Foreign Exchange Management Act - An Overview

Foreign Exchange Management - Regulations.

- **History**
- **FEMA, 1999 – A snapshot.**
- **Important Sections of FEMA**
- **FEMA – New Amendments**
- **LRS**
- **Accounts**
- **Compounding**
- **Legal Cases**

Foreign Exchange

Foreign Exchange is the system or process of converting one national currency into anther , and transforming money from country to another .

Example:

RBI Reference Rate	
INR / 1 USD	: 63.8664
INR / 1 Euro	: 77.0357
INR / 100 Jap. YEN	: 59.2800
INR / 1 Pound Sterling	: 83.8757

Foreign Exchange

- **Foreign exchange is the exchange of one currency for another or the conversion of one currency into another currency.**
- **The process by which people in different countries pay each other by exchanging different types of money.**
- **The process of balancing accounts in commercial transactions between business organizations of different nations.**
- **The process of balancing accounts in commercial transactions between businesses or individuals of different countries.**
- **Any currency other than the local currency which is used in settling international transactions.**
- **System of trading in and converting the currency of one country into that of another.**

Evolution of Exchange Control in India

1939	• Defence of India Rules (temporary basis) • Control focus
1947	• Statutory basis - Foreign Exchange Regulation Act • Control focus continues
1973	• Foreign Exchange Regulation Act (More comprehensive)
1993	• Foreign Exchange Regulation (Amendment) Act 1993
1999	• Foreign Exchange Management Act (effective June 1, 2000) • facilitating trade and payments, development of forex markets
2005	• Exchange Control Department in RBI renamed as Foreign Exchange Department to reflect the new objective (Word control removed)

FERA 1973 to FEMA 1999

Major differences:

1. **Object :**

   FERA 1973 – to conserve, preserve and prevent misuse of foreign exchange.

   FEMA 1999 – to facilitate external trade, payments, maintenance of foreign exchange market.

2. **Violations:**

   FERA 1973 – criminal offence , if violated, not compoundable & pursued by ED

   FEMA 1999 – civil offence, if violated, **can be compounded** & pursued by RBI and hawala offences perused by ED

FERA 1973 to FEMA 1999

Major differences contd….:

3. **Residential status**

FERA 1973 – Citizenship was the criteria

FEMA 1999 – It defines Resident Indian

4. **“Mens rea”** – presumption

FERA 1973 : presumes everyone is guilty of crime and onus to prove innocence was with individual. *He had the intent or motive or knowledge of what he is contravening.*

FEMA 1999 : prosecution has to prove that the person had committed the offence.

5. **Capital Account and Current Account [Sec 5 and Sec 6]**

FEMA 1999 : such terms are defined in FEMA 1999.

Administration of FEMA

The Act (FEMA) – passed by the Parliament

Notifications (published in the gazette)

Rules – framed by Central Government

Regulations – by RBI-Now GoI

(i) AP (DIR) Circulars – directions to APs by RBI – (ii) Master Directions from January 2016.

FEMA, 1999- Sections

Chapter I – Preliminary - Sec 1 – Title, Extent, application

Sec 2- Definitions

Regulation and Management of FE- Chapter II

Sec 3- Dealing in foreign exchange

Sec 4- Holding of foreign exchange

Sec 5- Current A/c transactions

Sec 6- Capital A/c Transactions

Sec 7 – Export of Goods and Services

Sec 8- Realization and repatriation of FE

Sec 9- Exemptions from realization and repatriation

Chapter III – Authorized Person

Sec 10- Authorized Person

Sec 11- RBI's powers to issue Directions to APs

Sec 12 – Power of RBI to inspect APs

FEMA, 1999- Sections

Chapter IV – Contraventions and Penalties

Sec 13 to 15 – Penalties and Compounding

Chapter V – Adjudication and Appeal

Sec 16 to 35

Chapter VI – Directorate of Enforcement

Sec 36 to 38

Chapter VII – Miscellaneous

Sec 39 to 49

FEMA Main Definitions

Foreign Currency

Foreign Exchange

Person Sec 2(u)

