Foreign Exchange Management Act (FEMA) From Auditors Perspective and Remittance Facilities

CA RAJESH P. SHAH

JAYANTILAL THAKKAR ASSOCIATES

STUDYING FEMA THROUGH FINANCIAL STATEMENT

- **COMPANIES ACT ,2013**
- **SECTION 129 STATES AS FOLLOWS**:-
- 29. Financial statement - (1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:
- **Income Tax Act**
- Section 92 :- Computation of Income from International Transaction
- Section 92 A :- Associated enterprise
- Section 92B:- Meaning of International transaction
- Section 92E :- Report from Accountant
- **Foreign Exchange Management Act**

BALANCE SHEET

- **Liability Side**
- Share capital
- Loans
- Trade Credit
- **Asset Side**
- Fixed Assets
- Investments
- Loans and Advances
- Debtors
- Branch Office
- Bank Balance and Foreign Currency
- Contingent Liability / Guarantees

PROFIT & LOSS ACCOUNT

- **Income**
- Exports
- Other income received
- **Expenses**
- Imports
- Other expenses
  - Bad Debt
  - Royalty

SHARE CAPITAL

- Routes

- Foreign Direct Investment is freely permitted in almost all sectors.

- Automatic Route - The foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.

- Government Route - Prior approval of the Government of India, Ministry of Finance, Foreign Investment Promotion Board (FIPB) is required

PROHIBITION

- FDI is prohibited in: a) Lottery Business including Government/private lottery, online lotteries, etc.
- Gambling and Betting including casinos etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real Estate Business or Construction of Farm Houses 'Real estate business' shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

PROHIBITION

- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations(other than permitted activities mentioned in para 5.2).
- Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

Types of Instruments

- Equity Shares
- Fully ,Compulsorily and Mandatorily Convertible Debentures(CCD)
- Fully ,Compulsorily and Mandatorily Convertible Preference Shares (CCPS)
- Share Warrants

INTIMATION OF SHARE CAPITAL

Forms	Particulars
FC-GPR	For intimating to RBI details of issue of capital instruments to PROI E-filing within 30 days from the date of such issue Incorporates the erstwhile ARF RBI allots UIN / Registration
FLA	Annual return on Foreign Liabilities and Assets Indian company / LLP who has received foreign investments To be filed on or before 15th day of July 2012
FC-TRS	For transfers between R / PROI-NR basis to PROI and PROI to R including each tranche for Reg. 10(9) cases Resident party to file within 60 days from receipt / payment of consideration (for stock exchange transfer – PROI) Transfer to be recorded post AD-Bank approval
FORM ESOP	Indian company issuing ESOP to report to RBI within 30 days
Form FDI-LLP (I)	Intimating RBI receipt of capital contribution / profit shares in LLP by PROI within 30 days from the receipt of the consideration
Form FDI – LLP (II)	Disinvestment / Transfer of capital contribution/ profit shares between R & NR or vice versa within 60 days of receipts
Downstream FDI	E-intimation on FIFP portal within 30 days Form DI to RBI within 30 days of allotment of capital instruments

LOANS - External Commercial Borrowings

- ECBs are commercial loans raised by eligible resident entities from recognized non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

- The parameters apply in totality and not on a standalone basis. The framework for raising loans through ECB (herein after referred to as the ECB Framework) comprises the following three tracks

LOANS - External Commercial Borrowings

- **Use of proceeds:**
- The negative list, for which the ECB proceeds cannot be utilised, would include the following:
- Real estate activities.
- Investment in capital market.
- Equity investment.
- Working capital purposes except from foreign equity holder.
- General corporate purposes except from foreign equity holder.
- Repayment of Rupee loans except from foreign equity holder
- On-lending to entities for the above activities

DOCUMENTATION FOR ECB

- Reporting Requirements: Borrowings under ECB Framework are subject to reporting requirements in respect of the following:

- Loan Registration Number (LRN): Any draw-down in respect of an ECB as well as payment of any fees / charges for raising an ECB should happen only after obtaining the LRN from RBI. To obtain the LRN, borrowers are required to submit duly certified Form 83, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Balance of Payments Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India

DOCUMENTATION FOR ECB

- Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.
- Changes in terms and conditions of ECB:
- Permitted changes in ECB parameters should be reported to the DSIM through revised Form 83 at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form 83 the changes should be specifically mentioned in the communication.

