FOREIGN EXCHANGE TRANSACTIONS & COMPLIANCES

Important Definitions –

1) Current account and capital account transactions –

Transactions

Capital account transactions - Section 2(e)

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'Capital account transaction' means any transaction –

- Which alters the assets or liabilities position outside of PRI
- Which alters the assets or liabilities in India of the PROI
- Which include contingent liabilities also

Current account transactions - Section 2(j)

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current account transaction means a transaction other than a capital account transaction. Current account transactions include payments in connection with –

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

2) Foreign Exchange – Section 2(n)

Foreign Exchange means foreign currency and includes –

a) deposits, credits, balance payable in foreign currency,

b) drafts, travelers' cheques, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in any foreign currency.

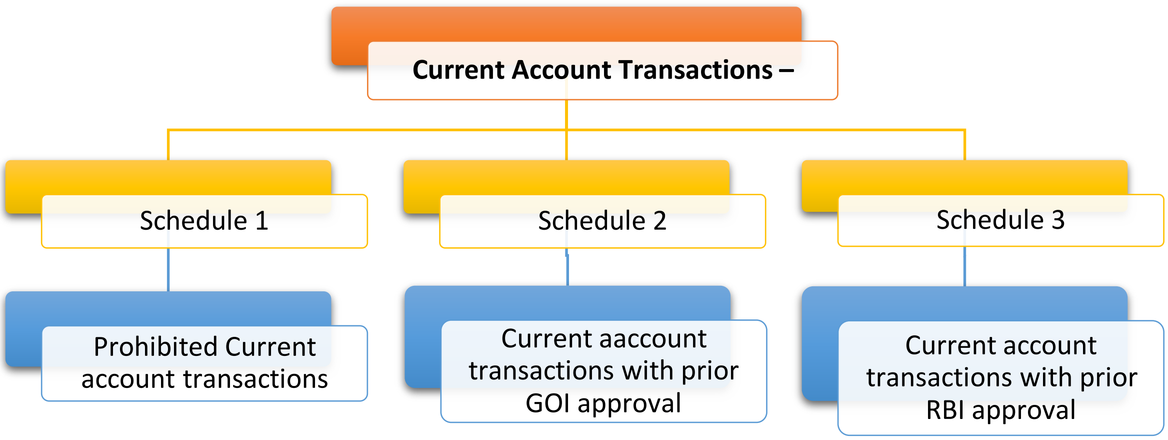
c) Any draft, traveler's cheque, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency.

3) Foreign Security – Section 2(o)

Foreign Security means 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.

Current Account Transactions – Section 5

Current Account Transactions are governed by Foreign Exchange Management (Current Account Transactions) Rules, 2000



Prohibited Current account transactions – Schedule 1

- 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, fotball pools, seepstakes etc.
- Payment of commission on exports made towards equity investments in JV / WOS abroad of Indian companies
- Remittance of dividend by any company to which the requirement of dividend balancing is applicable
- Payment of commission on exports under state rupee credit route except commission upto 10% of invoice value of exports of tea and tobacco
- Payment related to "call back services" of telephones
- Remittance of interest income on funds held in non-resident sprecial rupee (account) scheme

Current account transactions are also prohibited for –

a) travel to Nepal and/or Bhutan

b) a transaction with a person resident in Nepal or Bhutan

The prohibition for transaction with a person resident in Nepal and Bhutan may be exempted by RBI subject to terms and conditions

Current aaccount transactions with prior GOI approval – Schedule 2

Prior approval of the Central Government is required for drawl of foreign exchange by any person for the purposes listed below –

- Cultural tours
- Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding **(exceeding US$ 10,000)** by a State Government and its PSU
- Payment of import through ocean transport by a Government Department of a PSU on CIF basis
- Multi-modal transport operators making remittance to their agents abroad

- Remittance of hiring charges of transponders by TV channels and Internet service providers
- Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping
- Remittance of prize money or sponsorship of sports activity abroad by a person other than International or National or State Level sports bodies, if the amount involved exceeds **US$ 1,00,000**
- Remittance for membership of Protection & Indemnity Insurance Club.

Note –
Prior approval of the Central Government is not required where payment is made out of funds held in RFC or EEFC Account.

