the Zone level;
- v. Establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and
- vi. Designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

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December 2020

Question: “Special Economic Zones are the growth engines of our country.” Comment upon this statement in view of salient features of Special Economic Zones Act, 2005.

Solution: Special Economic Zones (SEZ) are growth engines that can boost manufacturing, augment exports and generate employment. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, the Government enacted Special Economic Zones Act, 2005.

The salient features of the Special Economic Zones Act, 2005 are as under:—

- i. Matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;
- ii. Matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;
- iii. The fiscal regime for developers of Special Economic Zones and units set up therein;
- iv. Single window clearance mechanism at the Zone level;
- v. Establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and
- vi. Designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

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Lesson 7 - Law relating to Foreign Contribution Regulation

June 2023

Discuss the provisions where the Central Government may call for and examine any proceedings under the Foreign Contribution (Regulation) Act, 2010.

Ans - Section 32(1) of Foreign Contribution (Regulation) Act, 2010 provides that the Central Government may, either of its own motion or on an application for revision by the person registered under this Act, call for and examine the record of any proceeding under this Act in which any such order has been passed by it and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as it thinks fit.

The Central Government shall not of its own motion revise any order under this section if the order has been made more than one year previously.

In the case of an application for revision under this section by the person referred to in sub-section (1), the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier.

Central Government may, if it is satisfied that such person was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

The Central Government shall not revise any order where an appeal against the order lies but has not been made and the time within which such appeal may be made has not expired or such person has not waived his right of appeal or an appeal has been filed under this Act.

Every application by such person for revision under this section shall be accompanied by such fee, as may be prescribed.

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June 2022

What kinds of restrictions and prohibition have been imposed upon person, resident of India and citizen of India to accept foreign contribution under the Foreign Contribution (Regulation) Act, 2010 ?

Ans- Section 3(1) of the Foreign Contribution Regulation Act, 2010 prohibits following person to accept foreign contribution:

(a) candidate for election; (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; (c) public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government; (d) member of any Legislature; (e) political party or office-bearer thereof; (f) organisation of a political nature as may be specified 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 or any other mode of mass communication. (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

Section 3(2) states that:

(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.

According to Section 3(3) of the Act, 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.

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**(b) Cancellation of certificate under the Foreign Contribution (Regulation) Act, 2010".
Discuss.**

Ans- Section 14 of the Foreign Contribution (Regulation) Act, 2010 empowers the Central Government to Cancel the Certificate. Accordingly, the Central Government may if it is satisfied after making such inquiry as it may deem fit, by an order, Cancel the certificate if –

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

Before passing an order of cancellation of Certificate, the person concerned would be given a reasonable opportunity of being heard. Any person, whose certificate has been cancelled, shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

December 2020

QUESTION 1: Discuss the circumstances in which the Foreign Contribution (Regulation) Act, 2010 does not apply.

Solution: According to Section 4 of the Foreign Contribution (Regulation) Act, 2010 prohibition regarding acceptance of foreign contribution does not apply to any foreign contribution where such contribution is accepted by a person specified under section 3 of the Act, 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
- by way of any scholarship, stipend or any payment of like nature

JUNE 2021

Question 1: Enumerate the persons who are prohibited from accepting foreign contributions under the Foreign Contribution (Regulation) Act, 2010.

Solution: Section 3 of the Foreign Contribution (Regulation) Act, 2010 prohibits the following person from accepting foreign contribution:

- (a) Candidate for election;
- (a) Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (b) Public Servant, Judge, government servant or employee of any entity controlled or owned by the Government;
- (c) Member of any Legislature;
- (d) Political party or office bearers thereof;
- (e) Organisations of a political nature as may be specified;
- (f) Associations or companies engaged in the production or broadcast of audio news or audio-visual news or current affairs programmes through any electronic mode or form or any other mode of mass communication;
- (g) Correspondent or columnist, cartoonist, editor, owner of the association or company referred to in (g) above.

Question 2: Upto what limit an authorised dealer may release foreign exchange for business trip and medical treatment abroad, under Liberalised Remittance Scheme

Solution: Followings are the limits up to which the authorised dealer may release foreign exchange for business trip and medical treatment under Liberalised Remittance Scheme (LRS):

(b) Business trip

Visits by individuals in connection with attending of an international conference, seminar, specialised training, apprentice training, etc., are treated as business visits/trips. For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD 2, 50,000 in a Financial Year 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 are to be treated as residual current account transactions outside LRS and may be permitted by the AD without any limit, subject to verifying the bonafides of the transaction.

(ii) Medical treatment abroad

Authorised Dealers may release foreign exchange up to an amount of USD 2, 50,000 or its equivalent per Financial Year 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.

QUESTION 3: When and to whom an appeal may be preferred against the order of adjudication of confiscation, under the Foreign Contribution (Regulation) Act, 2010 ?

SOLUTION: Section 31 of the Foreign Contribution (Regulation) Act, 2010 deals with appeals and provides that any person aggrieved by any order made under section 29 of the Act may prefer an appeal, where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or where the order has been made by any officer specified, to the Court of Session within the local limits of whose jurisdiction such order of adjudication of confiscation was made, within one month from the date of communication to such person of the order.

Further 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 one month, allow such appeal to be preferred within a further period of one month, but not thereafter.

Every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall, as far as may be, apply thereto as they apply to an appeal from an original decree.

December 2021

Question 1: Discuss the powers of Central Government to prohibit receipt of foreign contribution.

Solution: According to Section 9 of the Foreign Contribution (Regulation) Act, 2010, 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 within 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) Without prejudice to the provisions of section 11(1), require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;
- (e) Require any person or class of persons, not specified in section 6, to furnish intimation, within 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:
Provided that 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.

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Lesson 8 - Prevention of Money Laundering

June 2023

1. Explain in brief the role of the Financial Action Task Force (FATF) in the prevention of money laundering under The Prevention of Money Laundering Act, 2002?

Ans - The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

The FATF is a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field.

The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally.

In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.

December 2020

QUESTION 1: Define the term "Money Laundering". What is the punishment for money laundering?

Solution: According to Section 2(1) (p) of the Prevention of Money Laundering Act, 2002 "money-laundering" has the meaning assigned to it in section 3 of the Act.

Section 3 of the Prevention of Money Laundering Act, 2002 states that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it is an untainted property shall be guilty of offence of money laundering.

Section 4 provides that any person who commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and also liable to fine. However, where the proceeds of crime involved in money laundering relates to any offence specified under the Narcotic Drugs and Psychotropic Substances Act, the punishment may extend to rigorous imprisonment for ten years.

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JUNE 2021

Question 1: Which information should be preserved by the banks under Prevention of Money Laundering Act, 2002?

Solution: According to the Prevention of Money Laundering Act, 2002 requires every Bank shall—

- (a) Maintain a record of all transactions, including information relating to transactions in such manner as to enable it to reconstruct individual transactions.
- (b) Furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed.
- (c) Maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
- (d) Preserved information such as the nature of the transactions; the amount of the transaction and the currency in which it was denominated; the date on which the transaction was conducted; and the parties to the transaction.

Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

The records shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

Question 2: Explain the obligations which have been imposed upon the banks to remain cautious under the Prevention of Money Laundering Act, 2002.