DOCUMENTATION FOR ECB

Adobe Acrobat Document

- **Reporting of actual transactions:** The borrowers are required to report actual ECB transactions through ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates.
- Changes, if any, in ECB parameters should also be incorporated in ECB 2 Return. Format of ECB 2 Return is available at Annex III of Part V of Master Directions – Reporting under Foreign Exchange Management Act.

Late Submission Fee (LSF) for delay in reporting:

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

TRADE CREDIT

- **Trade Credit:** Trade Credits refer to the credits extended by the overseas supplier, bank and financial institution for maturity up to five years for imports into India. Depending on the source of finance, such trade credits include suppliers' credit or buyers' credit. Suppliers' credit relates to the credit for imports into India extended by the overseas supplier, while buyers' credit refers to loans for payment of imports into India arranged by the importer from overseas bank or financial institution. Imports should be as permissible under the extant Foreign Trade Policy of the Director General of Foreign Trade (DGFT)
- **Maturity prescription:** Maturity prescriptions for trade credit are same under the automatic and approval routes. While for the non-capital goods, the maturity period is up to one year from the date of shipment or the operating cycle whichever is less, for capital goods, the maturity period is up to five year from the date of shipment. For trade credit up to five years, the ab-initio contract period should be 6 (six) months. No roll-over/extension will be permitted beyond the permissible period.

ASSET SIDE -Fixed Asset

Import of Capital Goods (Plant & Machinery etc)

- Physical import of capital goods into India is made within three) from the date of remittance and the importer gives an undertaking to furnish documentary evidence of import within fifteen days from the close of the relevant period.
- It is clarified that where advance is paid as milestone payments, the date of last remittance made in terms of the contract will be reckoned for the purpose of submission of documentary evidence of import.

ASSET SIDE -Fixed Asset

Immovable Property

- A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purpose of its staff ,in accordance with the direction issued by RBI from time to time(FEMA 7(R)).
- Individual can acquire immovable property abroad within the limit of LRS (USD 250000)
- A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may -

ASSET SIDE -Fixed Asset

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

  Provided that

- (i) all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and
- (ii) the person files with the Reserve Bank a declaration in the form IPI as prescribed by Reserve Bank from time to time, not later than ninety days from the date of such acquisition.
- (b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).

ASSET SIDE-Fixed Asset

- Provided no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.
- Any transaction involving acquisition or transfer of immovable property under these regulations shall be undertaken:

  (a) through banking channels in India;

  (b) subject to payment of applicable taxes and other duties/ levies in India.

INVESTMENTS-OVERSEAS DIRECT INVESTMENTS

- Overseas investments (or financial commitment) in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognized as important avenues for promoting global business by Indian entrepreneurs. Joint Ventures are perceived as a medium of economic and business co-operation between India and other countries. Transfer of technology and skill, sharing of results of R&D, access to wider global market, promotion of brand image, generation of employment and utilization of raw materials available in India and in the host country are other significant benefits arising out of such overseas investments (or financial commitment).
- The Indian Party submits Form ODI, duly completed, to the designated branch of an authorized dealer.

Overseas Direct Investment - Reporting

Microsoft Word Document

- Form ODI

- **Part I – Application for allotment of Unique Identification Number (UIN) and reporting of Remittances / Transactions:**

  Section A – Details of the IP / RI.

  Section B – Capital Structure and other details of JV/ WOS/ SDS.

  Section C - Details of Transaction/ Remittance/ Financial Commitment of IP/ RI.

  Section D – Declaration by the IP/ RI.

  Section E – Certificate by the statutory auditors of the IP/ self- certification by RI.