Current account transactions with prior RBI approval – Schedule 3

Current account transactions with prior RBI approval

- For resident individuals
- for persons other than individual

A) For Resident Individuals –

Type of transaction	Limits
Private visit (other than Nepal & Bhutan)	• 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 • Number of visits does not matter
Gift or Donation	Any resident individual may remit up-to USD 2,50,000 in one Financial Year as gift to a person residing outside India or as donation to an organization outside India.
Going outside India for employment	A person going abroad for employment can draw foreign exchange up to USD 2,50,000 per Financial Year from any Authorised Dealer in India.
Emigration	A person wanting to emigrate can draw foreign exchange from AD Category I bank – **Upto 2,50,000 USD** **Or** **Amount prescribed by the country of emigration** ⇩ **Whichever is higher**
Maintenance of close relatives abroad	A resident individual can remit up-to USD 2,50,000 per Financial Year towards maintenance of close relatives.
Business trip	• For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD 2,50,000 in a Financial Year

	• Number of visits does not matter
Medical treatment abroad	• Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 without any estimation from the doctor. • In case of higher amount, authorised dealer may release amount after receiving estimation from doctor in India / foreign • amount up to USD 250,000 per financial year is allowed to attendant also.
Facilities available to students for pursuing their studies abroad	• AD may release foreign exchange up to USD 2,50,000 to resident individuals for studies abroad without any estimation from the foreign University • In case of higher amount, authorised dealer may release amount after receiving estimation from foreign university

Note –
Release of foreign exchange in excess of USD 2, 50,000, requires prior permission from the Reserve Bank of India.

Other permissible capital account transactions –

Remuneration / Salary To Foreign Technician –
- Salary payable to foreign technician is current account transaction
- Hiring of foreign nationals as technician is permissible **without restrictions**
- There is **no ceiling** on salary, which can be paid as per contract
- Their salary can be remitted abroad **after TDS**

Remittance of Dividend –
- Dividend on investment is current account transaction
- It is permitted **without restriction**
- Dividend may be remitted through **normal banking channels**

Procedure –
Application in form A2;
Copy of resolution declaring dividend should be attached;
Certificate from chartered accountant that TDS has been deducted.

B) For persons other than individual –

Gift/donation –

Person other than individuals can remit by way of donation for creation of Chairs in reputed educational institutes.

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Contribution can be made to –
1) Funds promoted by educational institutes; and
2) Technical institution or body or association in the field of activity of the donor Company.

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Limits of contribution –
1% (foreign exchange earnings during the previous 3 financial years)
or

USD 5,000,000

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Whichever is less

remittance in excess of the above limits shall require prior approval of the RBI.

Commission to agents abroad for sale of residential flats or commercial plots in India –

Person other than Individuals can remit commission to agents abroad for sale of residential flats or commercial plots in India.

Limits -

USD 25,000 or 5% of the inward remittance whichever is more.

- If amount is within the limits
  - Prior RBI approval is not required
- If amount is above the limits
  - Prior RBI approval is not required

Remittances towards consultancy services –

Person other than Individuals can remit consultancy services for consultancy services procured from outside India.

Limits -

upto USD 1,00,00,000 per project for any consultancy services for infrastructure projects.

upto USD 10,00,000 per project for other consultancy services.

- If amount is within the limits
  - Prior RBI approval is not required
- If amount is above the limits
  - Prior RBI approval is required

Remittances towards re-imbursement of pre-incorporation expenses –

1) Remittances by persons other than individuals for reimbursement of pre-incorporation expenses by an entity in India is allowed.
2) If remittance exceed 5% of investment brought into India or USD 100,000 whichever is higher, the prior RBI approval is required.

Capital account transactions – Section 6

- Capital account transactions are governed by **Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000**
- Capital account transactions are allowed subject to certain conditions.
- RBI has the power to specify capital account transactions which are permissible and the limit up to which foreign exchange shall be admissible for such transactions.
- Reserve Bank shall not impose any restrictions on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business

Capital account transactions

Capital account transactions by PRI

- Investment in foreign securities
- Foreign currency loans raised in India and abroad
- Transfer of immovable property outside India
- Guarantees issued in favour of a PROI
- Export, import and holding of currency/currency notes
- Loans and overdrafts (borrowings) from a PROI
- Maintenance of foreign currency accounts in India and outside India
- Taking out of insurance policy from an insurance company outside India
- Loans and overdrafts to a PROI
- Remittance outside India of capital assets
- Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad

Capital account transactions by PROI

- Investment in securities / capital in India
- Acquisition and transfer of immovable property in India
- Guarantee in favour of PRI
- Import and export of currency/currency notes into/from India
- Deposits between a person resident in India and a person resident outside India
- Foreign Currency accounts in India
- Remittance outside India of capital assets in India

PROI cannot make investments in –

a) any company or
b) partnership firm or
c) proprietary concern or
d) any entity whether incorporated or not,

which is engaged or proposed to engage in the business of

a) chit funds, or
b) Nidhi company, or
c) in agricultural or plantation activities, or

d) real estate business, or
e) construction of farm houses, or
f) trading in Transferable Development Rights (TDRs)

Acquisition and Transfer of Immovable Property Outside India by a Person Resident In India –

1) A PRI can acquire property outside India with prior RBI approval.

