

Roll. No.

Total No. of Question -06

Maximum Marks : 100

Test Paper with Solutions

ECONOMIC, BUSINESS & COMMERCIAL LAWS

CS-Executive (June 2023) | Examination

Note : Answer ALL Questions

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PART—I

1. (a) "The Reserve Bank of India has prescribed appropriate prudential norms for banks in order to strengthen the balance sheets of banks." Briefly describe these norms.

(5 marks)

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

Capital Adequacy: The Reserve Bank has instructed banks to maintain adequate capital on a continuous basis. The adequacy of capital is measured in terms of Capital to Risk-Weighted Assets Ratio (CRAR). Basel II standardised approach is applicable with road map drawn up for advanced approaches.

Loans and Advances: In order to maintain the quality of their loans and advances, the Reserve Bank requires banks to classify their loan assets as performing and non- performing assets (NPA), primarily based on the record of recovery from the borrowers. NPAs are further categorised into Sub-standard, Doubtful and Loss Assets depending upon age of the NPAs and value of available securities.

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

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

(5 marks)

Ans In respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded and relevant provisions of the FEMA, 1999 shall apply. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention. Contraventions relating to any transaction where proper approvals or permission from the Government or any statutory authority concerned, as the case may be, have not been obtained such contraventions would not be compounded unless the required approvals are obtained from the concerned authorities. Cases of contravention such as those having a money laundering angle, national security concerns and/or involving serious infringements of the regulatory framework or where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation and necessary action under FEMA, 1999 or to the authority instituted for implementation of the Prevention of Money Laundering Act 2002, or to any other agencies, for necessary action as deemed fit.

In this connection, it is clarified that whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide

- whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice;
- whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or
- whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE).

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

(5 marks)

Ans The Central Government has been empowered to -

- (a) prohibit any person or organisation not specified in section 3, from accepting any foreign contribution;
- (b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (c) require any person or class of persons not specified in section 11, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;

- (d) without prejudice to the provisions of sub-section (1) of section 11, require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;
- (e) require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received.

However, no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially the sovereignty and integrity of India; or public interest; or freedom or fairness of election to any Legislature; or friendly relations with any foreign State; or harmony between religious, racial, social, linguistic or regional groups, castes or communities.

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

(5 marks)

Ans Section 15 entitles any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, to submit a proposal to the Development Commissioner concerned. The Development Commissioner in turn place the proposal before the Approval Committee for its approval. The Approval Committee may, approve the proposal with or without modification, and subject to such terms and conditions as it may deem fit, or reject the same. In case of modification or rejection of a proposal, the Approval Committee has been put under obligation to afford a reasonable opportunity of being heard to the person concerned and after recording the reasons therefor, either modify or reject the proposal. Sub-section (4) entitles a person aggrieved by an order of the Approval Committee, to make an appeal to the Board of Approvals, within the prescribed time and specified manner. Sub-section (8) empowers the Central Government to prescribe the requirements (including the period for which a unit may be set up) subject to which the Approval Committee may approve, modify or reject the proposal. The Development Commissioner may, after the approval of the proposal, grant a letter of approval to the person concerned to set up a Unit and undertake in the Unit such operations which the Development Commissioner may authorise and every such operation so authorised is mentioned in the letter of approval.

Attempt all parts of either Q. No. 2 or Q. No. 2A

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

(4 marks)

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

- (a) The proprietorship concern / unregistered partnership firm in India is classified as 'Status Holder' as per the Foreign Trade Policy issued by the Ministry of Commerce and Industry, Government of India from time to time;

- (b) The proprietorship concern / unregistered partnership firm in India has a proven track record, i.e., the export outstanding does not exceed 10% of the average export realisation of preceding three years and a consistently high export performance;
- (c) The Authorised Dealer bank is satisfied that the proprietorship concern / unregistered partnership firm in India is KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated;
- (d) The proprietorship concern / unregistered partnership firm in India has not come under the adverse notice of any Government agency like the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc. and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India; and
- (e) The amount of proposed investment (or financial commitment) outside India does not exceed 10 per cent of the average of last three years' export realisation or 200 per cent of the net owned funds of the proprietorship concern/ unregistered partnership firm in India, whichever is lower.

2. (b) What do you mean by Liberalised Remittance Scheme ?