Person Resident in India Sec 2(v)

Current Account

Sec 5

Capital Account

Sec 6

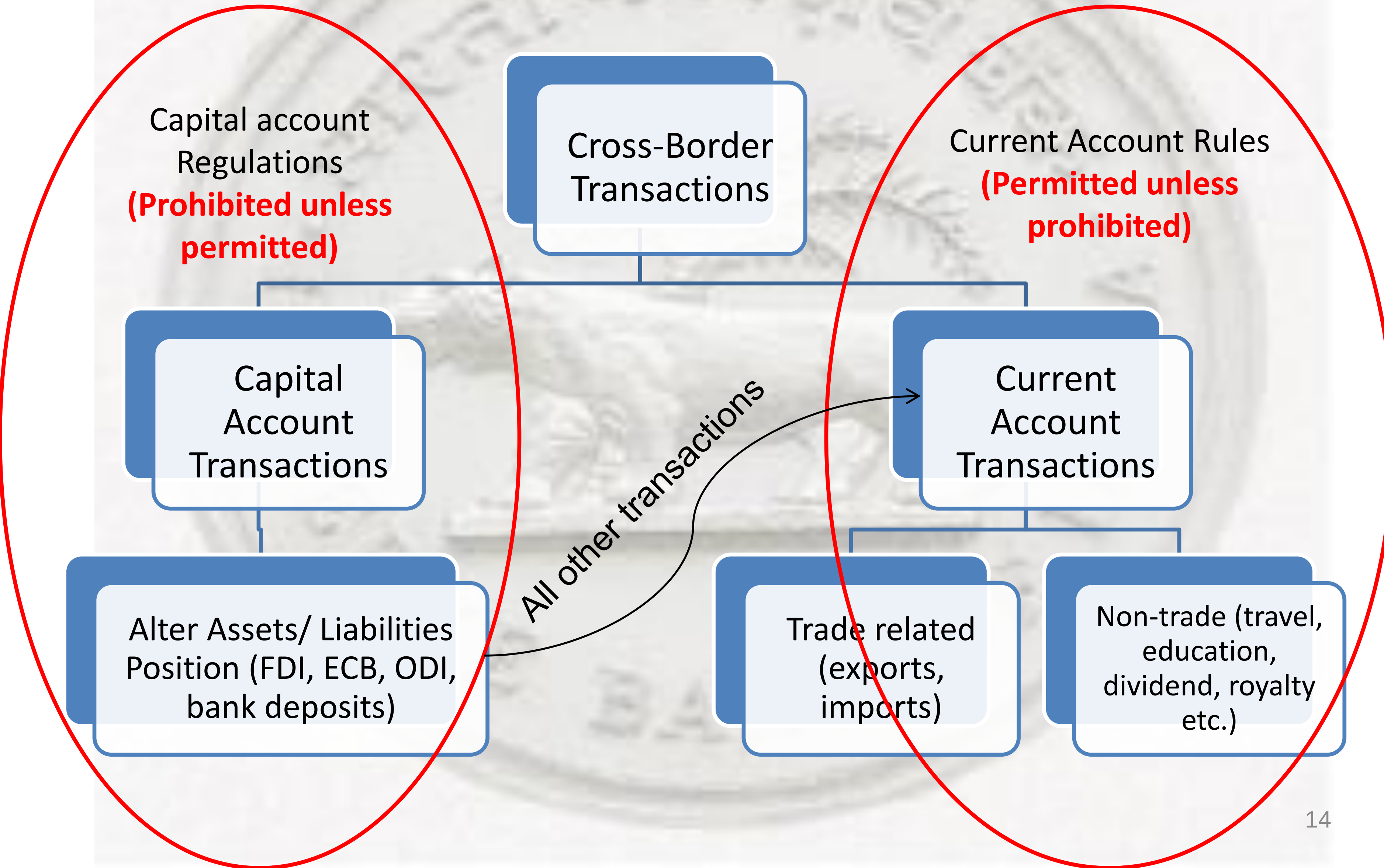
Institutions involved under FEMA

Ministry of Finance	Ministry of Commerce , DGFT	Directorate of Enforcement	Customs
Export Promotion Councils – FIEO	Authorized Persons	FEDAI	EXIM Bank
	ECGC	RBI	