2) No RBI approval is required for following –
a) Property held by a person resident in India who is national of foreign state or was acquired on or before 1947 or had inherited from person who was resident outside India
b) Person resident in India acquire immovable property outside India by way of gift or inheritance from person resident in India
c) Person resident in India acquire immovable property on lease for period not exceed 5 years.
d) Person resident of India also acquire property outside India by using fund held in **RFC account** maintained.

3) Transfer of property situated outside India –
Person resident in India has acquired immovable property outside India as per above provisions; he may transfer it by way of gift to his relative who is person resident in India.

4) Acquisition of property by company having overseas offices –
A company having overseas offices may acquire immovable property outside India for :
1) Its business purpose; and
2) Residential purposes of its staff
For above purpose, remittance is allowed within following limits :
1) For initial expenses –
a) 15% of the average annual sales or income or turnover of the India entity during the last 2 financial years or upto 25% of the net worth, whichever is higher.
2) For recurring expenses
a) **10%** of the average annual sales or income or turnover during the **last 2 financial years**

Realisation, Repatriation and Surrender of Foreign Currency –

Realisation, Repatriation and Surrender of Foreign Currency is governed as per The Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015

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.
- PRI should not make any delay for realizing and repatriating foreign exchange.
- PRI should realise and repatriate before the foreign exchange ceases to be receivable by him

How foreign exchange can be repatriated?

PRI shall repatriate foreign exchange earned and –
a) sell it to an authorised person in India in exchange for rupees; or
b) retain or hold it in account with an authorised dealer in India upto the limits allowed by RBI;

c) use it for discharge of a debt or liability denominated in foreign exchange upto the limits allowed by RBI.

Note –

Foreign exchange can also be repatriated if foreign exchange is converted in rupees from authorized dealer outside India and such rupees are received in India by him.

Period for surrender of realised foreign exchange –

Mode of Realization	Time limit for surrender
Foreign exchange received by person other than individual resident in India. - By way of inheritance, settlement or gift; or - By way of remuneration; or - By way of income from any asset held outside India	**7 days**
Unutilized foreign exchange received earlier for permissible use by person other than individual resident in India except foreign travel	**60 days**
Unspent foreign exchange in form of currency notes purchased by person other than individual resident in India for foreign travel	**90 days from date of return**
Unspent foreign exchange in form of travelers cheque purchased by person other than individual resident in India for foreign travel	**180 days from date of return**
Foreign exchange received or realized or unspent or unused by an individual resident of India	**180 days**

Note –

The Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015 does not apply to foreign exchange in the form of currency of Nepal or Bhutan.

Possession and Retention of Foreign Currency or Foreign Coins –

1) AD can retain and possess foreign currency without any limits;
2) Any person can hold foreign coins without any limits;
3) PRI can retain or and possess foreign currency notes, bank notes and foreign currency travelers cheques not exceeding US $ 2000

Note –

A person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travelers cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the law

Remittance of Assets –

Remittance of Assets is governed as per Foreign Exchange Management (Remittance of Assets) Regulations, 2016.

A) Remittances by individuals not being NRIs/ PIOs –

1) What does remittance of assets mean?

'Remittance of assets' means remittance outside India of funds as per FEMA, 1999 in a –

a) deposit with a bank/ firm/ company,
b) provident fund balance,
c) claim or maturity proceeds of insurance policy,
d) sale proceeds of shares, securities, immovable property or
e) any other asset held in India

2) Conditions for Remittance –

a) Remittance will be done through AD.
b) AD will do the remittance for foreign national,
c) the person has retired from employment in India;
d) the person has inherited from a person PROI
e) the person is a non-resident widow/widower and has inherited assets from her/his deceased spouse who was an Indian national resident in India.

Note –

- The remittance should not exceed USD one million per financial year.
- Above limit shall not include sale proceeds of assets held on repatriation basis.
- If remittance is done in installment then remittance should be made through same AD.

B) Remittance by foreign student studying in India –

- All the balances in the account of foreign student studying in India may be remitted abroad after he has completed studies.
- Only those funds can be remitted which was received from abroad through normal banking channels.
- stipend/ scholarship received from the Government or any organisation in India can also be remitted.

