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PREVIOUS EXAMS SOLVED PAPERS

Economic Commercial & Intellectual Property Laws

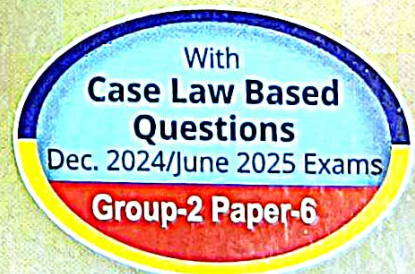
Key Highlights

- ▶ Fully Solved Questions of Previous Exams as per latest examination pattern
- ▶ Topic-wise arrangement of Past Examination Questions till June 2024 attempt
- ▶ Chapter-wise Marks Distribution Chart
- ▶ Covers latest applicable provisions and amendments under the respective laws

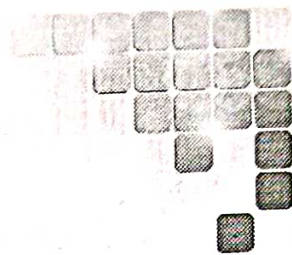
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3rd Edition



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LAW RELATING TO FOREIGN EXCHANGE MANAGEMENT

OBJECTIVES & SCOPE OF FEMA

Q1. "FEMA is to facilitate external trade and payments and promotion of orderly development and maintenance of foreign exchange market in India." Discuss. [June 2014 (5 Marks)]

Or

Discuss the objectives of enacting the Foreign Exchange Management Act, 1999. Explain in brief the scheme of Foreign Exchange Management Act, 1999. [June 2019 (4 Marks)], [Dec. 2021 (4 Marks)]

Ans.:

- (a) **Objective as per Preamble:** As per the preamble, the objective is to consolidate and amend the law relating to foreign exchange with view to:
- ◆ Facilitate external trade and payments.
 - ◆ For promoting development & maintenance of foreign exchange market in India.
- (b) **Scope:** The Act extends to the **whole of India**. It also applies to:
- ◆ All branches, offices and agencies outside India owned or controlled by a Person Resident in India (PRI), and
 - ◆ Any contravention committed outside India, by any person to whom the Act applies.
- (c) **Liberalized Provisions:** FEMA has considerably liberalized provisions in respect of foreign exchange. However, in extraordinary situations, the Central Government has been empowered to suspend operation of any or all provisions of FEMA in public interest, by issuing a notification. The Central Government has also been empowered to relax provisions by issuing a notification.
- (d) **Objective of facilitating external trade and payments:** 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.

- (e) **Central Legislation:** 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.
- (f) **Provisions:** FEMA makes provisions for dealings in foreign exchange. Broadly, all Current Account Transactions are free. However, Central Government can impose reasonable restrictions by issuing Rules. Capital Account Transactions are permitted to the extent specified by RBI by issuing Regulations.
- (g) **Penalties, Adjudication & Appeal:** FEMA also makes provisions for enforcement, penalties, adjudication and appeal. The FEMA contains only basic legal framework. The practical aspects are covered in Rules made by Central Government and Regulations made by RBI.
- (h) **Support pro-liberalization policies:** FEMA had become the need to support the pro-liberalization policies of the Government of India. As the name indicates, the Act is to 'manage' not to 'regulate'; hence FEMA is investor friendly. FEMA lay down that *"everything is permitted unless what is not covered, controlled or prohibited"*.

Q2. Discuss the overall scheme of the Foreign Exchange Management Act, 1999. [Dec. 2022 (4 Marks)]

Ans.: Overall Scheme of FEMA:

- ◆ FEMA makes provisions for dealings in foreign exchange.
- ◆ Broadly, all Current Account Transactions are free. However, Central Government can impose reasonable restrictions by issuing Rules.
- ◆ Capital Account Transactions are permitted to the extent specified by RBI by issuing Regulations.
- ◆ FEMA envisages that RBI shall have a controlling role in management of foreign exchange.
- ◆ Since RBI cannot directly handle foreign exchange transactions, it authorizes "Authorized Persons" to deal in foreign exchange. RBI has been empowered to issue directions to such "Authorized Persons" under Section 11.
- ◆ FEMA also makes provisions for enforcement, penalties, adjudication and appeal.
- ◆ FEMA contains only basic legal framework. The practical aspects are covered in Rules made by Central Government and Regulations made by RBI.
- ◆ FDI Policy announced by Ministry of Commerce & Industry directly relevant to understanding the provisions of FEMA. Instructions/Guidelines etc. of Ministry of Finance and SEBI become relevant when ECB/ADR, GDR and capital market is involved.