(4 marks)

Ans As liberalization measure to facilitate resident individuals to remit funds abroad for permitted current or capital account transactions or combination of both, Reserve Bank of India issues Liberalised Remittance Scheme.

Liberalised Remittance Scheme permits the Authorised Dealers to 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 available to all resident individuals including minors. In case of remitter being a minor, the Form A2 must be countersigned by the minor's natural guardian. The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.

- Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.
- Clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/ investment/property.
- Further, a resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.
- All other transactions which are otherwise not permissible under FEMA and those in the nature of remittance for margins or margin calls to overseas exchanges/ overseas counterparty are not allowed under the Scheme.

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

(4 marks)

Ans Parking of ECB proceeds abroad: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

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

2. (d) What mandatory documents are required to be submitted for export and import of goods from/into India ? **(4 marks)**

Ans Following are the requisite details/documents (scanned copies) to be submitted/ uploaded along with the application for IEC:

- (i) Details of the entity seeking the IEC:
 - (1) PAN of the business entity in whose name Import/Export would be done (Applicant individual in case of Proprietorship firms).
 - (2) Address Proof of the applicant entity.
 - (3) LLPIN /CIN/ Registration Certification Number (whichever is applicable).
 - (4) Bank account details of the entity. Cancelled Cheque bearing entity's pre-printed name or Bank certificate in prescribed format ANF2A(I).
- (ii) Details of the Proprietor/ Partners/ Directors/ Secretary or Chief Executive of the Society/ Managing Trustee of the entity:
 - (1) PAN (for all categories)
 - (2) DIN/DPIN (in case of Company /LLP firm)
- (iii) Details of the signatory applicant:
 - (1) Identity proof
 - (2) PAN
 - (3) Digital photograph

2. (e) What is meant by Core Investment Company (CIC) ? **(4 marks)**

Ans Core Investment Company (CIC), that is to say, a non-banking financial company carrying on the business of acquisition of shares and securities and which satisfies the following conditions as on the date of the last audited balance sheet:-

- (i) it holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies;
- (ii) its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies and units of Infrastructure Investment Trust only as sponsor constitute not less than 60% of its net assets as mentioned in clause (i) above;
Provided; that the exposure of such CICs towards InvITs shall be limited to their holdings as sponsors and shall not, at any point in time, exceed the minimum holding of units and tenor prescribed in this regard by SEBI (Infrastructure Investment Trusts) Regulations, 2014, as amended from time to time.
- (iii) it does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
- (iv) it does not carry on any other financial activity referred to in Section 45I(c) and 45I (f) of the Reserve Bank of India Act, 1934 except

- (a) investment in
 - (i) bank deposits,
 - (ii) money market instruments, including money market mutual funds and liquid mutual funds
 - (iii) government securities, and
 - (iv) bonds or debentures issued by group companies,
- (b) granting of loans to group companies and
- (c) issuing guarantees on behalf of group companies.

OR (Alternate question to Q. No. 2)

- 2A (i)** Define the following terms as stated under Foreign Exchange Management Act, 1999
- (a) Automatic Route
 - (b) Government Route.
 - (c) Foreign Portfolio Investment
 - (d) Foreign Portfolio Investor.

(4 marks)

Ans. (a) Automatic Route : means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank of India or the Central Government.

Ans. (b) Government Route : means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval of Government (Competent Ministry/Department for grant of approval).

Ans. (c) Foreign Portfolio Investment: means any investment made by a person resident outside India through capital instruments where such investment is less than ten percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than ten percent of the paid-up value of each series of capital instrument of a listed Indian company.

Ans. (d) Foreign Portfolio Investor: means a person registered in accordance with the provisions of Securities and Exchange board of India (Foreign portfolio Investors) Regulations, 2019 as amended from time to time.

- 2A (ii)** Explain any four provisions related to eligibility of service providers under service Exports from India Scheme (SEIS) as per Foreign Trade Policy and Procedure.

Ans. Eligibility:

- (a) Service Providers of notified services, located in India, shall be rewarded under SEIS, subject to conditions as may be notified. The notified services and rates of rewards are listed in Appendix 3D of Appendices and Aayat Niryat Forms of FTP 2015-2020. Following Services shall be eligible:
 - (i) Supply of a 'service' from India to any other country; (Mode1- Cross border trade)
 - (ii) Supply of a 'service' from India to service consumer(s) of any other country; (Mode 2-Consumption abroad).
- (b) Such service provider should have minimum net free foreign exchange earnings of US\$15,000 in preceding financial year to be eligible for Duty Credit Scrip. For Individual Service Providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US\$10,000 in preceding financial year.