Solution: The obligations which have been imposed upon banks to remain cautious under the Prevention of Money Laundering Act, 2002 are:

- (1) In terms of the provisions of Prevention of Money-Laundering Act, 2002 and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, banks are required to follow certain customer identification procedures (KYC procedures) while undertaking a transaction either by establishing an account-based relationship or otherwise and monitor their transactions.
- (2) Banks should keep in mind that the information collected from the customer for the purpose of opening of account is to be treated as confidential and details thereof are not to be divulged for cross selling or any other like purposes. Banks should, therefore, ensure that information sought from the customer is relevant to the perceived risk, is not intrusive, and is in conformity with the guidelines issued in this regard. Any other information from the customer should be sought separately with his/her consent and after opening the account.
- (1) Banks should ensure that the provisions of Foreign Contribution (Regulation) Act, 2010 and the Foreign Exchange Management Act, 1999 as amended from time to time, wherever applicable are strictly adhered to.
- (2) Banks should take appropriate steps to evolve a system for proper maintenance and preservation of account information in a manner that allows data to be retrieved easily and quickly whenever required or when requested by the competent authorities.
- (3) Banks should ensure that records pertaining to the identification of the customer and his address (e.g. copies of documents like passports, identity cards, driving licenses, PAN card, utility bills etc.) obtained while opening the account and during the course of business relationship, are properly preserved. The identification records and transaction data should be made available to the competent authorities upon request.
- (4) Banks have been advised to pay special attention to all complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. It is further clarified that the background including all documents/office records/memorandums pertaining to such transactions and purpose thereof should, as far as possible, be examined and the findings at branch as well as Principal Officer Level should be properly recorded.

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December 2021

Question 1: “Money laundering is an Economic Crime”. What punishment is provided for it under Prevention of Money Laundering Act, 2002 ?

Solution: Section 4 of the Prevention of Money Laundering Act, 2002 provides that any person who commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and also liable to fine.

However, where the proceeds of crime involved in money laundering relates to any offence specified under the Narcotic Drugs and Psychotropic Substances Act, the punishment may extend to rigorous imprisonment for ten years.

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Lesson 9 - Law relating to Fugitive Economic Offenders

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Lesson 10 - Law relating to Benami Transactions & Prohibition

June 2023

1. Discuss the provisions for the confiscation and vesting of benami property under the Benami Transactions (Prohibition) Act, 1988.

Ans - Section 27 of the Benami Transactions (Prohibition) Act, 1988 deals with confiscation and vesting of benami property.

Sub-section (1) of this section provides that where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a benami property. However, where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46. Further, confiscation of the property shall be made in accordance with such procedure as may be prescribed.

Sub-section (2) of this section provides that the above shall not apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the benami transaction.

Sub-section (3) of this section provides that where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.

Sub-section (4) of this section provides that any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.

Sub-section (5) of this section provides that where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

December 2020

QUESTION 1: What do you understand by “Benami Transaction” under the Benami Transactions (Prohibition) Act, 1988 ?

Solution: As per Section 2 (9) of the Benami Transactions (Prohibition) Act, 1988 “benami transaction” means-

(A) a transaction or an arrangement—

- (a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
- (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—
 - (i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;
 - (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;
 - (iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;
 - (iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

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- (B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or
- (C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;
- (D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious.

Question 2: 'A', an individual, by a transaction, purchased a house in the name of his wife. Consideration of transaction was paid by 'A' out of his known sources. Government seized the house claiming it to be a benami property. Decide, whether the action of the Government is justified ?

Solution: According to Section 2 (8) of the Benami Transactions (Prohibition) Act, 1988 Benami Property means any property which is the subject matter of a benami transaction and also includes the proceeds from such property.

As per Section 2 (9)(A) of the Benami Transactions (Prohibition) Act, 1988 "benami transaction" means-a transaction or an arrangement—

- (a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
- (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—
- (iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

In the present case transaction falls in the category of Section 2 (9)(A)(b)(iii) of the Benami Transactions (Prohibition) Act, 1988 and is an exception to what constitutes

Benami Transaction. Therefore, the house purchased by A in the name of his wife known sources does not fall in the Benami Transaction. So the action of seizure of the house by the Government is not justified

JUNE 2021

Question 1: In what manner and to whom the service of notice will be served under the Benami Transactions (Prohibition) Act, 1988 ?

Solution: Section 25 of the Benami Transactions (Prohibition) Act, 1988 deals with the manner of service of notice. A notice under Section 24(1) may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

Any notice referred to above may be addressed---

- (i) in case of an individual, to such individual;
- (ii) in the case of a firm, to the managing partner or the manager of the firm;
- (iii) in the case of a Hindu undivided family, to karta or any member of such family;
- (iv) in the case of a company, to the principal officer thereof;
- (v) in the case of any other association or body of individuals, to the principal officer or any member thereof;
- (vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

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Lesson 11 - Competition Law

June 2023

2. Under what circumstances the Central Government may remove the Chairperson or any member of the Competition Commission of India under the Competition Act, 2002?

Ans - Under Section 11(?) of the Competition Act, 2002 in the following circumstances the Central Government may, by order, remove the Chairperson or any Member from his office if such Chairman or Member as the case may be, -

- (a) is, or at any time has been, adjudged as an insolvent; or
- (b) has engaged at any time, during his term of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has acquired such financial or other interest as it likely to affect prejudicially his functions as a member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) has become physically or mentally incapable of acting as a member.

3. Discuss the provisions when the order passed by the Competition Commission of India may be rectified under the Competition Act, 2002.

Ans - Section 38(1) of the Competition Act, 2002 provides that the Competition Commission of India may amend any order passed by it under the provisions of this Act with a view to rectifying any mistake apparent from the record.

Section 38(2) provides that subject to other provisions of this Act, the Commission may make

- (a) an amendment of an order of its own motion;
- (b) an amendment for rectifying any mistake apparent from record, which has been brought to its notice by any party to the order.

An explanation below the Section clarifies that while rectifying any mistake apparent from the record, the Commission shall not amend substantive part of the order passed by it under the provisions of this Act.

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4. **An Organization constituted by the owners of Cement Industries unanimously decided to raise the price of cement above competitive levels resulting in injury to the consumers and to the economy. But the decision taken by the organization was not in writing and also not intended to be enforced by legal proceedings. Discuss whether the decision taken by organization may be considered as an 'agreement' under the provisions of the Competition Act, 2002?**

Ans - According to Section 2(b) of the Competition Act, 2002 the term agreement includes any arrangement or understanding or action in concert –

- (i) whether or not, such arrangement, understanding or concert is in formal or in writing; or
- (ii) whether or not such arrangement, understanding or concert is intended to be enforceable by legal proceedings.

It implies that an arrangement need not necessarily be in writing. Intention of legal enforceability is also not relevant for an arrangement to be treated as agreement under this section. The term is relevant in the context of Section 3, which envisages that anti-competitive agreements shall be void and thereby prohibited by the law. Thus, the organisation constituted by the owners of cement industries which decided to raise the price of cement above competition level which is causing injury to the consumers and economy, will be treated as an agreement under Section 2(b), though it was neither in writing nor intended to have legal enforceability. Such agreement will be void and thereby prohibited under the Competition Act.

5. **Mention the most commonly adopted ways in which collusive bidding or bid rigging may occur.**

Ans - Some of the most commonly adopted ways in which collusive bidding or bid rigging may occur are:

- agreements to submit identical bids
- agreements as to who shall submit the lowest bid, agreements for the submission of cover bids (voluntarily inflated bids)
- agreements not to bid against each other,
- agreements on common norms to calculate prices or terms of bids
- agreements to squeeze out outside bidders
- agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis.

6. **Explain the provisions regarding "Meetings of Commission" under Section 22 of The Competition Act, 2002.**

Ans -

Section 22 of the Competition Act, 2002 provides that the Commission shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations. The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior most Member present at the meeting, shall preside at the meeting.