DEFINITIONS**Q3. Distinguish between: Foreign Exchange & Foreign Security****[Dec. 2010 (5 Marks)]**

Ans.: Foreign Exchange: Foreign exchange means foreign currency and includes –

- (i) Deposits, credits and balances payable in any foreign currency.
- (ii) Drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but *payable in any foreign currency*.
- (iii) Drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but *payable in Indian currency*.

Foreign Security:

- (a) Foreign security means any security, in the form of shares, stocks, bonds, debentures or any other instrument in foreign currency.
- (b) It also includes securities expressed in foreign currency, but where redemption or return such as interest or dividends is payable in Indian currency.

Q4. Distinguish between: Appellate Tribunal & Court**[Dec. 2011 (5 Marks)]**

Ans.: Following are the main points of difference between Appellate Tribunal & Court:

Points	Court	Appellate Tribunal
Meaning	The term 'Courts' refers to places where justice is administered or refers to Judges who exercise judicial functions.	Tribunals are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law.
Type	Courts refer to the Civil Courts, Criminal Courts and High Courts.	Tribunals can be either private tribunals such as Arbitral Tribunals or Tribunals constituted under the Constitution or Tribunals authorized by the Constitution or Statutory Tribunals which are created under a statute.
Code of Procedure	Procedure in Court is carried out as per the Code of Civil Procedure, 1908 & the Code of Criminal Procedure, 1973.	Tribunals are not required to follow the procedure strictly as per the Code of Civil Procedure, 1908 & the Code of Criminal Procedure, 1973.

Points	Court	Appellate Tribunal
Headed by	Judge, panel of Judges & Magistrate.	Chairperson, Judicial & Technical Members.
Example	Pune District Court, Court of Sessions & Mumbai High Court etc.	National Company Appellate Tribunal, Income-Tax Appellate Tribunal & Securities Appellate Tribunal etc.

Q5. Write a short note on: Person and Authorized Person

[Dec. 2013 (5 Marks)]

Ans.: Person [Section 2(u)]: Person includes –

- ◆ Individual
- ◆ Hindu undivided family
- ◆ Company
- ◆ Firm
- ◆ AOP or BOI
- ◆ Every artificial juridical person and
- ◆ Any agency, office or branch owned or controlled by any person.

Authorized Person [Section 2(c)]: Authorized person means any person for the time being authorized to deal in *foreign exchange* or *foreign securities*.

Authorized person includes –

- ◆ An authorized dealer
- ◆ Money changer
- ◆ Off-shore banking unit
- ◆ Any other person.

Generally, all nationalized banks, leading non-nationalized banks and foreign banks are appointed as authorized dealers to deal in foreign exchange.

Example: HDFC Bank is authorized to deal in foreign exchange.

POSSESSION & RETENTION OF FOREIGN EXCHANGE

Q6. Dr. Sukant, who is permanently resident in India, retains foreign currency notes of US \$ 5,000 which he had acquired during his visit to USA by way of expert medical advice rendered to patients there. Advise with reference to FEMA.

[June 2014 (1 Mark)]

Ans.: As per Regulation 3 of the Foreign Exchange Management (Possession & Retention of Foreign Currency) Regulations, 2015, a person resident in India may possess foreign currency notes, bank notes and foreign currency travellers cheque not exceeding US \$ 2,000 provided that such foreign exchange was

acquired by him while on a visit to any place outside India by way of payment for services.

Thus, Dr. Sukant can hold foreign currency of US \$ 2,000 and will have to surrender to US \$ 3,000 to an authorized person.

Q7. What is the limit on possession and retention of foreign currency or foreign coins under the Foreign Exchange Management (Possession & Retention of Foreign Currency) Regulations, 2015?

[Dec. 2018 (4 Marks)], [June 2022 (4 Marks)]

Ans.: As per Section 4 of the Foreign Exchange Management Act, 1999, person resident in India can acquire, hold, own, possess or transfer any foreign exchange only after compliance with the provisions of the Act, Rules and Regulations. In this regard the RBI has framed **FEM (Possession & Retention of Foreign Currency) Regulations, 2015**.