- SPECIFIED LIMITS – 400% criteria; USD 1BN /FY
- Share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months of the remittance to be submitted

Overseas Direct Investment – Annual Reporting (APR)

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- **Form APR and other criteria to be seen while certifying Annual Performance Report**
- Submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before December 31, an Annual Performance Report (APR) in Part II of Form ODI in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV/WOS for the preceding year, unless specifically exempted by the Reserve Bank
- Repatriation to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit

Overseas Direct Investment - Overseas Direct Investment – Annual Reporting (APR)

- Reporting requirements including submission of Annual Performance Report are also applicable for investors in unincorporated entities in the oil sector.
- Where the law of the host country does not mandatorily require auditing of the books of accounts of JV / WOS, the Annual Performance Report (APR) may be submitted by the Indian Party based on the un-audited annual accounts of the JV / WOS provided:
- The Statutory Auditors of the Indian Party certify that law of the host country does not mandatorily require auditing of the books of accounts of JV / WOS and the figures in the APR are as per the un-audited accounts of the overseas JV / WOS;

Overseas Direct Investment - Overseas Direct Investment – Annual Reporting (APR)

- That the un-audited annual accounts of the JV / WOS have been adopted and ratified by the Board of the Indian Party. c. 7 The above exemption from filing the APR based on unaudited balance sheet will not be available in respect of JV/WOS in a country / jurisdiction which is either under the observation of the Financial Action Task Force (FATF) or in respect of which enhanced due diligence is recommended by FATF or any other country / jurisdiction as prescribed by Reserve Bank of India.

INVESTMENTS-OVERSEAS DIRECT INVESTMENTS
Obligation of IP/RI
(FLA)

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- Part of Annual compliance like APR.
- **Annual Return on Foreign Liabilities and Assets**
- Excel based return to be sent via email by 15th July of every year. (there's another date of Sept, are you complying?)

PROFIT & LOSS ACCOUNT - EXPORTS

- Export and Import are Current Account Transactions under FEMA. Prima facie no restrictions. However procedures to be complied with. For most arrangements – conditions apply.

- Realization and repatriation of proceeds of export of goods / software / services It is obligatory on the part of the exporter to realize and repatriate the full value of goods / software / services to India within a stipulated period from the date of export, as under:

Realization of Exports Proceeds	Time Frame
Export of goods / software / services	Nine Months
Goods exported to a warehouse established outside India	Fifteen Months

EXPORTS -Accounts

- EEFC A/c. – Export proceeds and other permitted transactions can be received in the account. - Funds to be converted in rupees before the end of subsequent month except – funds utilised for approved purpose and forward commitments. - No interest can be earned.
- RFC(Domestic) A/c. – Individuals can open this account for export earnings, services rendered abroad and some other purposes. - Restrictions on conversion into rupees & interest – similar to EEFC A/c.
- Diamond Dollar Account (DDA) – only for sale of diamonds & diamond studded jewellery. [Plain gold jewellery businessmen can also open DDA A/c. – but only for diamonds.]
- Cannot have another foreign currency A/c. - Only firm & companies are permitted.
- SEZ unit can hold account in India.

ADVANCE AGAINST EXPORTS

- Export should be made within one year of advance.
- Interest cannot exceed LIBOR+1%.
- Documents should be routed through the bank where advance is received.
- Non-supply of goods becomes a loan. Condonation required.
- Refund if any beyond one year will require RBI approval.
- Exporters with 3 year track record can receive advance against confirmed order for goods upto 10 years. Para MD-C.2(2).
- No double financing. i.e. No working capital loan.
- Strict monitoring.
- BG/SBLC upto 2 years at a time.
- No pending investigation or caution listing.

DELAY IN REALISATION OF PROCEEDS

- Bank can permit extension upto 6 months at a time subject to conditions:
  - No pending investigations.
  - Bank is satisfied about reasons.
  - For extension beyond one year, outstanding should not exceed US$ 1 mn. or 10% of average export realisations of preceding 3 years, whichever is higher.
  - If suits are filed, extension may be granted irrespective of amount involved.
  - Realization not insisted under Export Promotion scheme. Write off under AD route. Para MD-C.25

WRITE OFF OF UNREALISED EXPORTS

- Write off of outstanding amounts of more than one year is permitted up following percentage in a year of export proceeds realized during previous calendar year.
- Exporter itself – 5%
- Status Holder exporter itself – 10%
- Through AD – 10% [CA certificate required for self write off with full details.]
- Write off can exceed 10% if claims are settled by ECGC / pvt. Insurance companies. Claim in rupees will not be FX realization.