Person Resident in India - Sec 2(v)

(i) a person **residing in India** for more than 182 days during the course of the preceding financial year **but does not include-**	
(A) a person who has gone out of India or who stays outside India, **in either case-**	(B) a person who has **come to or stays in India**, **in either case, otherwise than-**
for or on taking up employment outside India, or	for or on taking up employment in India, or
for carrying on outside India a business or vocation outside India, or	for carrying on in India a business or vocation in India, or
for any other purpose, in such circumstances as would indicate his **intention to stay outside India for an uncertain period;**	for any other purpose, in such circumstances as would indicate his **intention to stay in India for an uncertain period;**

Classification of Transactions



FEMA....Contd.

- Initially
  - GoI issued 7 Notifications (***Rules***) – Subordinated Legislations
  - RBI issued 30 Notifications (***Regulations***) – Subordinated Legislations to carry out the provisions of the Act
  - RBI issued 20 Master Directions and are updated in real time basis.
- The amendments to the Notifications are announced by the Reserve Bank to the Authorized Persons through AP (DIR Series) Circulars

Rules issued under FEMA

1	**Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000**
2	Foreign Exchange (Authentication of Documents) Rules, 2000
3	**Foreign Exchange Management (Current Account Transactions) Rules, 2000**
4	Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000
5	**Foreign Exchange (Compounding Proceedings) Rules 2000**
6	Appellate Tribunal for Foreign Exchange (Recruitment, Salary and Allowances and Other Conditions of Service of Chairperson and Members) Rules, 2000
7	**Foreign Exchange Management (Non-debt Instruments) Rules, 2019 [supersession of FEMA 20 (R) and FEMA 21 (R)**

Notifications Issued by RBI

S.No.	FEMA Notification	Description
1	1	**Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000**
2	2	Foreign Exchange Management (Issue of Security in India by a branch, office or agency of a person resident outside India) Regulations, 2000
3	3 R	Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 (Supersedes FEMA 3 and FEMA 4)
4	5 R	Foreign Exchange Management (Deposit) Regulations, 2016
5	6 R	Foreign Exchange Management (Export and Import of Currency) Regulations, 2015

Notifications Issued by RBI

6	**7**	**Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015**
7	8	Foreign Exchange Management (Guarantees) Regulations, 2000
8	9 R	Foreign Exchange Management (Realization, repatriation and surrender of foreign exchange) Regulations, 2015
9	**10 R**	**Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015**
10	**11 R**	**Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015**
11	12 R	Foreign Exchange Management (Insurance) Regulations, 2015

Notifications Issued by RBI

12	**13 R**	**Foreign Exchange Management (Remittance of Assets) Regulations, 2016**
13	**14 R**	**Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016**
14	15 R	Definition of 'Currency' Supersedes Foreign Exchange Management Regulations, 2000 (Definition of 'Currency')
15	16	Receipt from and payment to a person resident outside India
16	17	Transactions in Indian rupees with residents of Nepal or Bhutan
17	18 R	Post Office (Postal Orders / Money Orders)
18	22 R	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
19	**23 R**	**Foreign Exchange Management (Export of Goods & Services) Regulations, 2015**
20	24	Foreign Exchange Management (Investment in Firm or Proprietary concern in India) Regulations, 2000
21	25	Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000

Notifications Issued by RBI

22	**71**	**Foreign Exchange Management (Offshore Banking Units) Regulations, 2002**
23	101	Foreign Exchange Management [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003
24	120	Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000
25	223	Foreign Exchange Management Regulations, 2000 (Definition of 'Security')
26	339	Foreign Exchange Management (International Financial Services Centre) Regulations, 2015
27	**348**	**Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015**

Notifications Issued by RBI

28	389	Foreign Exchange Management (Cross Border Merger) Regulations, 2018
29	395	Foreign Exchange Management (Mode of Payment and Reporting of Non -Debt Instruments) Regulations, 2019
30	396	Foreign Exchange Management (Debt Instruments) Regulations, 2019 [Supersedes FEMA 20 R]