All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or/casting vote. However, the quorum for such meeting shall be three Members.

7. Explain the procedure which is being regulated by the Competition Commission of India under Section 36(2) while trying the suit under the provisions of the Competition Act, 2002.

Ans - According to Section 36 of the Competition Act, 2002, in the discharge of its functions, the Competition Commission of India shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, any public record or document or copy of such record or document from any office.

8. What are the orders that may be issued by the Competition Commission of India after inquiry into any agreement entered into by any enterprise or association of enterprises or any person or association of persons or an enquiry into abuse of dominant position under Section 27 of the Competition Act, 2002?

Ans - Section 27 of the Competition Act, 2002 envisages that the Commission after any inquiry into agreement entered into by any enterprise or association of enterprises or person or association of persons, or an inquiry into abuse of dominant position may pass all or any of the following orders, namely, –

- (i) direct that such agreement, or abuse of dominant position shall be discontinued and such agreement, which is in contravention of Section 3 shall not be re-entered or the abuse of dominant position in contravention of Section 4 shall be discontinued, as the case may be. The direction to discontinue and not to recur is commonly known as “Cease & desist” order.
- (ii) the Commission may impose penalty not exceeding ten percent of the average turnover of last three preceding financial years, upon each of person or enterprises which are parties to such agreement in contravention of Section 3 or are abusing dominant position within meaning of Section 4.

In case any agreement which is prohibited by Section 3 has been entered into by any cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider participating in that cartel, a penalty up to three times of its profits for each year of the continuance of such agreement whichever is higher.

- (iii) The Commission may direct that the agreements shall stand modified to the extent and in the manner as specified in the order.
- (iv) The Commission may direct the enterprises concerned to comply with such other orders and directions, including payment of cost, if any, as it deems fit.
- (v) to pass such order or issue such directions as it may deem fit.

June 2022

- **What was Raghavan Committee ? What were the recommendations of Raghavan Committee?**

Ans-

As India moved steadily on the path of reforms comprising of Liberalisation, Privatisation and Globalisation it did away with the MRTP Act, 1969 as it was realised that the Act had outlived its utility and control of monopoly was not appropriate to support the growth aspirations of Indians. Indeed, need was felt to promote and sustain competition in the market place. The then Finance Minister in budget speech in 1999 had announced: "The Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. Government has decided to appoint a committee to examine this range of issues and propose a modern Competition Law suitable for our conditions." Accordingly, a High-Level Committee on Competition Policy and Law was constituted under chairmanship of Mr. S.V.S Raghavan.

The Committee submitted its report on 22nd May 2000 recommending replacement of the MRTP Act with a modern competition law for fostering competition and for eliminating anticompetitive practices in the economy. After consulting the stakeholders, Competition Bill, 2001 was introduced in the Parliament which eventually became the Competition Act, 2002. Rashaan Committee recommendation for the establishment of a Competition Commission of India & winding up of MRTP Commission, formulation of merger rules etc.

- **Define the term 'Service' under the Competition Act, 2002?**

Ans- As per Section 2(u) of the Competition Act, 2002, service means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying or news or information and advertising

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- **What is the threshold limit for regulation of combination under section 5 under the Competition Act, 2002?**

Ans- The Threshold limits for regulation of combination under Section 5 of the Competition Act, 2002 are following:

		<i>Assets</i>		<i>Turnover</i>
Enterprise Level	India	>2000 INR Crore	OR	>6000 INR Crore
Worldwide with Indian Leg		>USD 1 billion with at least >1000 INR Crore in India		>USD 3 billion with at least >3000 INR Crore in India
		Or		
Group Level	India	>8000 INR Crore	OR	>24000 INR Crore
Worldwide with Indian Leg		>USD 4 billion with at least >1000 INR Crore in India		>USD 12 billion with at least >3000 INR Crore in India

- **Who can appear before the Competition Commission of India ?**

Ans- As per Section 35 of the Competition Act, 2002, the following persons are entitled to appear before the Competition Commission of India:

1. a complainant; or
2. a defendant; or
3. the Director General

They may either appear in person or authorise 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 Competition Commission of India

- **Why do we need competition in the market under the Competition Act, 2002?**

Ans- Competition is now universally acknowledged as the best means of ensuring that consumers have access to the broadest range of services at the most competitive prices. Producers will have maximum incentive to innovate, reduce their costs and meet Consumer demand. Competition this promotes allocative and productive efficiency. But all this requires healthy market Conditions and governments across the globe are increasingly trying to remove market imperfections through appropriate regulations to promote competition.

- **How can the order of Competition Commission imposing monetary penalty be executed under the Competition Act, 2002 ? Explain**

Ans-

Section 39(1) of the Competition Act, 2002 provides that if a person fails to pay any monetary penalty imposed on him under the Act, the Competition Commission of India shall proceed to recover such penalty, in such manner as may be specified by the regulations.

As per Section 39 (2) of the Act, in a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under the Act in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.

Where a reference has been made by the Commission under sub-section (2) stated above for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income Tax Act, 1961 and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made there under shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine, and interest under the Income-tax Act, 1961 and to the Commission instead of the Assessing Officer.

- **What is the procedure for inquiry of complaint under section 19 of the Competition Act, 2002?**

Ans- Section 26 of the Competition Act details out the procedure for inquiry of complaint. According to it if the Competition Commission of India is of the opinion that there exists a prima facie case, on receipt of an information from any person, consumer, their association or trade association or on a reference from Central Government or State Government or of a statutory authority or on its knowledge or information under Section 19, it shall direct the Director General to cause an investigation to be made into the matter.

The Director General shall investigate into the matter and submit a report of its findings within the period as may be specified by the Commission. It is, however, not binding on the Commission to accept the report of the Director General.

Where upon receipt of a reference or information, the Commission is of the opinion that there is no prima-facie case, it shall pass an order dismissing the reference/information, as it deems fit and necessary.

Upon receipt of a report from the Director General, the Commission shall forward a copy thereof to (a) the parties concerned or (b) Central Government or (c) State Government or (d) statutory authority as the case may be.

If the Director General, in relation to a matter referred to it, recommends that there is no contravention of any of the provisions of the Act, the Commission shall give an opportunity of hearing to the informant and after hearing, if the Commission agrees with the recommendation of the Director General, it shall dismiss the information.

If, after hearing information provider, the Commission is of the opinion that further inquiry is called for, it shall direct the enquiry to proceed further.

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Where the report of the Director General relates to matter referred to Commission by the Central Government or a State Government or a statutory authority and the report contains recommendation that there is no contravention of the provisions of the Act, the Commission shall invite the comments of the Central Government or the State Government or statutory authority, as the case may be, on such report. On receipt of the comments, if there is no prima-facie case, in the opinion of the Commission the Commission shall return the reference. However, if the Commission feels that there is a prima-facie case it shall proceed with a reference.

Section 26(9) provides that the Commission on receipt of recommendation of Director General that there is contravention of any of the provisions of the Act, and a further inquiry is called for, shall inquire into such contravention in accordance with the provisions of the Act.

December 2020

QUESTION 1: Describe the jurisdiction of Competition Commission of India to inquire and pass orders in respect of acts and agreement taking place outside India which are likely to have an appreciable adverse effect on competition in relevant market in India.

Solution: The Competition Commission of India has the power to inquire and pass orders in respect of acts and agreements taking place outside India which are likely to have appreciable adverse effect on competition in relevant market in India.