- (c) Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E of Appendices and Aayat Niryat Forms of FTP 2015-2020.
- (d) Net Foreign exchange earnings for the scheme are defined as under:

Net Foreign Exchange = Gross Earnings of Foreign Exchange minus Total expenses/payment/remittances of Foreign Exchange by the IEC holder, relating to service sector in the Financial year.

- 2A (iii)** State the provisions of Reserve Bank of India Act, 1934 regarding creation of reserve d by non-banking financial companies. How can it be appropriated ?

(4 marks)

Ans. Section 45-IC of the Reserve Bank of India Act, 1934 provides that every non-banking financial company shall create a reserve fund the transfer therein a sum not less than twenty percent of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

Appropriation of any sum from the reserve fund shall not be made by the non-banking financial company except for the purpose as may be specified by the Reserve Bank of India from time to time and every such appropriation shall be reported to the Reserve bank of India within 21 days from the date of such withdrawal.

- 2A (iv)** What do you mean by "Financial Commitment" and "Indian Party" under Overseas Direct Investment ?

Ans. "Financial Commitment" means the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.

"Indian Party" means a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, or a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008, making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank. When more than one such company, body or entity makes investment in the foreign JV / WOS, such combination will also form an "Indian Party".

- 2A (v)** Explain the following instruments used by Reserve Bank of India for implementing monetary policy :

- (a) Liquidity Adjustment Facility
(b) Marginal Standing Facility.

(4 marks)

Ans. (a) **Liquidity Adjustment Facility:** The LAF consists of overnight as well as term repo auctions. Progressively, the Reserve Bank has increased the proportion of liquidity injected under fine-tuning variable rate repo auctions of range of tenors. The aim of term repo is to help develop the inter-bank term money market, which in turn can set market based benchmarks for pricing of loans and deposits, and hence improve transmission of monetary policy. The Reserve Bank also conducts variable interest rate reverse repo auctions, as necessitated under the market conditions.

- (b) **Marginal Standing Facility:** Marginal Standing Facility (MSF): A facility under which scheduled commercial banks can borrow additional amount of overnight money from the Reserve Bank by dipping into their Statutory Liquidity Ratio (SLR) portfolio up to a limit at a penal rate of interest. This provides a safety valve against unanticipated liquidity shocks to the banking system.

PART- II

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

(3 Marks)

Ans. The Central Government may, by order, remove the Chairperson or any Member from his office if such Chairman or Member as the case may be, -

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

3. (b) Discuss the Provisions when the order passed by the Competition Commission of India may be rectified under the Competition Act, 2002.

(3 Marks)

Ans. The Commission may amend any order passed by it under the provisions of this Act with a view to rectifying any mistake apparent from the record. Section 38(2) provides that subject to other provisions of this Act, the Commission may make –

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

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

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

(3 Marks)

Ans. Yes, the agreement by the organisation of the owners of Cement industries to raise the price of cement above competitive level will be considered as an agreement to distort the competition. And it will be deemed that they had acted in concert and adopted restrictive practice irrespective of the fact that the agreement was oral and not intended to enforced legal proceedings.

3. (d) Mention the most commonly adopted ways in which collusive bidding or bid rigging may occur. (3 Marks)

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

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

3. (e) Explain the provisions regarding "Meetings of Commission" under Section 22 of The Competition Act, 2002. (3 Marks)

Ans. Section 22 provides that the Commission shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations. The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting. All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or/casting vote. However, the quorum for such meeting shall be three Members.

4. (a) Explain the procedure which is being regulated by the Competition Commission of India under Section 36(2) while trying the suit under the provisions of the Competition Act, 2002. (5 Marks)

Ans According to Section 36(2) the Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying the suit, in respect of the following matters, namely:

- Summoning and enforcing the attendance of any person and examining him on oath.
- Requiring the discovery and production of documents.
- Receiving evidence on affidavits.
- Issuing commissions for the examination of witnesses or documents.
- Subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872.
- requisitioning any public record or document or copy of such record or document from any office.