WRITE OFF OF UNREALISED EXPORTS

- Eligible Cases –
  - Examples:- - buyer not traceable / insolvent, goods auctioned by foreign authorities, amount settled through Indian embassy / foreign chamber of commerce, cost of legal action is more than write off involved. - export incentives are surrendered. • Following cases not eligible:
  - countries with externalization problem buy buyer has deposited local currency with its central bank.
  - EDF under investigation
  - Cases Not covered above
  - RBI Approval Required

SET-OFF EXPORT AND IMPORT AMOUNTS

- If import payment for goods is still outstanding, export receivable for goods can be set off against the import payable.
- Set off should be for transactions with same party. [No set off of transactions within the group is also permitted.] Relevant documents should have been submitted. Consent of foreign party required.
- Transactions with ACU countries cannot be set off.
- Units in SEZ can set off on the balance sheet date.
- Set off of services? Bank is not authorised.

IMPORTS

- Import should be as per Foreign Trade policy. If license is required, import should be as per license.
- FX should be used for the purpose for which it is obtained – S.10 (6).
- For remittances, goods/ services should come in the country. Evidence should be provided to Bank.
- Time for payment
  - Normally payment should be within 6 months from date of shipment. Amounts held towards performance guarantee is all right. Interest if any is permitted as per Trade Credit Rules upto 3 years.

IMPORTS

- Time for payment
  - No time limit for import of books. Interest permitted as per Trade credit rules upto 3 years.
  - Delay due to disputes, financial difficulties are acceptable. Interest if any cannot be for more than 3 years.
  - Deferred payment upto 5 years are Trade credits. Separate rules for Trade Credit.

ADVANCE FOR IMPORTS

- Goods - Permitted upto US$ 2,00,000.
- Above US$ 2,00,000 – Irrevocable L/C, or guarantee from foreign bank of international repute; or guarantee from Indian bank with counter guarantee from foreign bank of international repute.
- If bank is satisfied, advance of upto US$ 5 mn. can be permitted by bank (other than for PSU or Govt. department).
- PSU / Govt. dept. which cannot obtain guarantee require MOF approval for advance above US$ 1,00,000

ADVANCE FOR IMPORTS

- Services - Permitted upto US$ 5,00,000.
- Above US$ 5,00,000 – guarantee from foreign bank of international repute; or guarantee from Indian bank with counter guarantee from foreign bank of international repute.
- PSU / Govt. dept. require MOF approval for advance above US$ 1,00,000 without guarantee.

WRITE OFF

- Write off upto 5% is permitted for operational reasons – quality issues, short shipment, destruction of goods by foreign authorities.
- There should be no civil suit pending.
- No adverse notice by investigation authorities.
- If situation changes, the importer should remit/receive funds – as the case may be.

EXPENSES-Current Account Transaction

- Current account transaction is a transaction other than a capital account transaction
- Current account transactions are governed by Foreign Exchange Management (Current Account Transaction) Rules, 2000 ("Current Account Transactions Rules").
- India is signatory to WTO Agreement and in terms of Article VIII; it states that "......no member shall, without the approval of the Fund (IMF), impose restrictions on the making of payments and transfers for current international transaction."

CURRENT ACCOUNT TRANSACTION

- Current account transactions are divided into 3 schedules in Current Account Transactions Rules:-
  - Schedule I – Prohibited Transactions
  - Schedule II – Transactions requiring prior approval of Government of India
  - Schedule III – Transactions requiring prior approval of RBI

- Drawal of foreign exchange is prohibited for –
  - Transactions specified in Schedule I; or
  - Travel to Nepal and / or Bhutan; or
  - Transaction with person resident in Nepal or Bhutan (this prohibition may be relaxed by special approval).

SCHEDULE I (RULE 3): Transactions Which Are Prohibited

- Remittance out of lottery winnings (*)
- Remittance of income from racing/riding etc., or any other hobby
- Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
- Payment of commission on exports made towards equity investment in
- JV/WOS abroad of Indian companies.

SCHEDULE I (RULE 3): Transactions Which Are Prohibited

- Payment of commission on exports under Rupee State Credit route except commission up to 10% of invoice value of exports of tea and tobacco.
- Payment related to 'Call Back Services' of telephones
- Remittance of interest income of funds held in Non-resident Special Rupee Scheme A/c.

