



CS EXECUTIVE

ECONOMIC, COMMERCIAL AND INTELLECTUAL PROPERTY LAWS



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Module 2

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LAW RELATING FOREIGN EXCHANGE MANAGEMENT

1. INTRODUCTION

Foreign Exchange Management Act, 1999 has replaced Foreign Exchange Regulation Act, 1973 and it came into effect from 1.6.2000.

Reserve Bank of India is overall controlling authority in respect of FEMA. In addition to RBI, Directorate of Enforcement has also been formed for the implementation of FEMA.

Sec.46 of FEMA authorizes Central Govt. to make Rules and Sec.47 authorizes RBI to make Regulations to carry out the provisions of the Act. Accordingly, the Central Govt. has issued number of Rules and RBI has issued number of Regulations for various purposes. The practical aspects are covered by these Rules and Regulations.

2. FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (FEMA)

The Foreign Exchange Management Act, 1999 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.

December 2021

Q. What is the object and scope of Foreign Exchange Management Act, 1999?

Ans: 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.

3. IMPORTANT DEFINITIONS

3.1 AUTHORISED PERSON [SECTION 2 (C)]

The term 'authorised person' is defined to include an authorised dealer, money changer, offshore banking unit or any other person for the time being authorised to deal in foreign exchange or foreign securities.

3.2 EXPORT [SECTION 2(L)]

'Export' means

1. The taking out of India to a place outside India any goods
2. Provision of services from India to any person outside India.

3.3 FOREIGN EXCHANGE [SECTION 2(N)]

The term 'foreign exchange' has been defined to mean foreign currency and includes deposits, credits, balance payable in foreign currency, drafts, travellers' cheques, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in any foreign currency. Any draft, travellers' cheque, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency has also been included in the definition of foreign exchange.

3.4 FOREIGN SECURITY [SECTION 2(O)]

The term 'foreign security' has been defined to mean any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return such as interest or dividend is payable in Indian currency.

3.5 PERSON [SECTION 2(U)]

The definition of the term 'person' includes, an individual, a Hindu Undivided Family, a company, a firm, an association of persons or body of individuals whether incorporated or not; any agency, office or branch owned or controlled by such persons. Even every artificial juridical person not falling within the above definition has been treated as person as per clause (u) of Section 2.

3.6 PERSON RESIDENT IN INDIA [SECTION 2(V)]

The expression 'person resident in India' has been defined to mean: A person residing in India for more than 182 days during the course of the preceding financial year.

3.7 REPATRIATE TO INDIA [SECTION 2(Y)]

'Repatriate to India' means bringing into India the realised foreign exchange and

1. The selling of such foreign exchange to an authorised person in India in exchange for rupees, or
2. The holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank, and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly.

3.8 SPECIAL DIRECTOR (APPEALS) [SECTION 2(ZC)]

'Special Director (Appeals)' means an officer appointed under section 17. Section 17 empowers Central Government which shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.

4. CURRENT ACCOUNT TRANSACTIONS [SECTION 2 (J)]

The term current account transaction has been defined to mean a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business, payments due as interest on loan and as net income from investments, remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.

Current Account Transactions are Payment Towards

1. Private visits to any country,
2. Gift or donation,
3. Going abroad for employment,
4. Emigration,

5. Maintenance of close relatives abroad,
6. Travel for business,
7. for meeting expenses for meeting medical expenses,
8. for accompanying as attendant to a patient going abroad for medical treatment,
9. Studies abroad,
10. Any other current account transaction which is not covered under the definition of current account in FEMA 1999.

4.1 PROHIBITION ON DRAWAL OF FOREIGN EXCHANGE FOR CERTAIN TRANSACTIONS

Rule 3 prohibits the drawal of foreign exchange for the purposes of transactions specified in the Schedule I or a travel to Nepal and/or Bhutan or a transaction with a person resident in Nepal or Bhutan. Schedule I to the Rules enumerate the situations in which the drawal of foreign exchange is prohibited. These are as follows

Remittance out of lottery winnings.

Remittance of income from racing/riding etc, or any other body

Remittance for purchase of lottery tickets, banned/prescribed magazine, football pools, sweep stakes.

Payment of commission on exports made towards equity investment in joint venture/wholly owned subsidiaries abroad of Indian Companies.

Payment of commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of exports of tea and tobacco.

Payment related to 'call back service' of telephone. Remittance of interest income on funds held in Non-resident Special Rupee Scheme Account.

June 2021

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

Ans: 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.

4.2 PRIOR APPROVAL OF GOVERNMENT OF INDIA FOR CERTAIN TRANSACTIONS

Rule 4 requires prior approval of the Government of India for the transactions as specified in Schedule II. However, this does not apply to the cases where the payment is made out of funds held in Resident Foreign Currency Account (RFC) of the remitter.

4.3 PRIOR APPROVAL OF RESERVE BANK FOR CERTAIN TRANSACTION

Rule 5 of the Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015, governs every drawal of foreign exchange for transactions included in Schedule III.