4. (b) What are the orders that may be issued by the competition Commission of India after inquiry into any agreement entered into by any enterprise or association of enterprises or any person or association of persons or an enquiry into abuse of dominant position under Section 27 of the Competition Act, 2002 ? (5 Marks)

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

- (i) direct that such agreement, or abuse of dominant position shall be discontinued and such agreement, which is in contravention of Section 3 shall not be re-entered or the abuse of dominant position in contravention of Section 4 shall be discontinued, as the case may be. The direction to discontinue and not to recur is commonly known as "Cease & desist" order.
- (ii) the Commission may impose penalty not exceeding ten percent of the average turnover of last three preceding financial years, upon each of person or enterprises which are parties to such agreement in contravention of Section 3 or are abusing dominant position within meaning of Section 4
In case any agreement which is prohibited by Section 3 has been entered into by any cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider participating in that cartel, a penalty up to three times of its profits for each year of the continuance of such agreement whichever is higher.
- (iii) The Commission may direct that the agreements shall stand modified to the extent and in the manner as specified in the order.
- (iv) The Commission may direct the enterprises concerned to comply with such other orders and directions, including payment of cost, if any, as it deems fit.
- (v) to pass such order or issue such directions as it may deem fit

PART—III

5. (a) A tendered to supply goods to B up to ₹ 50,000 for a period of one year. B ordered the goods up to ₹ 30,000 only. A wants to sue B for breach of contract as order did not come up to the amount expected. Discuss with reasons whether A can sue B under The Indian Contract Act, 1872.

(4 marks)

Ans. A cannot sue for the breach of the contract. According to the contract between A & B, B promised to order goods upto Rs 750,000 and not of fixed amount of Rs. 750,000 or more.

5. (b) C agrees to appoint Bas his clerk to sell goods at a yearly salary upon, A's becoming surety to C for B for his conduct of duly accounting for money received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid commission on the goods to be sold by him and not by a fixed salary. B later misappropriated funds. Discuss the liability of A.

(4 marks)

Ans. A is absolved from his liability as surety as soon as there is a new agreement between C and B to pay commission on the goods without the knowledge of A.

5. (c) Ranu, hired a taxi car from his residence to airport as he and his family were going from Mumbai to Bengaluru. The taxi was in a poor condition and the driver had not adequate rest and drove rashly. Eventually, it went burst in the middle due to which Ranu and his family could not reach the airport in time to catch their flight.

Decide whether Ranu may be treated as a 'consumer' under the Consumer Protection Act, 2019 ?

(4 marks)

Ans Yes, Ranu can be treated as consumer under the consumer Protection Act,2019 as he hired the service of a taxi car for consideration and there is deficiency of service.

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

(4 marks)

Ans Section 27 deals with confiscation and vesting of benami property.
Sub-section (1) of this section provides that where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46. Further, confiscation of the property shall be made in accordance with such procedure as may be prescribed.
Sub-section (2) of this section provides that the above shall not apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the benami transaction.
Sub-section (3) of this section provides that where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.
Sub-section (4) of this section provides that any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.
Sub-section (5) of this section provides that where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

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

(4 marks)

Ans The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.
The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. First issued in 1990, the FATF Recommendations were revised in 1996, 2001, 2003 and in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application.
The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally.
The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering.
In February 2012, the FATF completed a thorough review of its standards and published the revised FATF Recommendations, This revision is intended to strengthen global safeguards and further protect the integrity of the financial system by providing governments with stronger tools

to take action against financial crime. The 9 Special Recommendations on terrorist financing have been fully integrated with the measures against money laundering. This has resulted in a stronger and clearer set of standards.

Attempt all parts of either Q. No. 6 or Q. No, 6 (A)

6. (a) Explain the provisions of the "Publication of names of convicted companies by Court" as per Section 10-B of The Essential Commodities Act 1955.

(3 marks)

Ans Section 10-B of the Act provides that the Court may cause to be published in newspapers or in other manner at the expense of the company the name, place of business and the offence/contravention committed by it when a company has been convicted. However, no publication shall be made until the period for preferring an appeal against the order of the Court has expired, without any appeal having been preferred or where such appeal having been preferred, was disposed of. The expenses of any publication shall be recoverable from the company as if it were a fine imposed by Court.

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

(3 marks)

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

6. (c) Section 2A of the Essential Commodities Act, 1955 lists 'foodstuffs' as an essential commodity in its Schedule. Discuss with the help of decided case whether 'tea' is also a 'foodstuff' in this sense ?