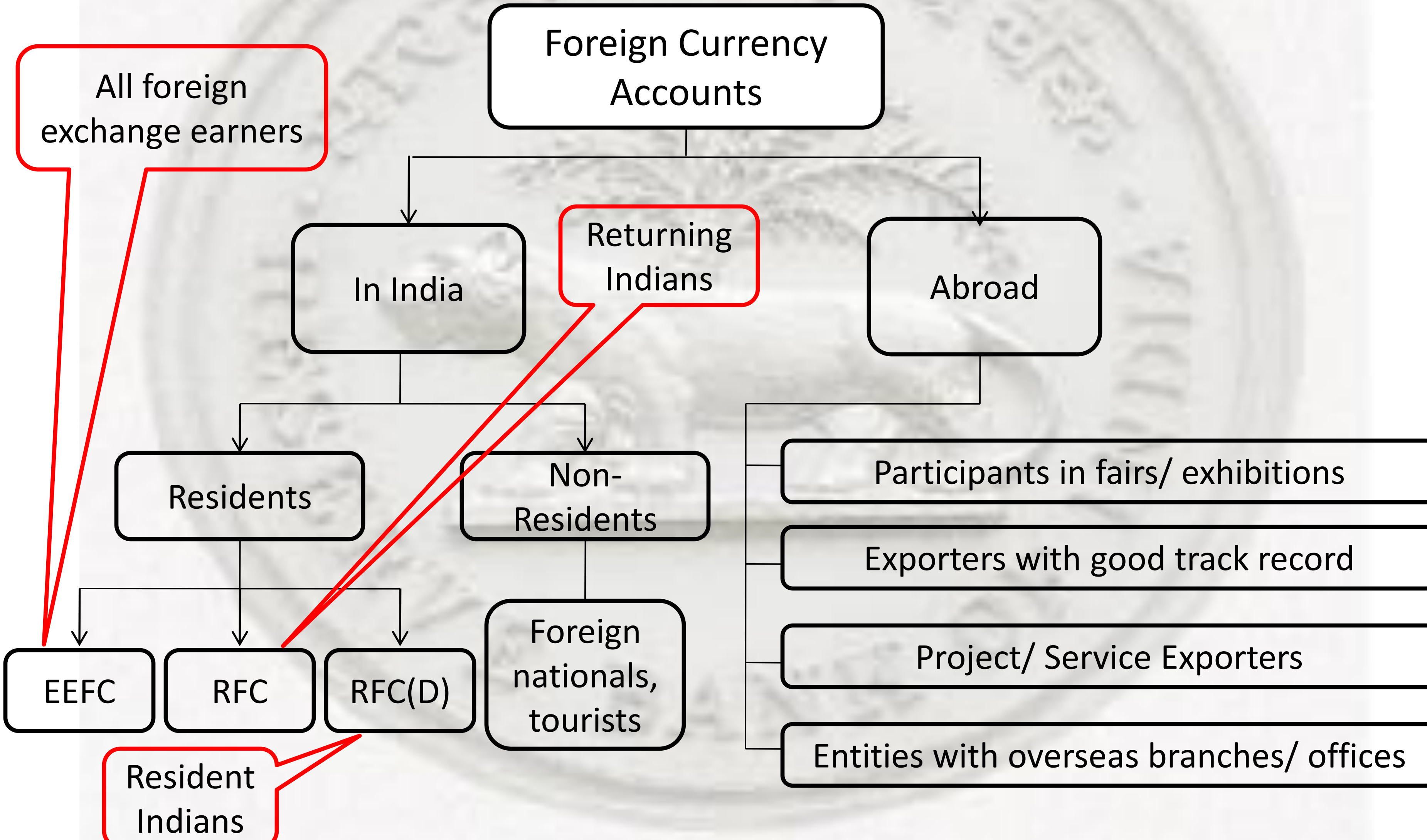
Basis	FERA, 1973 01-01-1974	FEMA, 1999 01-06-2000
Meaning	FERA was implemented to regulate foreign payments and to ensure optimum use of foreign currency in India.	FEMA aims to promote foreign trade, foreign payments and to increase the size of foreign exchange reserve in the country.
Enactment	It is an old enactment and was approved by the Parliament in the year 1973.	It is a new enactment and was approved by the Parliament in the year 1999 and is currently in force.
Number of Sections	It had 81 Sections.	It has 49 Sections divided into 7 chapters.
When this was introduced (position of foreign exchange)	When foreign exchange reserves were very low.	When foreign exchange reserves were adequate but required regulation and balance.
Outlook towards foreign exchange reserves	A rigid approach was there.	A flexible approach is here.