4.4 TRANSACTIONS INCLUDED IN SCHEDULE III

1. Facilities for individuals

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess thereof requires prior approval of the Reserve Bank of India.

- (a) Private visits to any country (except Nepal and Bhutan).
- (b) Gift or donation.
- (c) Going abroad for employment.
- (d) Emigration.
- (e) Maintenance of close relatives abroad.
- (f) Travel for business, vii. Expenses in connection with medical treatment abroad.
- (g) Studies abroad.
- (h) Any other current account transaction.

Furthermore, a person who is resident but not permanently resident in India and

- (a) Is a citizen of a foreign State other than Pakistan, or
- (b) Is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary.

Explanation: A person resident in India on account of his employment or deputation of a specified duration or for a specific job or assignments, the duration of which does not exceed three years.

2. Facilities for persons other than individual

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

- I. Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for:
 - (a) Creation of Chairs in reputed educational institutes,
 - (b) Contribution to funds (not being an investment fund) promoted by educational institutes,
 - (c) Contribution to a technical institution or body or association in the field of activity of the donor Company.
- II. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
- III. Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
- IV. Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

5. LIBERALISED REMITTANCE SCHEME (LRS)

Liberalised Remittance Scheme (LRS) of USD 2,50,000 for resident individuals. Under the Liberalised Remittance Scheme, Authorised Dealers may freely allow remittances by resident individuals up to USD 2, 50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both. The Scheme is not available to corporates, partnership firms, HUF, Trusts, etc.

(a) Private visits

For private visits abroad, other than to Nepal and Bhutan, any resident individual can obtain foreign exchange up to an **aggregate amount of USD 2,50,000 from an Authorised Dealer**, in any one financial year, irrespective of the number of visits undertaken during the year.

(b) Gift/donation

Any resident individual may remit up-to USD 2,50,000 in one FY as gift to a person residing outside India or as donation to an organization outside India.

(c) Going abroad on employment

A person going abroad for employment can draw foreign exchange up to USD 2,50,000 per FY from any Authorised Dealer in India.

(d) Emigration

A person who wants to emigrate can withdraw foreign currency from AD Category I banks and AD Category II banks. The amount they can withdraw is determined by the country they are emigrating to or a maximum limit of USD 250,000. If someone wants to send more money abroad, it can only be used for covering additional expenses in the destination country and not for earning points or credits to become eligible for immigration through investments in government bonds, land, or commercial enterprises.

(e) Maintenance of relatives abroad

A resident individual can remit up-to USD 2,50,000 per FY towards maintenance of relative

(f) Business trip

For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD 2,50,000 in a FY irrespective of the number of visits.

(g) Medical treatment abroad

Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 or its equivalent per FY without insisting on any estimate from a hospital/doctor. For amount exceeding the above limit, Authorised Dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital/ doctor abroad. A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer for medical treatment outside India.

In addition to the above, an amount up to USD 250,000 per financial year is allowed to a person for accompanying as attendant to a patient going abroad for medical treatment/check up.

(h) Facilities available to students for pursuing their studies abroad.

AD Category I banks and AD Category II, may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign university. However, AD Category I bank and AD Category II may allow remittances (without seeking prior approval of the Reserve Bank of India) exceeding USD 2,50,000 based on the estimate received from the institution abroad. Further, a resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.

The Permissible Capital Account Transactions by an Individual Under LRS are

- ◆ Opening of foreign currency account abroad with a bank;
- ◆ Acquisition of immovable property abroad, Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI), in accordance with the provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022,
- ◆ Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022; extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.

6. CAPITAL ACCOUNT TRANSACTIONS

Capital account transaction' has been defined to mean any transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of person resident outside India.

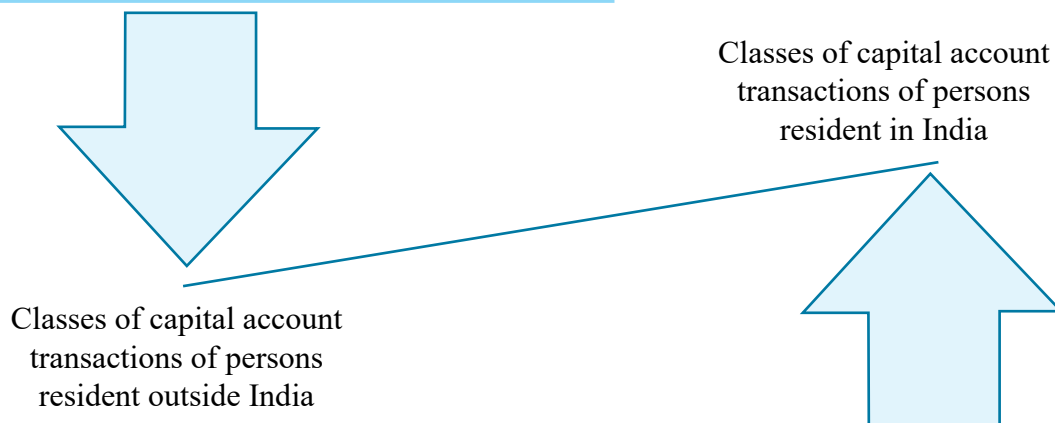
6.1 PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS

◆ CLASSES OF CAPITAL ACCOUNT TRANSACTIONS

Classes of capital account transactions of persons resident in India

Classes of capital account transactions of persons resident outside India

6.2 PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS



6.3 CLASSES OF CAPITAL ACCOUNT TRANSACTIONS BY PERSONS RESIDENT IN INDIA

- (a) Investment by a person resident in India in foreign securities.
- (b) Foreign currency loans raised in India and abroad by a person resident in India.
- (c) Transfer of immovable property outside India by a person resident in India.
- (d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- (e) Export, import and holding of currency/currency notes.
- (f) Loans and overdrafts by a person resident in India from a person resident outside India.
- (g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- (h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- (i) Loans and overdrafts by a person resident in India to a person resident outside India.
- (j) Remittance outside India of capital assets of a person resident in India.
- (k) Undertake derivative contracts.

6.4 CLASSES OF CAPITAL ACCOUNT TRANSACTIONS BY PERSONS RESIDENT OUTSIDE INDIA

- (a) Investment in India by a person resident outside India,
- (b) Acquisition and transfer of immovable property in India by a person resident outside India
- (c) Guarantee by a person resident outside India in favour of, or on behalf of a person resident outside India
- (d) Import and export of currency/currency notes into / from India by a person resident outside India
- (e) Foreign currency accounts in India of a person resident outside India.
- (f) Remittance outside India of capital asset in India of a person resident outside India.
- (g) Undertake derivative contracts.

7. REALISATION, REPATRIATION AND SURRENDER OF FOREIGN CURRENCY

- ◆ Section 8 of the Foreign Exchange Management Act, 1999 requires the person resident in India to make all reasonable efforts to realise and repatriate the foreign exchange due or accrued as per the directions of the Reserve Bank.
- ◆ In exercise of the powers conferred by Section 8, Section 10(6), Section 47(2)(c) of the Foreign Exchange Management Act, 1999, the Reserve Bank issued Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015 relating to the manner of, and the period for, realisation of foreign exchange, repatriation of realised foreign exchange to India and its surrender.

7.1 DUTY OF PERSONS TO REALISE FOREIGN EXCHANGE DUE

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

1. That the receipt by him of the whole or part of that foreign exchange is delayed, or
2. That the foreign exchange ceases in whole or in part to be receivable by him.

7.2 MANNER OF REPATRIATION

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

1. Sell it to an authorised person in India in exchange for rupees, or
2. Retain or hold it in account with an authorised dealer in India, or
3. Use it for discharge of a debt or liability denominated in foreign exchange.

7.3 PERIOD FOR SURRENDER OF REALISED FOREIGN EXCHANGE

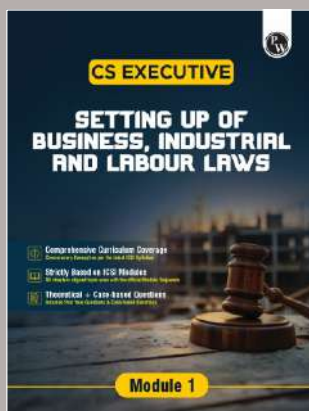
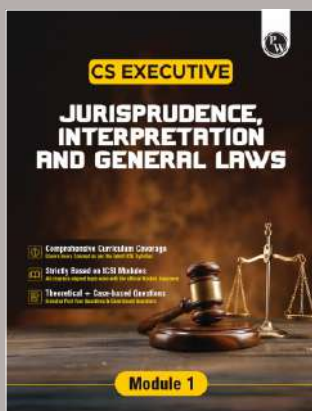
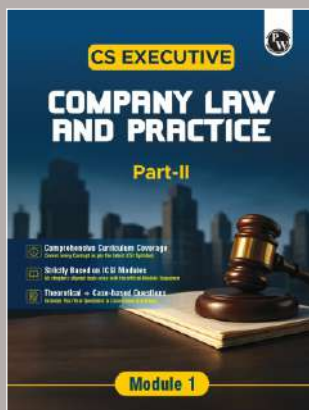
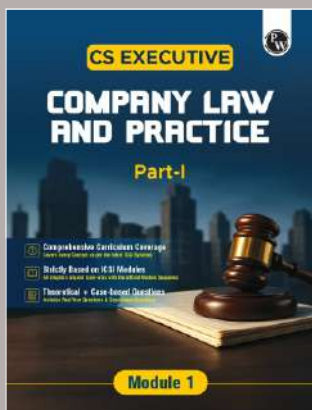
A person not being an individual resident in India shall sell the realised foreign exchange to an authorised person, within the period specified below:

1. Foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift, within seven days from the date of its receipt,
2. In all other cases within a period of ninety days from the date of its receipt.

7.4 PERIOD FOR SURRENDER IN CERTAIN CASES

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

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