Limits for possession and retention of foreign currency or foreign coins [Regulation 3]: The RBI specifies the following limits for possession or retention of foreign currency or foreign coins:

- (i) An authorized person acting within the scope of his authority may possess foreign currency and coins without any limit.
- (ii) Any person may possess foreign coins without any limit.
- (iii) A person resident in India may possess foreign currency notes, bank notes and foreign currency travellers cheque not exceeding **US \$ 2,000** provided that such foreign exchange –
 - ◆ was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India,
 - ◆ was acquired by him, from any person not resident in India and who is on a visit to India as honorarium or gift or for services rendered or in settlement of any lawful obligation,
 - ◆ was acquired by him by way of honorarium or gift while on a visit to any place outside India,
 - ◆ represents unspent amount of foreign exchange acquired by him from an authorized person for travel abroad.

REALIZATION, REPATRIATION & SURRENDER OF FOREIGN EXCHANGE

Q8. Discuss the exemptions from the provisions relating to holding, realization and repatriation of foreign currency under the Foreign Exchange Management Act, 1999.

Ans.: Repatriate to India: Repatriate to India means bringing into India the realized foreign exchange and –

- (i) The selling of foreign exchange to an authorized person in India in exchange for rupees, or
- (ii) The holding of realized amount in an account with an authorized person to the extent notified by the RBI and includes use of the realized amount for discharge of a debt or liability denominated in foreign exchange.

Realization & repatriation of foreign exchange [Section 8]: Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within specified period and in specified manner by the RBI.

Exemption from realization and repatriation in certain cases [Section 9]: In following cases foreign exchange need not be repatriated to India:

- ◆ Possession of foreign currency or coins by any person up to specified limit.
- ◆ Foreign currency account held or operated as specified by RBI.
- ◆ Foreign exchange acquired or received before 8-7-1947 or any income arising or accruing which is held outside India by any person in pursuance of a general or special permission granted by the RBI.
- ◆ Foreign exchange acquired and held by way of gift or inheritance by a person resident in India up to limit as specified by RBI.
- ◆ Foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to limit specified by the RBI.
- ◆ Such other receipts in foreign exchange as may be specified by the RBI.

AUTHORIZED PERSON

Q9. Define the term 'authorized person' under the Foreign Exchange Management Act, 1999 and state the powers of the RBI to issue directions to an authorized person. [Dec. 2015 (5 Marks)]

Or

Explain the powers of the Reserve Bank of India to issue directions to an authorized person under the Foreign Exchange Management Act, 1999. [Dec. 2019 (5 Marks)]

Ans.: Authorized Person [Section 2(c)]: Authorized person means any person for the time being authorized to deal in *foreign exchange* or *foreign securities*.

Authorized person includes –

- ◆ An authorized dealer
- ◆ Money changer
- ◆ Off-shore banking unit
- ◆ Any other person.

Generally, all nationalized banks, leading non-nationalized banks and foreign banks are appointed as authorized dealers to deal in foreign exchange.

Example: HDFC Bank is authorized to deal in foreign exchange.

RBI's powers to issue directions to authorized person [Section 11]:

- (a) **Directions by RBI to authorized persons:** The RBI may give to the authorized persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security for the purpose of securing compliance with the provisions of FEMA.
- (b) **Power of RBI to direct authorized person to furnish information:** The RBI may also direct any authorized person to furnish necessary information in prescribed manner for the purpose of ensuring the compliance with FEMA.
- (c) **Penalty for contravention of directions of RBI:** Where any authorized person contravenes any direction or fails to file any return, the RBI may after giving reasonable opportunity of being heard impose on the authorized person a penalty which may extend to ₹ 10,000.
- (d) **Penalty for continuing contravention:** In the case of continuing contravention an additional penalty up to ₹ 2,000 per day can be imposed.

Q10. Who is an authorized person under Foreign Exchange Management Act, 1999 and what are his obligations? [Dec. 2018 (5 Marks)]

Ans.: Authorized Person [Section 2(c)]: Please refer to answer of Question No. 8. Section 10 of the Foreign Exchange Management Act, 1999 makes following provisions in relation to authorized person.