Basis	FERA	FEMA
Determining the residential status	Through citizenship only it was determined.	More than 182 days/ 6 months stay in India and purpose of stay
Transfer of funds	A person has to take permission from RBI relating to the transfer of funds to external operations.	There is no requirement of the pre-approval from RBI regarding the transfer of funds relating to the external operations, funds or trade.
contravention/violation	If any violation of the provision or order then it will be considered as a criminal offence.	If any violation of the provision or order then it will be considered as a civil offence.
Punishment for the violation	The guilty person will be sentenced to imprisonment.	The guilty person will be held liable to pay a fine and if the fine is not paid within stipulated time then will be sentenced to imprisonment.

Authorized Persons - u/s 10 FEMA

Category	Entities	Activities
AD-Cat I	Commercial banks, SCBs, UCBs	All current and capital account transactions
AD Cat II	Upgraded FFMCs, RRBs, Co-op banks	Specified non-trade related current account transactions
AD Cat-III	Financial and other institutions	Forex transactions incidental to their own activities (IFCI Factors, CCIL, SIDBI, EXIM, SBI Factors, Can Factors)
FFMCs	**India Post,** UCBs, other companies	Travel related – Sale Purchase of FC Notes / Coins

Foreign Currency Accounts - A Schematic Representation



Type of Accounts in India

NRI/PIO/ NR

FCNR(B)

NRE

NRO

FCNR- in F.Currency – Exchange risk born by AD

NRE- in Rupees – Exchange risk by Investor

NRO- any NR in rupees. 1,000,000 USD per year

Foreign Trade (Import/ Export)

Agencies Involved

- **DGFT** (Trade Policy Formulation)
- **Customs** (Valuation, physical aspects)
- **RBI** (Receipts and payments)

Exports and Imports are free unless regulated by FTP or any other law in force

Mandatory to realise and repatriate export proceeds and produce evidence of import in the manner and within the time prescribed by RBI