(3 marks)

Ans N S. Samuel, MD. Harrisons Malayava v. Union of India, AIR 2004 SC 218, Supreme Court held that Tea is not foodstuff. Even in a wider sense, foodstuffs will not include tea as tea either in the form of the leaves or in the form of beverage, does not go into the preparation of food proper to make it more palatable and digestible.

Tea leaves are not eaten. Tea is a beverage produced by steeping tea leaves or buds of the tea plants in the boiled water. Such tea is consumed hot or cold for its flavour, taste and its quality as a stimulant. The stimulating effect is caused by the presence of caffeine therein. Tea neither nourishes the body nor sustains nor promotes its growth. It does not have any nutritional value. It does not help formation of enzymes nor does it enable anabolism. Tea or its beverage does not go into the preparation of any foodstuff. In common parlance, anyone who has taken tea would not say that he has taken or eaten food. Thus tea is not a food.

6. (d) What are the penalty provisions for vexatious search under the Legal metrology Act, 2009 ?

(3 marks)

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

6. (e) Enumerate any four kind of properties which cannot be transferred under the Transfer of Property Act, 1882.

(3 marks)

Ans According to section 6 of the Act the following properties cannot be transferred, namely:

- (a) the chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature cannot be transferred.
- (b) An easement cannot be transferred apart from the dominant heritage.
- (c) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.
- (d) A right to future maintenance in whatsoever manner arising, secured or determined, cannot be transferred.

OR (Alternate question to Q. No. 6)

6A. Distinguish between the following :

- (i) Cheque and Bill of Exchange (3 marks)
- (ii) 'Contract of service' and 'Contract for service' under Consumer Protection Act, 1996. (3 marks)
- (iii) Sale and Agreement to sell (3 marks)
- (iv) Actual, Active or Ostensible partner and Sleeping or Dormant partner. (3 marks)
- (v) Simple mortgage and Mortgage by conditional sale. (3 marks)

Ans (i) Cheque and Bill of Exchange

Basis	Cheque	Bills of Exchange
Drawee	A cheque is always drawn on a bank or banker.	A bill of exchange can be drawn on any person including a banker.
Acceptance	A cheque does not require any acceptance.	A bill must be accepted before the Drawee can be made liable upon it.
Payment	A cheque is payable immediately on demand without any days of grace.	A bill of exchange is normally entitled to three days of grace unless it is payable on demand.
Stamp	A cheque does not require any stamp.	A bill of exchange must be stamped.
Protection	A banker is given statutory protection with regard to payment of cheques in certain circumstances.	No such protection is available to the Drawee or acceptor of a bill of exchange.

Crossing	A cheque may be crossed.	Bill can never be crossed.
Presentment	If not presented to the banker for payment, it does not discharge the drawer unless he suffers injury or damages.	Drawer is discharged, if bill is not presented for payment to the acceptor.
Noting and Protesting	A cheque is not required to be noted or protested for dishonour.	A bill of exchange may be noted or protested for dishonour.

Ans (ii)."Contract of service and 'Contract for service' under Consumer Protection Act, 1986

Contract of Service	Contract for Service
<p>Employment - States that the company has appointed an individual as an employee of the company, and details what position they will be taking on.</p> <p>Place of work - States the designated place and address of the company from where the employee is supposed to report and carry out his assigned activities. Also whether the employee may be relocated to any other department/office/location within the organisation.</p> <p>Duties and obligations - As the name suggests, this mentions the duties and obligations of the employee and how they should perform the tasks they've been assigned to the best of their ability.</p> <p>Representation and warranties - State that the documents necessary to submit are true and accurate, and that the employee is competent to enter into an agreement with the company.</p> <p>Remuneration and benefits - Remuneration is the total compensation received by an employee. It includes the base salary, any bonuses, commission payments, overtime pay, or other financial benefits that an employee will receive from an employer.</p> <p>Probation period - States if an employee will be subjected to a probation period and how long it will last will also be mentioned.</p>	<p>Retention of the service provider - Unlike the employment clause, this describes that the service provider or self-employed party or freelancer is not an employee of the other party.</p> <p>Scope of work - States the responsibility of the service provider which includes both qualitative and quantitative performance requirements.</p> <p>Consideration - Mentions the amount to be paid by the company in exchange for the services provided by the service provider.</p> <p>Ownership - This clause will mention that the service provider understands that all ownership rights arising out of the work created shall rest with the company. This means that the company will be the exclusive owner of that work and has the right to use, modify and edit it.</p> <p>Assignability - This clause mentions that the service provider cannot assign the contract to any other party without prior written permission from the company.</p> <p>Confidentiality - The service provider shall keep information obtained during the course of their work confidential and shall not disclose anything without prior written consent from the company.</p>