- (1) **Authorization to act as Authorized Person:** The RBI may, on an application made to it, authorize any person to be known as authorized person to deal in foreign exchange or securities. An authorization shall be in writing and shall be subject to the prescribed conditions.
- (2) **Revocation of authorization:** An authorization granted may be revoked by the RBI at any time if the RBI is satisfied that –
 - (a) It is in public interest so to do.
 - (b) The authorized person has failed to comply with the condition or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder.

However, a reasonable opportunity of making a representation in the matter should be given to authorized person before revocation.

- (3) **Duties of Authorized Person:** An authorized person shall comply with general or special directions or orders given by the RBI. An authorized person shall not engage in any transaction which is not in conformity

with the terms of his authorization without the previous permission of the RBI.

- (4) **Obtaining information & refusal to deal:** An authorized person shall before undertaking and declaration from a person to satisfy himself that the transaction in is not violation of FEMA. If authorized person has any doubt, he should refuse the transaction in writing. If the authorized person has reason to believe that transaction is contemplated, he should refer the matter to the RBI.
- (5) **Effect of misuse:** A person who has foreign exchange shall be deemed to have committed contravention of the provisions of the FEMA if such person –
- ◆ Does not use foreign exchange for purpose for which it was acquired or
 - ◆ Does not surrender it to authorized person within the specified period or
 - ◆ Uses the foreign exchange for any other purpose other than for which it was acquired.

CONTRAVENTION & PENALTIES

Q11. What are the penalties provided for contravention of any provisions under the Foreign Exchange Management Act, 1999?

Or

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

[June 2021 (4 Marks)], [June 2022 (4 Marks)]

Ans.:

- (a) **Penalties [Section 13]:** If any person contravenes any provision of the FEMA, he shall be liable to a penalty as stated below:
- ◆ **If amount is quantifiable:** Penalty up to **thrice the sum** involved in such contravention.
 - ◆ **If amount is not quantifiable:** Penalty up to ₹ 2 lakh.
 - ◆ **Continuing Contravention:** In case of continuing contravention additional penalty up to ₹ 5,000 per day can be imposed.
- (b) **Confiscation:** Adjudicating Authority can also order confiscation of an currency, security or any other money or property in respect of which the contravention has taken place.
- (c) **Direction:** Adjudicating Authority can also direct that foreign exchange holdings of any person committing the contraventions shall be brought back into India or shall be retained outside India as per directions.

COMPOUNDING OF OFFENCES

Q12. Discuss the provisions and procedure relating to compounding of various offences under the Foreign Exchange (Compounding Proceedings) Rules, 2000.

Ans.:

- (a) **Compounding Meaning:** Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.
- (b) **Power of Reserve Bank to compound contravention [Rule 4(1)]:** If any Person contravenes any provisions of Foreign Exchange Management Act, 1999 *except Section 3(a)* of the Act, then application for compounding can be made as specified below:

Sum involved in contravention is	Officer of RBI that can compound the offence
₹ 10 lakh or below	Assistant General Manager
More than ₹ 10 lakh but less than ₹ 40 lakh	Deputy General Manager
More than ₹ 40 lakh but less than ₹ 100 lakh	General Manager
More than ₹ 100 lakh	Chief General Manager

Section 3(a): No person shall deal in or transfer any foreign exchange or foreign security to any person not being an authorized person.

- (c) **No compounding if similar offence is committed within a period of 3 years [Rule 4(2)]:** No contravention shall be compounded unless the amount involved in such contravention is *quantifiable*.
- Once an offence is compounded, similar offence committed within period of 3 years cannot be compounded. Thus, similar offence can be compounded only once in 3 years. Every officer shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the RBI. **[Rule 4(3)]**
- (d) **Fee for compounding [Rule 4(4)]:** Every application for compounding any contravention shall be made in prescribed Form to the Reserve Bank of India, Exchange Control Department, Central Office, **Mumbai** along with a fee of ₹ 5,000 by way of DD in favour of compounding authority.
- (e) **Power of Enforcement Directorate to compound contraventions [Rule 5(1)]:** Applications seeking compounding of contraventions *u/s 3(a)* shall be submitted to Enforcement Directorate as specified below:

Sum involved in contravention is	Directorate that can compound the offence
₹ 5 lakh or below	Deputy Director of the Directorate of Enforcement
More than ₹ 5 lakh but less than ₹ 10 lakh	Additional Director of the Directorate of Enforcement
More than ₹ 10 lakh but less than ₹ 50 lakh	Special Director of the Directorate of Enforcement
More than ₹ 50 lakh but less than ₹ 100 lakh	Special Director with Legal Advisor of the Directorate of Enforcement
More than ₹ 100 lakh	Director of Enforcement with Special Director of the Directorate of Enforcement

(f) **No compounding if similar offence is committed within a period of 3 years [Rule 5(2)]:** No contravention shall be compounded unless the amount involved in such contravention is *quantifiable*.