C) Remittances by NRIs/ PIOs –

Conditions for remittance –

a) Remittance will be done through AD.
b) The remittance should not exceed USD one million per financial year.
c) Documentary evidence should be submitted.
d) balances in their non-resident (ordinary) (NRO) accounts can be remitted.
e) sale proceeds of assets/ assets acquired in India by way of inheritance/ legacy can be remitted.
f) Sale proceeds of an assets acquired under a deed of settlement made by either of his/ her parents or a relative can be remitted.
g) If remittance is done in installment then remittance should be made through same AD.

D) Remittances by companies/ entities –

Conditions for remittance –

a) Remittance will be done through AD.

b) remittances by Indian companies under liquidation on directions issued by a Court in India or orders issued by official liquidator in case of voluntary winding up may be allowed, but following should be submitted –

- Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
- Auditor's certificate to the effect that the winding up is according to the provisions of the Companies Act.
- In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceedings pending in any court in India

E) Remittances/ winding up proceeds of branch/ office –

Conditions for remittance –

a) Remittance will be done through AD.

b) Remittance will be allowed on closure or remittance of winding up proceeds of branch office/ liaison office on submission of the following documents –

- A copy of the Reserve Bank's permission for establishing the branch/ office in India.
- Auditor's certificate –
  1) Showing how the amount has been calculated which is to be repatriated outside India.
  2) Showing statement of assets and liabilities
  3) Confirming that all the employees dues has been paid
  4) Confirming that all the legal requirements have been complied with.
- Confirmation by BO / LO that no legal proceedings is pending.
- A report from the ROC regarding compliance with the provisions of the Companies Act, 2013

Remittance of assets requiring RBI approval –

Prior approval of the Reserve Bank is necessary for remittance of assets in the following cases –

1) Remittance is in excess of USD one million per financial year –
   a) on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India;
   b) by NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.
2) Hardship will be caused to a person if remittance from India is not made to such a person.

Authorised Person –

A) Meaning of Authorized Persons –

1) 'Authorized Person' means an authorized dealer, money changer, offshore banking unit or any other person authorized by RBI
2) Usually **banks** are appointed as 'Authorized Dealers' to deal in foreign exchange

B) Activities performed by Authorized Dealer –

1) 'Authorized Dealers' can deal in all other transactions in foreign exchange.
2) Authorized Dealer can deal with **bill of exchange, Cheques, Letter of Credit, deposit etc.**
3) The 'authorized person' should deal in foreign exchange and foreign securities as per guidelines of RBI.

4) They should submit reports to RBI as prescribed.
5) Authorized person can open various accounts like :
   - Non-resident (ordinary) Rupee Account
   - Non-resident (External) Rupee Account
   - Foreign Currency (non-Resident) Account
   - Resident Foreign Currency Account
   - Exchange Earner Foreign Currency Account

Duty of authorized person –

- To follow directions of RBI;
- Carry out transactions for which permission have been received by RBI;
- Obtain undertaking and declaration from person to satisfy himself that the transaction is not in violation of FEMA
  If authorized person has doubt then he should refuse the transaction;
- Submit periodic reports to RBI
- Report any suspicious transaction to RBI

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Who will give registration to any person to act as an Authorized Person?

- RBI can authorize any person as 'Authorized Person'
- The authorization shall be in **writing and subject to the conditions**

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Cancellation of registration by RBI –

- Registration can be revoked at any time if RBI is satisfied that –
  a) authorized person has failed to comply with the conditions or any provisions of the act.
  b) Has acted against public interest
- Before revocation, authorized person is given an **opportunity of being heard.**
- RBI can aslo ask them to furnish information
- RBI can impose penalty up to rupees 10,000 for contravention of any direction. In case of continuing contravention, penalty up to rupees 2000 per day can be imposed by RBI
- RBI can inspect accounts of authorized person

Adjudication and Appeal –

Meaning of **contravention under the Foreign Exchange Management Act (FEMA), 1999**

Contravention is the breach of provisions and norms under the FEMA, 1999.

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Appointment of Adjudicating Authority –

1) **Who will appoint AA?**
   CG has the power to appoint AA.