(NOT PERMISSIBLE EVEN FROM RFC and EEFC ACCOUNT)

* In terms of FDI Policy even technology collaboration (franchise, trademark, brand name, management contract is prohibited for lottery business and gambling and betting)

SCHEDULE II (RULE 4) TRANSACTIONS REQUIRING PRIOR APPROVAL OF GOVERNMENT

Purpose of remittance		Ministry/Department of Govt. of India
▪ Cultural tours		Ministry of Human resources Development
▪ Advertisement in foreign print media for purpose other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public sector undertaking		Ministry of Finance
▪ Remittance of freight of vessel charted by a PSU		Ministry of Surface Transport
▪ Payment of import [through ocean transport] by a Govt. department or a PSU on CIF basis		Ministry of Surface Transport

CURRENT ACCOUNT TRANSACTION

Purpose of remittance		Ministry/Department of Govt. of India
▪ Multimodal transport operators making remittance to their agents abroad		Registration Certificate from the Director General of Shipping
▪ Remittance of hiring charges of transporters by TV channels, internet service providers		Ministry of Information and Broadcasting, Ministry of Communication and Information
▪ Remittance of container detention charges exceeding rate prescribed by Director General of Shipping		Ministry of Surface Transport
▪ Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State Level sports bodies if the amount involved exceeds USD 1,00,000		Ministry of Human Resources Development (Department of Youth Affairs and Sports)
▪ Remittance for membership of P&I club		Ministry of Finance

PRE-INCORPORATION EXPS

- Remittances exceeding 5% of investment brought into India or USD 1,00,000 whichever is higher for reimbursement of pre- incorporation expenses by entity in India.
- As per FEMA Notification No. 20:
  - Capitalization of import of capital goods/ machinery/ equipment (excluding second-hand machinery) and pre-operative/ pre- incorporation expenses (including payments of rent etc.) - This requires Government Approval- Para 3(e) of Sch I of Not. 20
  - Capitalization of any other funds payable by the investee company, remittance of which does not require prior permission of government [A.P. (DIR Series) circular No. 31 dated September 17, 2014]. – Para 2(4)(iv) of Sch I of Not. 20

SCHEDULE III (RULE 5) : Prior Approval of RBI

- Facilities for Individuals - Individuals can make remittance within limit of USD 2,50,000 for following facilities. However, any additional remittance in excess of said limit shall require RBI approval.
    - Private visits to any country (except Nepal and Bhutan)
    - Gift or donation
    - Going abroad for employment
    - Emigration
    - Maintenance of close relatives abroad

SCHEDULE III (RULE 5) : Prior Approval of RBI

- Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check up abroad, or for accompanying as attendant to a patient gong abroad for medical treatment/check up.
- Expenses in connection with medical treatment abroad
- Studies abroad
- Any other current account transaction

FACILITIES FOR INDIVIDUALS

- **Release of Foreign Exchange by Authorised Dealer Category II**:
- Private visits,
- Remittance by tour operators / travel agents to overseas agents / principals / hotels,
- Business travel,
- Fee for participation in global conferences and specialized training,
- Remittance for participation in international events / competitions (towards training, sponsorship and prize money),
- Film shooting,

FACILITIES FOR INDIVIDUALS

- Medical treatment abroad,
- Disbursement of crew wages,
- Overseas education,
- Remittance under educational tie up arrangements with universities abroad,
- Remittance towards fees for examinations held in India and abroad and additional score sheets for GRE, TOEFL, etc.
- Employment and processing, assessment fees for overseas job applications,

FACILITIES FOR INDIVIDUALS

- Emigration and emigration consultancy fees,
- Skills / credential assessment fees for intending migrants,
- Visa fees,
- Processing fees for registration of documents as required by the Portuguese / other Governments,
- Registration / subscription / membership fees to International Organisations.