Section 32 of the Competition Act, 2002 extends the jurisdiction of Competition Commission of India to inquire and pass orders in accordance with the provisions of the Act into an agreement or dominant position or combination, which is likely to have, an appreciable adverse effect on competition in relevant market in India, notwithstanding that,

- (a) an agreement referred to in Section 3 has been entered into outside India; or
- (b) any party to such agreement is outside India; or
- (c) any enterprise abusing the dominant position is outside India; or
- (a) a combination has taken place outside India; or
- (b) any party to combination is outside India; or
- (c) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

The above clearly demonstrates that acts taking place outside India but having or likely to have an appreciable adverse effect on competition in India will be subject to the jurisdiction of Commission. The Competition Commission of India will have jurisdiction even if both the parties to an agreement are outside India but only if the agreement, dominant position or combination entered into by them has an appreciable adverse effect on competition in the relevant market of India.

Question 2: Discuss the functions and powers of Director-General under the Competition Act, 2002.

Solution: The Competition Act provides that the Director General when so directed by the Competition Commission of India, is to assist the Commission in investigation into any contravention of the provisions of the Act.

The Director General is bound to comply with such a direction to render requisite assistance to the Commission. The Director General, in order to effectively discharge his functions, has been given the same powers as are conferred upon the Commission under section 36(2). Under section 36(2) the Commission is having same powers as are vested in Civil Court under the Code of Civil Procedure 1908 while trying a suit, in respect of the following matters, namely;

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

the power inter-alia includes search and seizure of the record of any person in respect of which an investigation has been directed by the Commission

Question 3: What are the objectives of Competition Act, 2002?

Solution: The objectives of the Competition Act, 2002 are as under:

- To promote and sustain competition in the markets in India
- To protect the interest of consumers and to ensure freedom of trade carried on by other participant in the markets in India and for matters connected therewith or incidental thereto.
- Establishment of Competition Commission of India to prevent practices having adverse effect on competition.

Question 4: What is predatory pricing? Explain

Solution: The term “predatory price” has been defined under the Competition Act, 2002 as the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of goods or provision of services, with a view to reduce competition or eliminate the competitors.

Thus, the two conditions precedent to bring a case with the ambit of predatory pricing are: selling goods or provision of service at a price which is below its cost of production; and that practice is resorted to eliminate the competitors or to reduce competition

Question 5: What do you understand by “Anti-Competitive Agreement” under Competition Act, 2002?

Solution: An anti-competitive agreement under the Competition Act, 2002 is an agreement having appreciable adverse effect on competition. Anti-competitive agreements include, but are not limited to:-

- agreement to limit production and/or supply;
- agreement to allocate markets;
- agreement to fix price;
- bid rigging or collusive bidding;
- conditional purchase/ sale (tie-in arrangement);
- exclusive supply / distribution arrangement;
- resale price maintenance; and
- refusal to deal.

Question 6: Discuss the duties of Director General under Competition Act, 2002. If a person fails to comply without reasonable cause with a directions given by the Commission or the Director-General, what punishment can be given under the Competition Act, 2002.

Solution: The Competition Act, 2002 provides that the Director General when so directed by the Competition Commission of India, is to assist the Commission in investigation into any contravention of the provisions of the Act.

Section 42 Competition Act provides that if any person, without reasonable clause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

Further, if any person does not comply with the orders or directions issued, or fails to pay the fine imposed above, he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit.

According to Section 43 of the Competition Act, if any person fails to comply, without reasonable cause, with a direction given by—(a) the Commission under sub- sections (2) and (4) of section 36; or (b) the Director General while exercising powers referred to in sub-section(2)of section 41, such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission

Question 7: Elite Club is a club of eight Indian banks. The club covers entire Indian territory for its operations and dealings. The club covered entire India with a view of fixing rates of deposits, lending and other rates on banking facilities. The club covered all banking products and services and members of the club fixed interest rates for loans and savings for private/household including commercial customers; as well as the fees consumers had to pay for certain services. The club also provides services for money transfers and export financing. One of the customers of a 'Bank', which is a member of the club, made a complaint against the club acting as a 'cartel' to the Competition Commission of India. Examine the validity of the complaint

Solution: According to Section 2(c) of the Competition Act, 2002, Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.

Certain conditions which could be conducive to cartelization are history of collusion, high dependence of the consumers on the products or services, high concentration-few competitors, high entry and exit barriers, homogeneity of the products (similar products), similar production costs, excess capacity etc.

Coming to the factual matrix provided in the present case, certain banks have come together under the forum of a Club and are together by agreement amongst themselves, fixing the rate of deposits, lending, fees and other rates on banking facilities including loans and savings for private/household including commercial customers thereby limiting control or attempting to control the price of such services.

Keeping in view of the definition of the term cartel stated above it may be said that the activities of limiting control or attempting to control the price of banking services would constitute cartel. The complaint made by the customer is therefore, prima facie valid.

JUNE 2021

Question 1: Explain the concept of Cartel with reference to the Competition Act, 2002

Solution: According to Section 2(c) of the Competition Act, 2002, Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.

An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country.

An import cartel comprises enterprises (including an association of enterprises) that get together for the purpose of imports into the country.

An export cartel is made up of enterprises based in one country with an agreement to cartelize markets in other countries. In the Competition Act, cartels meant exclusively for exports have been excluded from the provisions relating to anti-competitive agreements. This is because such cartels do not adversely affect markets in India and are hence outside the purview of the Competition Act.

If there is effective competition in the market, cartels would find it difficult to be formed and sustained.

Question 2: State the composition to constitute the Competition Commission of India, under the Competition Act, 2002.

Solution: (a) According to Section 8 of the Competition Act, 2002, the composition of the Commission consists of a Chairperson and not less than two and not more than six other Members. The Chairperson and the Members are to be appointed by the Central Government.

(b) Regarding the qualifications of the Chairman and other Members, Section 8(2) of the Act provides that they shall be person of ability, integrity and standing and who has special knowledge of and such professional experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy which in the opinion of the Central Government, may be useful to the Commission. The Chairperson and other Members are to be appointed on whole time basis.

Question 3: Why competition in the market is essential ? Explain

Solution: Competition is now universally acknowledged as the best means of ensuring that consumers have access to the broadest range of services at the most competitive prices. Producers will have maximum incentive to innovate, reduce their costs and meet consumer demand. Competition thus promotes allocative and productive efficiency. But all this requires healthy market conditions and governments across the globe are increasingly trying to remove market imperfections through appropriate regulations to promote competition.

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Question 4: What do you understand by Vertical Agreements under the Competition Act, 2002 ? State various types of Vertical Agreements mentioned in the Competition Act, 2002.

Solution: Section 3(4) of the Competition Act, 2002 provides that any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, shall be an agreement in contravention of section 3(1) of the Act if such agreement causes or is likely to cause an appreciable adverse effect on competition in India. Such agreements are known as vertical agreements as they are entered into enterprises at different stages in the production or supply chain. Rule of reason is applicable to such agreements in order to find appreciable adverse effect on competition. Agreements that are likely to cause appreciable adverse effect on competition also fall under sub- section (4).

Various type of vertical agreements are as under:

- Tie-in agreement,
- Exclusive supply agreement,
- Exclusive distribution agreement
- Refusal to deal
- Resale price maintenance

Question 5: What are the factors to be taken into consideration by the Competition Commission of India, for determining whether an agreement has appreciable adverse effect on competition ?