<p>Intellectual property rights - This clause makes it clear that each party retains the ownership over their intellectual property; that is unless the agreement says otherwise.</p> <p>Non-compete and Non-solicit - This clause mentions that the employee shall not continue or attempt to carry on any services similar to that of the business of the company with any third party including but not limited to the competitors of the company.</p>	<p>Indemnification - This mentions that the service provider shall compensate the company in any cases of third-party breach claims.</p> <p>Termination - The company shall have the right to terminate the agreement if the service provider fails to deliver the work as per the timelines mentioned in the agreement.</p>
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Ans (iii) Sale and Agreement to sell

There are a few key differences between a sale and an agreement to sell:

Transfer of ownership: In a sale, ownership of the product or service is transferred immediately to the buyer upon payment. In an agreement to sell, ownership is not transferred until the agreed-upon date in the future.

Payment: In a sale, payment is usually made at the time of the transfer of ownership. In an agreement to sell, payment may be made at the time the agreement is made, or it may be made at a later date when the product or service is actually transferred.

Risk of loss: In a sale, the risk of loss or damage to the product or service is typically transferred to the buyer upon payment. In an agreement to sell, the risk of loss typically remains with the seller until the product or service is transferred to the buyer.

Performance of obligations: In a sale, the seller's obligations are typically completed upon the transfer of ownership. In an agreement to sell, the seller may have ongoing obligations, such as delivering the product or service on a specific date or maintaining the quality of the product until it is transferred to the buyer.

(iv) Actual, Active or Ostensible partner and Sleeping or Dormant partner.

(v) Simple mortgage and Mortgage by conditional sale.

(iv)

Actual /Active Partner	Ostensible Partner	Sleeping / Dormant partner
<p>An active partner is the one who contributes capital and also takes an active part in the management of the firm. He bears unlimited liability for the firm's debts.</p> <p>Active partners take actual part in carrying out the business of the firm on behalf of other partners.</p>	<p>These partners neither contribute capital nor take part in the management of the business. He does not share in the profits or losses of the firm but is liable to third parties for the debts of the firm. He only lends his name and reputation for the benefit of the firm. A nominal partner can be of two types:</p> <p>A) Partner by estoppel: A person who by his words (spoken or written) or by his conduct represents himself as a partner</p>	<p>This is a partner that does not participate in the daily functioning of the partnership firm, i.e. he does not take an active part in the daily activities of the firm. He is however bound by the action of all the other partners.</p> <p>He will continue to share the profits and losses of the firm and even bring in his share of capital like any other partner. If such a dormant partner retires he need not give a public notice of the same.</p>

	<p>becomes liable to those who advance money to the firm on the basis of such representation. He can not avoid the consequences of his previous act.</p> <p>B) Partner by holding out: When a person is declared as a partner and he does not deny this even after becoming aware of it, he becomes liable to third parties who lent money or credit to the firm on the basis of such a declaration.</p>	
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Ans (v)

Simple Mortgage	Mortgage by conditional sale
<p>In a simple mortgage, the mortgagor binds himself personally to pay the debt and agrees in the event of his failure to pay the mortgage money, the mortgagee shall have the right to cause the property to be applied so far as may be necessary by means of a decree for the sale of property. If the mortgaged property is not sufficient to discharge the debt, the mortgagee can bring a personal action against the mortgagor and obtain a decree which, like any other money decree, can be executed against other properties of the mortgagor. In simple mortgage, no right of possession or foreclosure is available to the mortgagee.</p>	<p>In this type of mortgage, the property is mortgaged with a condition super added that in the event of a failure by the debtor to repay the debt at the stipulated time, the transaction should be regarded a sale, and in case the loan is repaid at the stipulated time, the sale shall be invalid or on condition that on such payment being made the buyer shall transfer the property to the seller. Thus, for all practical purposes, this type of mortgage is ostensible sale of the mortgaged property with a condition for re-purchase by the mortgagor by repaying the loan.</p>

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