

NATIONAL LAW UNIVERSITY JODHPUR

End Term Examination May- 2024
Semester – VIII (Business Law Hons.)
Subject: Investment Law

Mark: 100 marks

Time: 3 hours

Instructions:

- i. *All the questions carry equal marks.*
- ii. *The students are required to attempt five questions.*
- iii. *Please substantiate your statement(s)/argument(s) with relevant case laws, whenever necessary.*

Q.1) ABC Corporation, a multinational conglomerate headquartered in California, has established a subsidiary, XYZ India Pvt. Ltd., in India to tap into the country's growing market opportunities. XYZ India Pvt. Ltd. operates in the technology sector and has received foreign investment amounting to 40% of its share capital from ABC Corporation. XYZ India Pvt. Ltd. is now exploring opportunities for expansion and innovation within the Indian market. To fuel its growth plans, XYZ India Pvt. Ltd. instead of seeking further foreign investment, decided to allocate only 30% of its additional capital to acquire shares in another Indian entity, DEF Technologies Pvt. Ltd., which operates in the same sector. As ABC Corporation and XYZ India Pvt. Ltd. navigate the regulatory complexities surrounding the proposed investments in India, they encounter challenges related to compliance interpretation, regulatory thresholds, and investment structuring.

The key question arises whether XYZ India Pvt. Ltd.'s proposal to invest 30% of its capital in DEF Technologies Pvt. Ltd. constitutes a downstream investment under the Foreign Exchange Management (Non-debt Instrument) Rule 2019, given that the Indian entity has already received 40% foreign investment from ABC Corporation. Accordingly, you are tasked to provide strategic advice to evaluate the proposed investment, ensure regulatory compliance, and mitigate risks associated with the intended investments under the Foreign Exchange Management (NDI) Rule 2019. Outline your advice explicating your coherent reasoning citing relevant provisions.

(Marks 20)

Q.2) Priya Sharma, an Indian citizen, and a resident of Mumbai has been offered admission to a prestigious university abroad for a three-year undergraduate program in computer science. Priya intends to pursue her education overseas but plans to return to India during semester breaks, vacations, and other significant occasions to maintain family ties, celebrate festivals, and engage in cultural and social activities in her home country. Priya's stay abroad is solely to pursue higher education, and she intends to return to India upon completion of her studies to pursue her career and contribute to the country's workforce. Priya is uncertain about her residency status under the Foreign Exchange Management Act (FEMA) during her period of study abroad.

As Priya navigates the complexities of her residency status under FEMA while studying abroad, she encounters challenges related to regulatory interpretation, compliance requirements, and documentation for maintaining ties with India.

Thus, she seeks clarification from you on whether her extended stay abroad for educational purposes, coupled with periodic visits to India during vacations, would impact her residency status under FEMA 1999 and her eligibility to access banking services, maintain Indian financial accounts, and engage in foreign exchange transactions.

Provide a detailed explanation of her concerns, emphasising the definitions of "person resident in India" and "person resident outside India," and quoting pertinent provisions.

(Marks 20)

Q.3) In violation of section 4 of the FEMA, 1999. LAT Techno Co. Pvt Ltd, a company based in Mumbai and incorporated in 2005, held property worth \$9 million in the United States. The property was disposed of and the company syphoned the proceeds into a shell company to evade tax and the investigation. When the matter was brought to the attention of the Enforcement Directorate regional office in Mumbai, an investigation was launched led by Additional Director of Enforcement Mr. Vijay. After a thorough investigation, it was discovered that LAT Techno Co. Pvt Ltd had violated the provisions of FEMA, and Mr. Vijay filed a criminal complaint against the company to the Adjudicating authority alleging to have contravened section 13 of the said Act. As a result, LAT Techno Co. Pvt Ltd tries to invoke section 15 of FEMA, 1999.

Discuss the fate of LAT Techno Co. Pvt Ltd, whether or not they would be successful in invoking the relevant section, citing pertinent processes and precedents. Also, explain under what circumstances can an individual be subject to arrest under FEMA 1999.

(Marks 20)

Q.4) Med. Ltd. a listed company was incorporated in 2008 under the Companies Act, 2013 to Embark on manufacturing Medical devices that include all aspects of the fabrication of a medical device, from designing a manufacturing process to scale-up to ongoing process improvements. Following the company's quick success in its venture, it attracted numerous foreign investors and had a variety of shareholding patterns, as follows:

- LT Inc. = 4% (Based in Singapore)
- Z Co. = 2% (Based in U.S)
- K Ltd = 7 % (Based in the UK)
- The remaining share is held by a person resident in India.

India has achieved an eminent global position in the pharma sector. However, the same has not been replicated in the medical devices industry. The country has a huge pool of scientists and engineers who have the potential to take the medical device industry to a very high level. The domestic capital market is not able to provide much-needed investment in the sector. As a result, in 2020, the government has therefore permitted FDI up to 100% under the automatic route for manufacturing of medical devices, without any distinction of greenfield or

brownfield and such FDI will not be subjected to other conditions of the FDI policy on the pharmaceutical sector.

A Chinese medical devices production company called Xin, which also has offices around the world, later expressed interest in K Ltd. acquired 5% of the equity share of K Ltd. in 2019. Later around mid 2023 K Ltd. expressed its interest in acquiring another 5% of the equity share in Med. Ltd..

Additionally, Med. Ltd. integrates a wholly-owned subsidiary (WOS) in Mauritius with eighty (80) employees as part of its strategy to diversify its clientele. The revenue of Med. Ltd. Mauritius WOS was increased by Mr. Nathal's (citizen of Mauritius) innovative ideas. As a result, the company has decided to grant Mr. Nathal a "Sweat equity share".

Explain the following citing the relevant provisions based on the factual matrix above:

1. Would K Ltd.'s future mode of investment in Med. Ltd. change as a result of Xin acquiring its stake? Justify your stand.
2. Is Med. Ltd.'s decision to issue "sweat equity" to Mr. Nathal legally justified?
3. Will LT Inc., Z Co., and K Ltd. be eligible for any "bonus issue" or "right issue" offered by Med. Ltd. to its existing shareholders who are "Persons resident in India"?

(Marks 10+5+5=20)

Q.5) To lessen the defects and eradicate money laundering in the area of foreign investment by institutional investors abroad, the Securities and Exchange Board of India (SEBI) has adopted a new regulation known as the SEBI (Foreign Portfolio Investors) Regulations, 2014. What impact has this had on Foreign Institutional Investors (FII), its sub-accounts, and Qualified Foreign Investors (QFI)? Also, describe in detail who has been entrusted the authority to register FPIs and the steps required to obtain such a designation.

(Marks 20)

Q.6) Compare and contrast the ensuing subjects:

- a) FERA and FEMA
- b) Commercial Arbitration and International Investment Arbitration

(Marks 10+10=20)