Solution: Section 19(3) of the Competition Act, 2002 provides that while determining whether an agreement has appreciable adverse effect on competition, the Commission shall give due regard to all or any of the following factors, namely—

- (a) Creation of barriers to new entrants in the market;
- (b) Driving existing competitors out of the market;
- (c) Foreclosure of competition by hindering entry into the market;
- (d) Accrual of benefits to consumers;
- (e) Improvements in production or distribution of goods or provision of services;
- (f) Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Question 6: On what matters the Competition Commission of India may direct for the division of an enterprise, enjoying dominant position to ensure that such enterprise or group does not abuse its dominant position.

Solution: According to Section 28 of the Competition Act, 2002, the Competition Commission of India may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise or group does not abuse its dominant position.

The Competition Commission of India may also order for the transfer or vesting of property, rights, liabilities or obligations; the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise; the creation, allotment, surrender or cancellation of any shares, stocks or securities etc.

Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position. There shall be abuse of dominant position, if an enterprise or group –

- (a) directly or indirectly imposes unfair or discriminatory;
 - (i) condition in purchase or sale of goods or services; or
 - (ii) price in purchase or sale (including predatory price) of goods or service.
- (b) limits or restricts—
 - (i) production of goods or provision of services or market therefor; or

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- (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
- (c) indulges in practice or practices resulting in denial of market access in any manner; or
- (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Question 7: Describe the penalties which may be imposed for non-furnishing of information and for making false statement on combination under the Competition Act, 2002.

Solution: Section 43A of the Competition Act, 2002 provides that if any person or enterprise who fails to give notice to the Competition Commission of India under section 6(2), the Competition Commission of India shall impose on such person or enterprise a penalty which may extend to one per cent of the total turnover or the assets, whichever is higher, of such a combination.

Thus, failure to file notice of combination falling under Section 5 attract deterrent penalty. Section 44 provides that If any person, being a party to a combination, makes a statement which is false in any material particular, or knowing it to be false; or omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Competition Commission of India.

December 2021

Question 1: What do you mean by Cartel ?

Solution: As per Section 2(c) of the Competition Act, 2002, "Cartel" includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.

Question 2: What do you understand by Anti-Competitive Agreements under the Competition Act, 2002 ?

Solution: Anti-Competitive Agreements are those agreements that have their object as to prevent, restrict or distort competition in India.

According to Section 3(1) of the Competition Act, 2002, no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition. Section 3(2) further declares that any anti-competitive agreement within the meaning of sub-section 3(1) shall be void. Under the law, the whole agreement is construed as 'void' if it contains anti-competitive clauses having appreciable adverse effect on competition. Section 3(3) provides that following kinds of agreements entered into between enterprises or association of enterprises or persons or associations of persons or person or enterprise or practice carried on, or decision taken by any association of enterprises or association of persons, including "cartels", engaged in identical or similar goods or services which –

- (a) directly or indirectly determines purchase or sale prices;

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- (b) limits or controls production, supply, markets, technical development, investment or provision of services;
 - (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; and
 - (d) directly or indirectly results in bid rigging or collusive bidding;
- shall be presumed to have an appreciable adverse effect on the competition.

Question 3: What do you understand by the term “Combination” under the Competition Act, 2002 ?

Solution: Combination under the Competition Act, 2002 means acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has direct or indirect control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the Act. The thresholds are specified in the Act in terms of assets or turnover in India and outside India. Entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combination shall be void.

Question 4: What is ‘Collusive bidding’ ? In which ways collusive bidding may occur ?

Solution: Bidding, as a practice, is intended to enable the procurement of goods or services on the most favourable terms and conditions. Invitation of bids is resorted to both by Government (and Government entities) and private bodies (companies, corporations, etc.). But the objective of securing the most favourable prices and conditions may be negated if the prospective bidders collude or act in concert. Such collusive bidding or bid rigging contravenes the very purpose of inviting tenders and is inherently anti- competitive.

Some of the most commonly adopted ways in which collusive bidding or bid rigging may occur are:

- Agreements to submit identical bids
- Agreements as to who shall submit the lowest bid, agreements for the submission of cover bids (voluntarily inflated bids)
- Agreements not to bid against each other
- Agreements on common norms to calculate prices or terms of bids
- Agreements to squeeze out outside bidders
- Agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis.

Question 5: What constitutes ‘abuse of Dominance’ under Competition Act, 2002 ? Critically analyse the relevant provisions.

Solution: Section 4 of the Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position.

Section 4(2)(a) states that there shall be abuse of dominant position, if an enterprise or group, directly or indirectly imposes unfair or discriminatory:

- (i) condition in purchase or sale of goods or services; or
- (ii) price in purchase or sale (including predatory price) of goods or service.

Section 4(2) (b) includes in abuse of dominant position an enterprise or group limiting or restricting:

- (i) production of goods or provision of services or market therefore; or
- (ii) technical or scientific development relating to goods or services to the prejudice of consumers.

Similarly Section 4 (?) (c), (d) and (e) specify three other forms of abuses namely, if any person indulges in practice or practices resulting in denial of market access in any manner; or makes

conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts and also, if any person uses dominant position in one relevant market to enter into, or protect, other relevant market.

QUESTION 6: What are the factors which are taken into account by the Commission to determine the dominance position of an enterprise under the Competition Act, 2002. Discuss.

SOLUTION: For the purpose of determining whether an enterprise enjoys dominant position or not under Section 4 of the Competition Act, 2002, the Commission shall have due regard to all or any of the following factors, namely—

- (a) Market share of the enterprise;
- (b) Size and resources of the enterprise;
- (c) Size and importance of the competitors;
- (d) Economic power of the enterprise including commercial advantages over competitors;
- (e) Vertical integration of the enterprises or sale or service network of such enterprises;
- (f) Dependence of consumers on the enterprise;
- (g) Monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- (h) Entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
- (i) Countervailing buying power;
- (j) Market structure and size of market;
- (k) Social obligations and social costs;
- (l) Relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
- (m) Any other factor which the Commission may consider relevant for the inquiry.

Question 7: The basic purpose of Competition Policy and law is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy. Discuss.

Solution: The basic purpose of Competition Policy and law is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy. Competition policy typically has two elements: one is a set of policies that enhance competition in local and national markets. The second element is legislation designed to prevent anti-competitive business practices with minimal Government intervention, i.e., a competition law. Competition law by itself cannot produce or ensure competition in the market unless this is facilitated by appropriate Government policies. On the other hand, Government policies without a law to enforce such policies and prevent competition malpractices would also be incomplete.

Competition policies cover a much broader set of instruments than competition law and typically include all policies aimed at increasing the intensity of competition or rivalry in local and national markets by lowering entry barriers and opportunities for harmful coordination, to ensure that markets work effectively and serve the interests of all citizens. Competition law is only a subset of a nation's competition policies. Competition policies typically include pro-competition approaches to trade, investment, sectoral regulation, and consumer protection.

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Lesson 12 - Law relating to Consumer Protection

June 2023

1. Ranu, hired a taxi car from his residence to airport as he and his family were going from Mumbai to Bengaluru. The taxi was in a poor condition and the driver had not adequate rest and drove rashly. Eventually, it went burst in the middle due to which Ranu and his family could not reach the airport in time to catch their flight. Decide whether Ranu may be treated as a 'consumer' under the Consumer Protection Act, 2019?

Ans - Section 2(7)(ii) of the Consumer Protection Act, 2019, consumer means any person who hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Further, as per Section 2(11) of the Consumer Protection Act, 2019, Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—

- any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
 - deliberate withholding of relevant information by such person to the consumer.
- Accordingly, Ranu who hired the taxi service for his travel along with his family could not reach well in time at the airport to catch the flight. There was also deficiency in performance of service rendered by taxi driver, which caused loss to Ranu. Therefore, Ranu is a consumer as per the above stated provisions of Consumer Protection Act, 2019.