External Commercial Borrowing

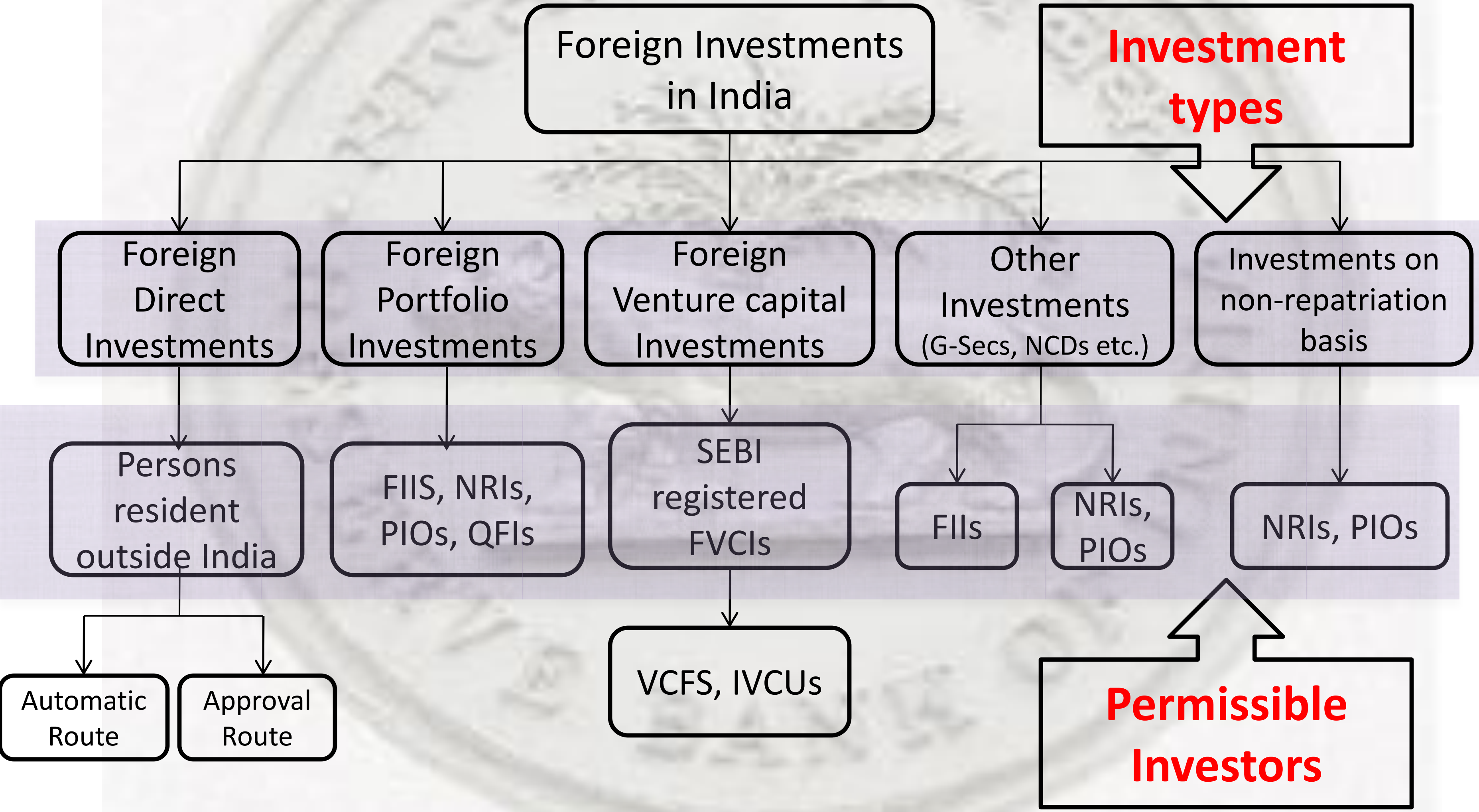
Commercial loans from abroad (bank loans, trade credit, securitized instruments (e.g. bonds, preference shares, FCCB etc.) - quantitative, cost and end-use and tenor restrictions

- Automatic Route
  - Eligible borrowers – corporates, NGOs, SEZ units
  - Recognised lenders – banks, capital markets, financial Institutions, export credit agencies, suppliers, collaborators, equity holders
- Approval route (RBI)