Once an offence is compounded, similar offence committed within period of 3 years cannot be compounded. Thus, similar offence can be compounded only once in 3 years.

Every officer of the Directorate of Enforcement shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the RBI. [Rule 5(3)]

(g) **Fee for compounding [Rule 5(4)]:** Every application for compounding any contravention rule shall be made in prescribed Form to the Director, Directorate of Enforcement, **New Delhi**, along with a fee of ₹ 5,000 by way of DD in favour of compounding authority.

Q13. What is meant by contravention and compounding of contravention?
[June 2018 (5 Marks)], [June 2022 (4 Marks)]

Or

Explain briefly scope and procedure for compounding of contravention under Foreign Exchange Management Act, 1999. [Dec. 2020 (4 Marks)]

Or

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

Ans.:

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

- ◆ The RBI is empowered to compound contraventions of the provisions of the FEMA.
 - ◆ It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention.
 - ◆ It provides comfort to any person who contravenes any provisions of FEMA, 1999 by minimizing transaction costs.
 - ◆ *Wilful, mala fide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the RBI.*
- (c) **Power to compound contravention [Section 15(1)]:** Any contravention u/s 13 may, on an application made by the person committing such contravention, be compounded within 180 days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and Officers of the RBI as may be authorized in this behalf by the Central Government in prescribed manner.
- (d) **No further proceedings after compounding [Section 15(2)]:** Where a contravention has been compounded, no proceeding or further proceeding shall be initiated or continued against the person committing such contravention in respect of the contravention so compounded.

Q14. Mr. Ronu an Indian national, failed to realize and repatriate foreign exchange amounting to ₹ 1 Crore. Subsequently he realized that he has committed a convention of the Foreign Exchange Management Act, 1999. He desires to compound the said offence. State, whether Mr. Ronu can do so?
[Dec. 2017 (5 Marks)]

Ans.:

- (a) **Compounding Meaning:** Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.
- (b) **Provisions:** This problem is related to Section 15 of the Foreign Exchange Management Act, 1999. Section 15 permits the offending party to compound the contravention within 180 days from the date of receipt of application by the Directorate of Enforcement or such other offices of the Directorate of Enforcement and officers of RBI as may be authorized by Central Government in such manner as may be prescribed.
- (c) **No Contravention in certain cases:** No Contravention shall be compounded unless the amount involved in such contravention is quantifiable.
- (d) **No proceedings after compounding:** Where a contravention has been compounded, no proceeding can continue or be initiated against the person in respect of the contravention so compounded.
- (e) **Conclusion:** Mr. Ronu has failed to realize and repatriate foreign exchange and contravened the provisions of section 8 and he is liable to the penalty leviable u/s 13 followed by adjudication proceedings.

Mr. Ronu can submit his application of compounding to the RBI, Exchange Control Department, Central Office, Mumbai along with a fee of ₹ 5,000 by way of DD in favour of compounding authority.

Q15. Elaborate briefly the pre-requisites for compounding process under Foreign Exchange Management Act (FEMA), 1999.

[June 2023 (5 Marks)]

Ans.: Prerequisite for Compounding Process:

- (a) Similar offence committed within 3 years cannot be compounded:** In respect of a contravention committed by any person within a period of 3 years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded and relevant provisions of the Foreign Exchange Management Act, 1999 shall apply.
- Any second or subsequent contravention committed after the expiry of a period of 3 years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.
- (b) No compounding unless proper approvals or permissions are obtained:** 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.
- (c) Serious contravention and failure to pay sum for contravention of compounding order will be referred to Directorate of Enforcement:** 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 the Foreign Exchange Management Act, 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.
- (d) Authority of the RBI to decide certain matters:** Whenever a contravention is identified by the RBI or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the RBI will continue to decide:
- Whether a contravention is technical or minor in nature and, as such, can be dealt with by way of an administrative/cautionary advice.
 - Whether it is material and is required to be compounded for which the necessary compounding procedure has to be followed.