2. 'Contract of service' and 'Contract for service' under Consumer Protection Act, 1986

Ans - The Supreme Court in the case of Indian Merchants Association vs. V P Shantha, (CA No. 688 of 1993 decided on 13th November 1995) observed that a contract for service implies a contract whereby one party undertakes to render services e.g., professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion.

A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance.

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June 2022

- (a) In pandemic of Covid 19 a drug company made an offer by advertisement, a reward of `10,000 to anyone suffering from Covid after using their drug in prescribed manner. Mrs. Romila having taken the drug as per prescription couldnot be cured. She claimed for the money. Will she succeed?**

Ans- Yes, she will succeed. The problem is based on leading case of Carlill v. Carbolic Smoke Ball Co. wherein the company offered by advertisement a reward of 100£ to anyone who contacted influenza after using their smoke ball in the specified manner. Mrs. Carlill used smoke ball in the specified manner, but was infected by influenza. She claimed the reward and it was held that she could recover the reward as general offer can be accepted by anybody. Since his offer is of a continuing nature, more than one person can accept it and can even claim the reward.

- (b) Ramesh buys a second-hand car from Suresh for `4 Lakh. The car is a stolen property of Dinesh. After two months of use Dinesh claims the car and deprives Ramesh of the car. Can Ramesh claim compensation from Suresh?**

Ans- Yes, Ramesh can claim compensation from Suresh.

Section 14(a) of the Sales of Goods Act, 1930 provides that unless the circumstances of the contract are such as to show a different intention, there is an implied condition as to title that the seller, in an actual sale, has the right to sell the goods, and in agreement to sell, he will have a right to sell the goods at the time when property is to pass.

As a result, if the title of the seller turns out to be defective, the buyer is entitled to reject the goods and can recover the full price paid by him.

In *Rowland v. Divall*, A had bought a second-hand motor car from B and paid for it. After he had used it for six months, he was deprived of it because the seller had no title to it. It was held that B had broken the condition as to title and 'A' was therefore, entitled to recover the purchase money from B.

- (c) Ramu purchased a tractor from Mahendra Ltd. for tilling the land but he used it in idle time for transportation of agricultural produce on hire. Some defects were developed in the engine of the tractor. He complained to Mahendra Ltd., but all in vain. Then he filed a suit in Consumer Disputes Redressal Forum for damages caused by the defects. Mahendra Ltd. pleaded that Ramu is not a 'consumer' within the definition of section 2(7) of the Consumer Protection Act, 2019, as he is using the tractor for commercial purposes. Whether Ramu will succeed in his case? Refer to relevant provisions of law in support of your answer with reference to case law, if any.**

Ans- According to Section 2(7) of the Consumer Protection Act, 2019, consumer means any person who—

buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for

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consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

“Commercial Purpose” does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment; the expressions “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

In the case of *Bhupendra Jang Bahadur Guna v. Regional Manager & Others*, it was held that a tractor purchased primarily to till the land of the purchaser and let out on hire during the idle time to till the lands of others would not amount to commercial use.

In view of the provisions of Consumer Protection Act and decided case law stated above, Ramu is a consumer under the Consumer Protection Act, 1986 and he can file the claim if there is any defect in the tractor.

JUNE 2021

Question 1: Ms. Rubina was operated in General Hospital Nagpur, which was under control of the Government of Maharashtra, free of charge for family planning i.e. tubectomy. Subsequently, she gave birth to a female child. She filed a complaint against the State of Maharashtra and the doctor, who performed the operation, claiming ₹ 2 lakh for negligence in performing the operation. Rubina sought the relief of ₹ 2 lakh under the Consumer Protection Act, 1986, stating that the negligence of the doctor and the State of Maharashtra, being the controller of the hospital may be treated as deficiency in the service. Decide, whether Rubina will succeed?

Solution: As per Section 2(1)(d) of the Consumer Protection Act, Consumer means any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose. The term ‘service’ is defined under Section 2(1)(o) of the Act as to mean service of any description which is made available to potential users and includes, but not limited to the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but not include the rendering of any service free of charge or under a contract of personal service.

But in the instant case, the tubectomy is rendered free of charge which will not fall within the ambit of the definition of “service” under the Consumer Protection Act, 1986. For the same reason, Rubina is not a consumer as per the provisions of the Act. Therefore, Rubina will not succeed under the Consumer Protection Act, 1986.

December 2020

Question 1: A is the tenant of B. A asks B to clean, repair and maintain the building. B refuses. There is no provision in the lease agreement in respect of cleaning, repairing and maintaining the building. However 'A' files a claim against 'B' under Consumer Protection Act, 2019. Decide referring the relevant provisions of law.

Solution: The present problem relates to Consumer Protection Act, 2019. Issue involved in the question is whether A is the consumer or not. A files for relief under the Consumer Protection Act, 2019 in view of the definition of "Consumer" given in the Act.

According to Section 2(7)(ii) of the Consumer Protection Act, 2019, Consumer means any person who hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose. Further, in *Laxmiben Laxmichand Shah v. Sakerben Kanji Chandan and others*, the Supreme Court held that the tenant entering into lease agreement with the landlord cannot be considered as consumer under the Consumer Protection Act. Where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service.

Therefore, going by the above judgement and definition of consumer in the Consumer Protection Act, 2019, A cannot be a consumer for services of cleaning, repairing and maintaining the building which is not part of lease agreement and for which rent he is paying cannot be considered to be consideration. If he is not consumer, there is no question of deficiency of service under the Consumer Protection Act, 2019.

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Lesson 13 - Legal Metrology

June 2023

1. What are the penalty provisions for vexatious search under the Legal Metrology Act, 2009?

Ans - Section 42 of the Legal Metrology Act, 2009 provides for vexatious search and empowers the Director, the Controller or any legal metrology officer, exercising powers under this Act or any rule made thereunder, who knows that there are no reasonable grounds for so doing, and yet searches, or causes to be searched, any house, conveyance or place; or searches any person; or seizes any weight; measure or other movable property shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

June 2022

- (a) *What do you mean by the International Organization of Legal Metrology (OIML) Certification System?*

Ans- The International Organization of Legal Metrology (OIML) is an intergovernmental treaty organization whose membership includes Member States, countries which participate actively in technical activities, and corresponding Members, countries which join the OIML as observers. It was established in 1955 in order to promote the global harmonization of legal metrology procedures.

The OIML certificate system for measuring instruments was introduced in 1991 to facilitate administrative procedures and lower the costs associated with the international trade of measuring instruments subject to legal requirements.

The System provides the possibility for a manufacturer to obtain an OIML Certificate and a Test Report indicating that a given instrument complies with the relevant requirements of OIML.

Certificates are delivered by the OIML Member States that have established one or several Issuing Authorities responsible for processing applications by manufacturers wishing to have their instrument certified.

Certificates are accepted by national metrology services on a voluntary basis and as the climate for mutual confidence and recognition of test results develops between OIML Members, the System serves to simplify the type (pattern) approval process for manufacturers and metrology authorities by eliminating costly duplication of application and test procedures

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December 2020

QUESTION 1: A shopkeeper sold a packet of pre-packed chillies which does not bear the declarations required to be made by the manufacturers on pre-packaged commodities. Whether the shopkeeper has committed any act punishable under the Legal Metrology Act, 2009 ? Discuss

Solution: Section 18 of the Legal Metrology Act, 2009 states that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed. Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

Under section 36 of the Legal Metrology Act, 2009 whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in the Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

Accordingly, the shopkeeper has sold pre packed chillies which do not bear the declarations required to be made on pre-packaged commodities, the said shopkeeper has committed an act punishable under Section 36 read with Section 18 of the Legal Metrology Act, 2009.