2) **What will be the role of AA?**

Holding enquiries on a complaint made in writing by an officer authorised by CG

3) There are three levels of adjudication authorities as under –
   a) Deputy director
   b) Additional director
   c) Director of directorate of enforcement

4) **Jurisdiction –**

Authority	Jurisdiction
Deputy Director	Cases involving amount up to ₹ 75 lakhs
Additional Director	Cases involving amount more than ₹ 75 lakhs and up to ₹ 1 crore
Director	Cases involving amount more than ₹ 1 crore

5) **Procedure –**
   a) Complaint will be made in writing
   b) Complaint should be made to AA
   c) On receipt of complaint, adjudicating authorities shall **issue show cause notice** to person indicating nature of contravention.
   d) The person to whom the show cause notice has been served should be given **10 days time for replying.**
   e) On receipt of reply, adjudicating authorities will issue notice fixing date of enquiry, if enquiry is needed
   f) person can either appear **in person or take assistance of legal practitioner**

Note –
AA has the option to obtain bond or guarantee for any amount from the person against whom complaint is made if AA thinks that such persons will abscond or evade the payment of penalty.

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What if a person is not satisfied with the order of AA? - Section 17

- Any person who is not satisfied with the order of AA may make an appeal to Special Directors (Appeals).
- Special Director (Appeal) can hear appeals only **against the orders of Assistant Director and Deputy Director**
- Appeal should be made within 45 days.
- Appeal may be entertained even after 45 days if there is sufficient cause.

<u>Person who will be appointed as special director (appeals) –</u>

- A person is qualified for appointment as a Special Director (Appeals) if he has been member of –
   a) The **Indian Legal Service** and has held a post in Grade I of that Service, or
   b) The **Indian Revenue Service** and has held a post equivalent to Joint Secretary to the Government of India.

Appellate Tribunal –

Appellate Tribunal constituted the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for FEMA as well.

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Appeal to Appellate Tribunal –

1) Any person aggrieved by the order of special director or AA (other than those referred to in section 17) may file an appeal to Appellate Tribunal.
2) Before making appeal, amount of penalty imposed by AA or special director shall be deposited with the CG.
   AT has the power to waive off the requirement of depositing penalty before filing appeal.
3) Appeal shall be made within 45 days.
4) Appeal may be entertained even after 45 days if there is sufficient cause.
5) AT will give opportunity of being heard and will pass such orders as it may think fit.
6) Copy of order shall be sent to the parties to the appeal.
7) AT shall dispose the appeal within 180 days
8) If appeal cannot be disposed off within 180 days then AT shall give reason in writing

Appeal to High Court –

- Any person aggrieved by the order of AT may file and appeal to HC.
- Appeal should be filed within 60 days. Extension of 60 days may be granted on sufficient cause.

Directorate of Enforcement –

A) Who will appoint Directorate of Enforcement?

Central Government appoints directors of Enforcement, Additional Director, Special Director, Deputy Director and Assistant Director of Enforcement.

B) Power of Directorate of Enforcement –

These officers have powers similar to those conferred on Income Tax Act to income tax authority :

a) Power regarding discovery and production of evidence
b) Search and seizure
c) Power to requisition books of account etc.
d) Power to inspect books of account.

Compounding of Contraventions –

A) Application for Compounding –

1) Compounding application is made to compounding authority
2) Application can be made before commencement of the adjudication or during the process of adjudication but not after determination of penalty through adjudication.

B) Important Points on Compounding –

- Compounding application is **disposed of in 180 days.**
- Compounding amount determined should be paid in **15 days**
- An offence once compounded, and then similar offence cannot be compounded again within a period of **3 years**
- Compounding is possible when amount involved in contravention is quantifiable

- No compounding of cases where approval of any statutory authority or Government was required. However if the approval is granted then offences may be compounded
- No proceeding shall lie under FEMA, 1999 against the person who has declared an asset held abroad under the Black Money Act.

C) Power to compound –

Power of RBI to compound (for all offences other than Hawala Offences)		**Power of enforcement directorate to compound (for Hawala Offences)**	
Rank	**Sum involved contravention**	**Rank**	**Sum involved contravention**
Asst. GM	10 lac or less	Deputy Director of Directorate of Enforcement	5 lacs or less
Dy. General Manager	More than 10 lacs but less than 40 lacs	Additional Director of Directorate of Enforcement	More than rupees 5 lacs but less than rupees 10 lacs
General Manager	40 lacs but not more than 100 lacs	Special Director of Directorate of Enforcement	10 lacs or more but less than rupees 50 lacs
Chief. General Manager	100 lacs or more	Special Director with Deputy Legal Advisor of Directorate of Enforcement	50 lacs or more but less than rupees 1 crore
		Director of Enforcement with special Director of Directorate of Enforcement	1 crore or more