- 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 motu*, 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 FEM (Compounding Proceedings) Rules, 2000.

ADJUDICATION & APPEAL

Q16. Explain the procedure relating to establishment of Appellate Tribunal under Foreign Exchange Management Act, 1999. [June 2017 (5 Marks)]

Or

Discuss the establishment of Appellate Tribunal constituted under the Foreign Exchange Management Act, 1999. [Dec. 2019 (4 Marks)]

Ans.: Establishment of Appellate Tribunal [Section 18]: The Appellate Tribunal constituted u/s 12(1) of the **Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976** shall be the Appellate Tribunal for the FEMA Act, 1999 and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it under the FEMA Act, 1999.

Appeal to Appellate Tribunal [Section 19(1)]: An appeal can be filed by with Appellate Tribunal against the order made by –

- ◆ Special Director (Appeals)
- ◆ An Adjudicating Authority [other than Assistant Director of the Enforcement or Deputy Director of Enforcement]

Q17. Explain the composition of Appellate Tribunal under the Foreign Exchange Management Act, 1999. [June 2017 (5 Marks)]

Ans.: Composition of Appellate Tribunal [Section 20]:

Due to amendment in Section 18 of the FEMA, the Appellate Tribunal constituted u/s 12(1) of the Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for the FEMA, 1999 and thus question is not relevant for Dec. 2018 and onward examinations.

CURRENT ACCOUNT TRANSACTIONS

Q18. Anand desires to donate US \$ 10,000 to Rotary International, an NGO in Chicago, USA. Advice with reference to relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder. [June 2012 (1 Mark)]

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Ans.: As per Rule 5 of the FEM (Current Account Transactions) Rules, 2000 read with Liberalized Remittance Scheme, transactions specified in **Schedule III** require approval of RBI. Drawal of foreign exchange for "gift & donation" is specified in Schedule III. If the foreign exchange to make donation exceeds US \$ 2,50,000 then prior approval of RBI is necessary. Therefore, Anand can obtain US \$ 20,000 for making donation to a charitable trust situated in South Korea without the prior approval of RBI.

Q19. Suresh desires to pay US \$ 10,000 through international credit card being the remittance out of lottery earnings. Advice with reference to relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder. [June 2012 (1 Mark)]

Ans.: As per Rule 3 of the FEM (Current Account Transactions) Rules, 2000, transactions specified in Schedule I are totally prohibited. "Remittance out of lottery winnings" is specified in Schedule I.

Thus, Suresh cannot pay US \$ 10,000 being the remittance out of lottery earnings.

Q20. Write a short note on: Current Account Transactions [Dec. 2014 (3 Marks)], [Dec. 2017 (5 Marks)]

Ans.:

(a) **Meaning of Current Account Transaction:** The term current account transaction has been defined to mean a transaction other than a capital account transaction. Current Account Transactions includes –

- ◆ Payments due in connection with foreign trade, other current business, services and short-term banking and credit facilities in the ordinary course of business.
- ◆ Payments due as interest on loan and as net income from investments.
- ◆ Remittances for living expenses of parents, spouse and children residing abroad.
- ◆ Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

(b) **Current Account Transactions [Section 5]:** Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, such sell or draw for foreign exchange can be made after complying the **FEM (Current Account Transactions) Rules, 2000**.

(c) **Categories of Current Account Transactions:** As per Rules, current account transactions are divided into following categories:

- ◆ Transaction for which drawal of foreign exchange is prohibited. [Rule 3]

- ◆ Transaction for which foreign exchange can be drawn with prior approval of Central Government. [Rule 4]
- ◆ Transaction for which foreign exchange can be drawn with prior approval of RBI. [Rule 5]

Q21. How much foreign exchange is available to a person going abroad on emigration?
[Dec. 2015 (3 Marks)]

Ans.:

- ◆ As per Rule 5 of the Schedule II of the FEM (Current Account Transactions) Rules, 2000 read with Liberalized Remittance Scheme, the exchange facilities for emigration not exceeding **US \$ 2,50,000** do not require prior approval of RBI.
- ◆ As per Liberalized Remittance Scheme, a person wanting to emigrate can draw foreign exchange from AD Category-I & Category-II up to the amount prescribed by the country of emigration or US \$ 2,50,000.
- ◆ Remittance of any amount in excess of above limit may require prior approval of RBI.