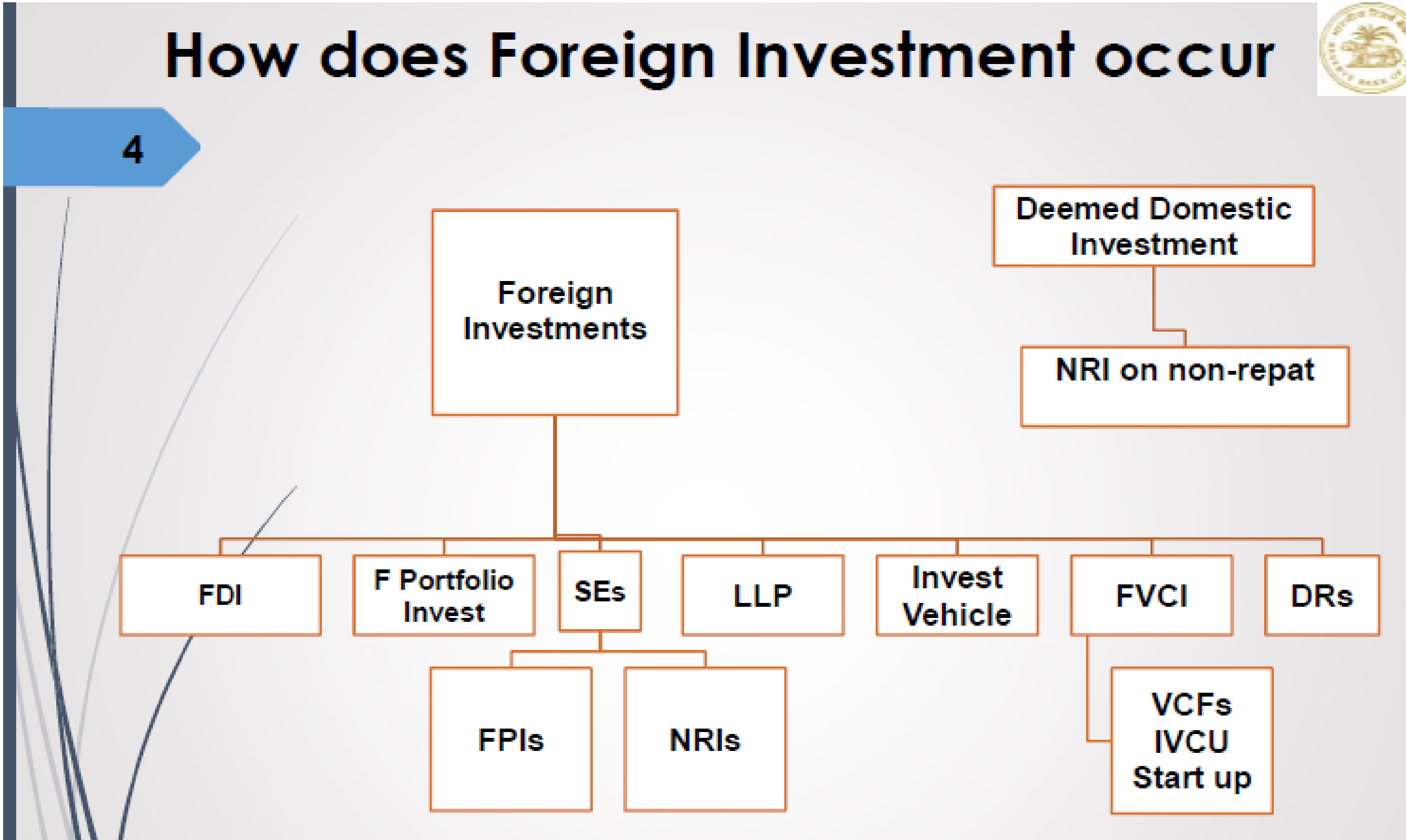
Overseas Direct Investments

- Joint Ventures, Wholly Owned Subsidiaries
  - Automatic Route (not available for real estate and banking business)
    - General Permission to persons resident in India – RFC, LRS, bonus shares
    - General Permission to Indian parties up to 4 times net worth (no limit for investments out of EEFC accounts and ADRs/ GDRs
  - Approval route (RBI)

Foreign Investments in India – Schematic Representation



Foreign Investment



Latest changes

- 1. EDPMS, IDPMS introduced to monitor exports and imports online. (i) extension of time to settle payment in imports
- 2. FDI Reporting - FIRMS
- 3. Introduced Master Directions
- 4. Revised various Notifications (R)
- 5. FAQs at https://fema.rbi.org.in
- 6. Current news – NRI exchange of SBNs

Fictitious Offers- What Can The Public Do ?

Modus Operandi - Lure

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Say money lying in
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PLEASE NOTE

RBI does not undertake any type of money arrangement, by whatever name called, and does not take any responsibility for recovering moneys remitted in response to such bogus communications

RBI does not hold any
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and genuine
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rg.in

Inform local police or Cyber Crime Cell

Want to Know More?

RBI will be more than happy to associate itself with and contribute to any awareness programme/ knowledge initiative

THANKS

Sudhakar Rao Desai
Manager-Retd
srdesai1960@gmail.com
srdesai0306@outlook.com

(M) 7032751594