JUNE 2021

Question 1: Explain the provisions regarding penalty for counterfeiting of seal specified under the Legal Metrology Act, 2009

Solution: Section 44 of the Legal Metrology Act, 2009 provides that whoever counterfeits any seal specified by or under this Act or the rules made thereunder, or sells or otherwise disposes of any counterfeit seal or possesses any counterfeit seal, or counterfeits or removes or tampers with any stamp, specified by or under this Act or rules made thereunder, or affixes the stamp so removed on, or inserts the same into, any other weight or measure, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.

Whoever obtains, by unlawful means, any seal specified by or under this Act or the rules made thereunder and uses, or causes to be used, any such seal for making any stamp on any weight or measure with a view to representing that the stamp made by such seal is authorised by or under this Act or the rules made thereunder shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.

Whoever, being in lawful possession of a seal specified by or under this Act or the rules made thereunder, uses, or causes to be used, such seal without any lawful authority for such use, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.

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December 2021

Question 1: What is the law relating to declarations on prepacked commodity under legal Metrology Act, 2009? Explain.

Solution: Section 18 of the Legal Metrology Act, 2009 states that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.

Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

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Lesson 14 - Real Estate Regulation and Development Law

June 2023

1. **Discuss the aims and advantages for which Real Estate (Regulation and Development) Act, 2016 (RERA) was enacted.**

Ans - Real Estate (Regulation and Development) Act, 2016 which aims at protecting the rights and interests of consumers and promotion of uniformity and standardization of business practices and transactions in the real estate sector. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism.

Advantages of the Act are as under:

- Increased FDI
- Customer management
- Timely completion of the project
- Project planning
- Transparency
- Reduction in litigation.

June 2022

- (a) **What are the rights of the allottees under the Real Estate (Regulation & Development) Act, 2016 ?**

Ans- Section 19 of the Real Estate (Regulation and Development) Act, 2016 provides for the various rights of the allottees as follows:

1. *Right to obtain information relating to sanctioned plans, layout plans, etc.* : The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority, and other information as per the Act or the agreement for sale signed with the promoter.
2. *Right to know stage-wise time schedule of completion of the project* : The allottee shall be entitled to know the stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity, and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.
3. *Right to claim possession* : The allottee shall be entitled to claim the possession of an apartment, plot, or building. The association of allottees shall be entitled to claim the possession of the common areas.
4. *Right claim refund, interest, and compensation* : The allottee shall be entitled to claim a refund with interest and compensation from the promoter if the promoter fails to comply or is unable to give possession of the apartment, plot, or building.
Right to have the necessary documents and plans : The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building by the promoter

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December 2020

QUESTION 1: Discuss the functions of Real Estate Agent under the Real Estate (Regulation and Development) Act, 2016.

Solution: According to Real Estate (Regulation and Development) Act, 2016, every real estate agent which or who is not registered with the Authority shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area. Therefore, the Real Estate Agents are required to register themselves with the authority. Every real estate agent shall be required to maintain and preserve such books of account, records and documents as may prescribed. Every real estate agent not to involve himself in any unfair trade practices, namely:–

(i) the practice of making any statement, whether orally or in writing or by visible representation which–

- falsely represents that the services are of a particular standard or grade;
- represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
- makes a false or misleading representation concerning the services;

(ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.

Every real estate agent shall facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be and discharge such other functions as may be prescribed.

Question 2: What are the duties and functions of Real Estate Regulatory Authority

Solution: The duties and functions of the Real Estate Regulatory Authority shall include:

- to register and regulate real estate projects and real estate agents registered under the Real Estate (Regulation and Development) Act, 2016;
- to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;
- to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under the Act, with reasons therefor, for access to the general public;
- to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under the Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;
- to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;
- to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act and the rules and regulations made thereunder;
- to ensure compliance of its regulations or orders or directions made in exercise of its powers under the Act;
- to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of the Act.

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Question 1: Explain the objects and reasons for which the Real Estate (Regulation and Development) Act, 2016 has been enacted.

Solution: The object and reason for which the Real Estate (Regulation and Development) Act, 2016 has been enacted are as under:

- Ensure accountability towards allottees and protect their interest
- Infuse transparency, ensure fair-play and reduce frauds & delays
- Introduce professionalism and pan India standardization
- Establish symmetry of information between the promoter and allottee
- Imposing certain responsibilities on both promoter and allottees
- Establish regulatory oversight mechanism to enforce contracts
- Establish fast-track dispute resolution mechanism
- Promote good governance in the sector which in turn would create investor confidence.

Question 2: Which project do not require registration under the Real Estate (Regulation and Development) Act, 2016?

Solution: The following projects do not require to be registered under the Real Estate (Regulation and Development) Act, 2016

(a) Where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act.

(b) Where the promoter has received completion certificate for a real estate project prior to commencement of this Act.

December 2021

Question 1: State the objects and reasons for which Real Estate (Regulation and Development) Act, 2016 has been framed.

Solution: The objects and reasons for which Real Estate (Regulation and Development) Act, 2016 has been framed are as under:

- Ensure responsibility towards allottees and protect their interest.
- Infuse transparency, ensure fair-play, reduce frauds and delays.
- Introduce professionalism and pan India standardization.
- Establish symmetry of information between the developers and buyers.
- Imposing certain responsibilities on both builders and investors
- Establish a regulatory oversight mechanism to enforce contracts.
- Promote reliable governance in the sector which in turn would create investor confidence.

Question 2: Briefly explain the powers of Tribunal established under Real Estate (Regulation and Development) Act, 2016.

Solution: Section 53 of the Real Estate (Regulation and Development) Act, 2016 deals with Powers of Tribunal. According to Section 53 of the Act:

- (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.
- (2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.
- (3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.
- (4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:— (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) issuing commissions for the examinations of witnesses or documents; (e) reviewing its decisions; (f) dismissing an application for default or directing it ex parte; and (g) any other matter which may be prescribed.
- (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

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Lesson 15 - Law relating to Patents

What is not inventions?

Sec 3 provides that following are not inventions within the meaning of the Act:

(Asked in Jun 2007, Jun 2008, Jun 2009, Dec 2011):

- a) Invention which are frivolous or contrary to natural laws.
- b) Invention, commercial exploitation of which may be against public order or morality.
- c) Mere discovery of a scientific principle or discovery of living or non-living thing in nature.
- d) Mere discovery of new form of known substance, not resulting in increasing its efficacy or mere discovery of new use of known process.
- e) Discovery of new admixture by merely aggregating properties of other known substances.
- f) Mere re-arrangement or duplication of known devices.
- g) Method of agriculture or horticulture.
- h) Medicinal or surgical process for treatment of human or animal so as to render
- i) them free of disease or increasing their economic value.
- j) Literary, dramatic, musical or artistic work.
- k) Method of performing mental act, method of playing game.

2009 - June [3] (a) Distinguish between the following:

(lii) 'Invention' and 'patentable invention' under the Patents Act, 1970.

(5 marks) [CSEM - II]

Answer:

Section 2(i) of the Patent Act defines invention as to mean a new product or process involving an inventive step and capable of Industrial application. The term 'inventive step' has been defined under the Patent Act as to mean a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art.

Any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject matter has not fallen into public domain or it does not form part of the state of the art, which is registered with Controller of Patent is patentable invention.

Section 3 enumerates the list of inventions which are not patentable.