FACILITIES FOR INDIVIDUALS

- Remittances for current account transactions (viz. private visit; gift/donation; going abroad on employment; emigration; maintenance of close relatives abroad; business trip; medical treatment abroad; studies abroad) available to resident individuals under Para 1 of Schedule III to Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015 dated May 26, 2015 are subsumed under the Liberalised Remittance Scheme (LRS) of USD 2,50,000 per Financial Year (FY) with effect from May 26, 2015

FACILITIES FOR INDIVIDUALS

- **Remittance of salary**
- 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 (after deduction of taxes, contribution to provident fund and other deductions).
- Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

FACILITIES FOR INDIVIDUALS

- **Meeting of medical expenses of NRI close relatives by resident individuals**
- Where the medical expenses in respect of NRI close relative (relative as defined in [1]Section 2 (77) of the Companies Act, 2013) are paid by a resident individual, such a payment being in the nature of a resident to resident transaction may be covered under the term "services related thereto" under Regulation 2(i) of Notification No. FEMA 16 /2000- RB dated May 3, 2000.

FACILITIES FOR INDIVIDUALS

- **International Credit Cards (ICC)**
- The restrictions contained in Rule 5 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 will not be applicable for use of International Credit Cards (ICCs) by residents for making payment towards expenses, while on a visit outside India.
- Residents can use ICCs on internet for any purpose for which exchange can be purchased from an Authorised Dealer in India, e.g. for import of books, purchase of downloadable software or import of any other item permissible under Foreign Trade Policy (FTP).
- ICCs cannot be used on internet or otherwise for purchase of prohibited items, like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., since no drawal of foreign exchange is permitted for such items/activities.
- There is no aggregate monetary ceiling separately prescribed for use of ICCs through internet.

FACILITIES FOR INDIVIDUALS

- Resident individuals maintaining foreign currency accounts with an Authorised Dealer in India or a bank abroad,
- Use of ICC for payment in foreign exchange in Nepal and Bhutan is not permitted.
- ADs may issue ICCs to NRIs/PIOs, without prior approval of the Reserve Bank, subject to the condition that charges on the use of ICCs should be settled by the concerned NRIs/PIOs only out of inward remittances or balances held in their Non-Resident External (NRE) Accounts/ Foreign Currency Non-Resident (FCNR) Accounts.

FACILITIES FOR INDIVIDUALS

- **International Debit Cards (IDC)**
- Banks authorised to deal in foreign exchange may issue International Debit Cards (IDCs) which can be used by a resident for drawing cash or making payment to a merchant establishment overseas during his visit abroad. IDCs can be used only for permissible current account transactions and the limits as mentioned in the Schedules to the Rules, as amended from time to time, are equally applicable to payments made through use of these cards.
- The IDCs cannot be used on internet for purchase of prohibited items like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., i.e. for such items/activities for which drawal of foreign exchange is not permitted.

FACILITIES FOR PERSONS OTHER THAN INDIVIDUALS – Following Remittances

- By persons other than individuals shall require prior approval of RBI
- Donations exceeding 1% of their foreign exchange earnings during the three financial years or USD 5,00,000 whichever is less.
- Commission per transaction to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of inward remittance whichever is more.
- Remittances exceeding USD 1,00,00,000 per project for any consultancy services in respect of infrastructure projects and USD 10,00,000 per project for other consultancy services procured from outside India.
  - (Infrastructure shall mean as defined in Explanation to para 1(iv)(A)(a) of Schedule I of FEMA 3)

MISCELLANEOUS

- Unincorporated Joint Ventures- Co-operation
  - Agreements/Strategic Alliances
  - It's a contractual relationship/arrangement like a cooperation agreement or a strategic alliance wherein the parties agree to collaborate as independent contractors rather than shareholders in a company or partners in a legal partnership.
- Co-operation agreements / strategic alliances can be employed for the following types of business activities:
  - Technology transfer agreements
  - Joint product development

MISCELLANEOUS

- Purchasing agreements
- Distribution agreements
- Marketing and promotional collaboration
- Intellectual advice In such a JV the rights, duties and obligations of the parties as between themselves.

- Royalties and Lump Sum Fees
  - Earlier there were monetary caps on remittances (both lumpsum fees and royalties) made for technology collaborations and license or use of trademark / brand name.

MISCELLANEOUS

- Now there are no restrictions and the payments towards the lumpsum fees or royalties for technology collaborations and license or use of trademark / brand name can be made under the automatic route, without any monetary cap

- The limits were there in Schedule II which read as under:
- Remittances under technical collaboration agreements where payments of royalty exceeds 5% on local sales and 8% on exports and lump sum payments exceeds USD 2 million.
- This has been removed w.e.f. 16/12/2009

THANK YOU