Q22. Point out the prohibited transactions as per Liberalized Remittance Scheme under the Foreign Exchange Management (Current Account Transactions) Rules, 2000.
[Dec. 2019 (5 Marks)], [Dec. 2020 (4 Marks)], [June 2021 (4 Marks)]

Ans.: Remittance facility under the Liberalized Remittance Scheme is not available for the following:

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.

Q23. Dr. Gupta, an Indian national, residing in Thailand and wanted to avail foreign exchange facility up to US \$ 2,00,000 only. Whether he can do so? Explain the relevant provisions of the Foreign Exchange Management Act, 1999 in this respect. [Dec. 2019 (5 Marks)]

Ans.: Remittances of US \$ 2,50,000 per Financial Year (FY) for permitted current account transactions are available to resident individuals under Schedule III to FEM (Current Account Transactions) Amendment Rules, 2000 read with Liberalized Remittance Scheme (LRS).

Release of foreign exchange exceeding US \$ 2,50,000, requires prior permission from the Reserve Bank of India.

In view of the above, Dr. Gupta can freely avail foreign exchange facilities up to US \$ 2,00,000.

Q24. Name any five permissible current account transactions made by an individual under Liberalized Remittance Scheme (LRS). [Dec. 2020 (5 Marks)]

Or

What are limits of Current Account Transactions by an Individual under liberalized remittance scheme? [June 2022 (5 Marks)]

Or

What do you mean by Liberalized Remittance Scheme? [June 2023 (4 Marks)]

Ans.: **Liberalized Remittance Scheme (LRS):** Under the Liberalized Remittance Scheme (LRS), Authorized Dealers may freely allow remittances by resident individuals up to US \$ 2,50,000 per Financial Year for any permitted current or capital account transaction or a combination of both.

It may be noted that release of foreign exchange in excess of US \$ 2,50,000 requires prior permission from the RBI.

Permissible current account transactions under Liberalized Remittance Scheme:

- ◆ Private visits to any country (except Nepal and Bhutan).
- ◆ Gift or donation.
- ◆ Going abroad for employment.
- ◆ Emigration.
- ◆ Maintenance of close relatives abroad.
- ◆ Travel for business, or attending a conference or specialized training for meeting expenses for meeting medical expenses, or check-up abroad or for accompanying as attendant to a patient going abroad for medical treatment/check-up.

- ◆ Expenses in connection with medical treatment abroad.
- ◆ Studies abroad.
- ◆ Any other current account transaction.

Q25. Up to what limit an authorized dealer may release foreign exchange for business trip and medical treatment abroad, under Liberalized Remittance Scheme. [June 2021 (5 Marks)]

Ans.: Business Trip:

- ◆ Visits by individuals in connection with attending of an international conference, seminar, specialized training, apprentice training, *etc.*, are treated as business visits.
- ◆ For business trips to foreign countries, resident individuals can avail of foreign exchange up to US \$ 2,50,000 in a financial year irrespective of the number of visits undertaken during the year.
- ◆ If an employee is being deputed by an entity for any of the above and the expenses are borne by the latter, such expenses shall be treated as residual current account transactions outside LRS and may be permitted by the AD without any limit, subject to verifying the *bona fide* of the transaction.

Medical treatment abroad:

- ◆ Authorized Dealers may release foreign exchange up to an amount of US \$ 2,50,000 or its equivalent per FY without insisting on any estimate from a hospital/doctor.
- ◆ For amount exceeding the above limit, Authorized 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 Authorized Dealer (without seeking prior approval of the RBI) for medical treatment outside India.
- ◆ In addition to the above, an amount up to US \$ 2,50,000 per financial year is allowed to a person for accompanying as attendant to a patient going abroad for medical treatment/check-up.

Q26. Describe the remittances by persons other than the individuals which require prior approval of the Reserve Bank of India. [June 2021 (4 Marks)]

Ans.: Facilities for persons other than individual: Following remittances by persons other than individuals shall require prior approval of the RBI.

- (1) Donations exceeding 1% of their foreign exchange earnings during the previous 3 financial years or US \$ 50,00,000, *whichever is less*, for –
 - (a) Creation of Chairs in reputed educational institutes.