2009 - Dec [3] (a) (iii) 'Provisional Specification' and 'complete specification' under the Patents Act, 1970.

(5 marks) [CSEM - II]

Answer:

A Provisional specification is a document, which contains the description regarding the nature of an invention. The description however, does not contain the details regarding the invention. It also does not claims. The provisional specification is filed to claim the priority date of an invention. The advantages of a provisional specification is that it can be filed as soon as the patent is conceived and for the record of priority date. But the application is only examined after the complete specification has been filed. **Section 9 of the Patents Act, 1970** stipulates that where an application for a patent (not being a convention application filed under PCT designation India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.

Complete specification is the document, which contains the detailed description of invention along with the drawings and claims. Also the description regarding prior application is included in the complete specification.

Section 10 dealing with contents of specifications provides that every specification, whether provisional or complete, shall describe the invention and being with a title sufficiently indicating the subject matter to which the invention relates. Every complete specification is required to:

- (a) fully and particularly describe the invention and the operation or use and the method by which it is to be performed;
- (b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection;
- (c) end with a claim or claims defining the scope of the invention for which protection is claimed; and
- (d) be accompanied by an abstract to provide technical information on the invention.

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

(ii) 'Registered proprietor of a 'trade mark' and 'registered user of a trade mark'
(5 marks) [CSEM - II]

(iv) 'Patent' and 'patent of addition'
(5 marks) [CSEM - II]

Answer:

(ii) Registered proprietor of a trade mark means the person for the time being entered in the register as proprietor of the trade mark.

In other words registered proprietor is simply the person whose name appears in the register containing the names of owner/proprietor of trade marks.

According to the provisions of the Section 37 of Trademarks Act, the proprietor has an absolute right to assign the trade mark and thus as a consequence the person to whom such rights to use the trademark arise becomes the 'registered user' of the trade mark.

1. **Section 49** Provides for the registration as registered user.
2. **Section 50** deals with the power of the registrar to vary or cancel registration as registered user on the ground that the registered user has used the trademark otherwise than in accordance with the agreement or used in such a way which is likely to cause confusion or registered user has failed to disclose any material fact.
3. **Section 50** empowers the registrar to require the proprietor to confirm at any time during the continuation of registration as registered user whether the agreement on the basis of which registered user was registered is still in force and if reply not received within 1 month then remove the name from register.
4. **Section 52** recognizes the right of the registered user to take proceedings against infringement.

(iv) Patent

- Patent means a patent granted under the **Patent Act, 1970**.
- Patent is a grant from government which confers on the grantee, for limited period of time, the exclusive privileges of making, selling and using the invention for which the patent has been granted and also of authorizing others to do so.
- Patent gives its owner a monopoly right to make & sell the subject matter of the patent, for a defined period of time.

Patent of addition.

- Patent of Addition is a patent for improvement in, or modification of an invention for which invention, a patent has already been applied for or granted,
- A patent of addition will remain in force as long as the patent for original invention remains in force.

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

(iii) 'Assignment of a trade mark' and transmission of a trade mark' under the Trade Marks Act, 1999.

(5 marks) [CSEM - II]

Answer:

Section 37 entitles the registered proprietor of a trademark to assign the trademark for consideration. **Section 39** provides that unregistered trade mark may also be assigned or transmitted.

Section 40 contains restriction on assignments or transmission of trademark where multiple exclusive rights would be created in more than one person in relation to same goods & services. Transmission of unregistered marks may take place with or without goodwill of the business concerned. This is referred to as "assignment in gross". The Indian law demands that assignment be necessarily in writing, with the consent of the Registrar (Sec. 43).

The Indian trademark laws provide for transmission, assignment and licensing of trademarks. Although the terms sound similar, have quite a remarkable degree of difference. **Section 2(1)(ac) of the Trademarks Act, 1999** clearly distinguishes between "transmission" and assignment, by stating that:

"Transmission means transmission by operation of law, devolution on personal representative of a deceased person and any other mode of transfer, not being assignment." Hence, it implies that assignment is voluntary and transmission is as per the requirements of law.

The assignment is not deemed to be invalid, if having regard to the limitation imposed, the goods are to be sold in different markets - either within India or though export. Hence, assignment can also be in parts.

The exception here would be Certification Trademarks, which can only be assigned with the consent of registrar with whom they were earlier registered.

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Lesson 16 - Law relating to Trade Marks

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Lesson 17 - Law relating to Copyright

2014 - Dec [2] (b) What is meant by 'artistic work' under the Copyright Act, 1957?

(3 marks)

Answer:

Section 2 (c) of the Copyright Act, 1957 defines artistic work as:

- i) A painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
- ii) Work of architecture; and
- iii) Any other work of artistic craftsmanship.

These works need to be original in order to secure the protection offered by the Act. In the case of all artistic works, copyright ensures the exclusive right:

- To reproduce the work
- To communicate the work to the public
- To issue copies of the work to the public
- To include the work in any cinematograph film
- To make any adaptation of the work, given to the creator of the work.

2015 - June [3] (b) Distinguish between 'copyright' and 'international copyright'.

(5 marks)

Answer:

Nature of Copyright: Copyright is described as a property right granted to authors or creators to protect their work from unauthorized use. It gives the creator exclusive rights to use and control the use of their creation.

National Application: Copyright laws are generally covered by national laws in each country. In the case of India, the Copyright Act of 1957 applies to works first published in India, regardless of the nationality of the author.

Extension to Foreign Works: Section 40 of the Copyright Act allows the Government of India to extend the benefits of the Act to works first published in foreign countries instead of India. This extension is subject to certain conditions, such as reciprocity in the treatment of Indian works in the foreign country.

Reciprocity and Home Laws: The benefits granted to foreign works are not to exceed those available to works in their home country. Additionally, the duration of copyright protection in India should not surpass that provided by the foreign country under its own laws.

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International Copyright Order (1958): The Government of India has passed the International Copyright Order, 1958. According to this order, works first published in countries that are members of the Berne Convention or the Universal Copyright Convention receive the same treatment as if they were first published in India. This ensures that such works are treated on par with Indian works for the purpose of copyright benefits.

2015 - June [2A] (Or) (ii) What is meant by an 'industrial property' under the intellectual property rights (IPRs)?

(3 marks)

Answer:

Intellectual property is usually divided into two branches, viz, industrial property and copyright. Industrial property is also a kind of intellectual property and relates to all creations of the human mind that can be put to industrial use, e.g., inventions and industrial designs. Inventions are new solutions to technological problems, and industrial designs are aesthetic aspects related to the appearance of industrial product, Industrial property also includes trademarks, service marks, brand names or commercial names, geographical indications and the right to protection against unfair competition. The Paris Convention also accepts these inclusions.

Hence, industrial property right is a collective name for right referring to the commercial or industrial activities of a persons, covering everything from inventions, creations, new technology, new products, new processes, new designs or updated models of the same product and the brand mark or name that distinguishes them etc.

2016 - Dec [2] (a) Who is an 'author' under the provisions of the Copyright Act, 1957 for musical and other classes of work?

(3 marks)

Answer:

"Author" means,

- i) in relation to a literary or dramatic work, the author of the work;
- ii) in relation to a musical work, the composer;
- iii) in relation to an artistic work other than a photograph, the artist;
- iv) in relation to a photograph, the person taking the photograph;
- v) in relation to a cinematograph or sound recording the producer; and
- vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.

[Section 2 (d) of the Copyright Act, 1957.]

Hence, we can generically say that the creator of the work is said to be the author.

Lesson 18 - Law relating to Geographical Indications of Goods

Lesson 19 - Law relating to Industrial Designs

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