Foreign Exchange Management Act - An Overview

Content for Regulatory and Supervision Functions of RBI – FEMA, 1999.

1. Background of FEMA
2. Salient Provisions of FEMA – Current and Capital Account
3. Enforcement of FEMA – RBI and ED
4. Functions of RBI under FEMA
5. Functions of ED under FEMA
6. Contraventions, Penalties and Compounding
7. FEMA in changed situation – Recent changes in FEMA
8. Trade Related frauds under FEMA.
9. Foreign Exchange Reserves Management – RBI Role
10. Is FEMA relevant now?
11. Conclusion.

Foreign Exchange

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

RBI Reference Rate	
INR / 1 USD	81.8165
INR / 1 Euro	84.4924
INR / 100 Jap. YEN	57.8800
INR / 1 Pound Sterling	97.2635

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)

Constitution of India

Art. 246. Parliament has exclusive power to make laws with respect to any of the matters enumerated in **List I in the Seventh Schedule.**

Seventh Schedule List

List No	Description
16	Foreign jurisdiction
36	Currency, coinage and legal tender; foreign exchange
37	Foreign Loans
41	Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.

Foreign Exchange Management Act, 1999

- Preamble to FEMA 1999:

  *"An Act to consolidate and amend the law relating to foreign exchange with the **objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India**".*
- Extends to the whole of India (including J&K)
- Extra-territorial jurisdiction (applies to overseas Offices)
- FEMA came into force w.e.f. June 1, 2000 with over **330+ amendments** since then
- **FEMA has 7 Chapters and 49 sections**
- FEMA is **regulated through the Rules (9) & the Regulations AP (Dir Series) Circulars; Master Directions; FAQs; Compounding Orders**

FERA 1947	FERA 1973	FEMA 1999
An Act to regulate certain payments, dealings in foreign exchange and the import and export of currency and bullion economic and financial interests of India to provide for the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion;	*An Act to consolidate and amend the law regulating certain payments, dealing in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency1[* * * * *], for the* ***conservation of the foreign exchange resources*** *of the country and the proper utilisation thereof in the interest of the economic development of the country.*	An Act to consolidate and amend the law relating to foreign exchange with **the objective of facilitating external trade and payments** **and** **for promoting the orderly development and maintenance of foreign exchange market in India.**

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.

FERA Vs FEMA

Headings	FERA	FEMA
Offence under Law	Any offence under FERA, was a criminal offence, punishable with imprisonment as per CPC, 1973	Here, the offence is considered to be a Civil offence only punishable with some amount of money as a penalty. Imprisonment is prescribed only when one fails to pay the penalty.
Names of transactions / Categorization	No categorization	1. Capital Account Transaction 2. Current Account Transaction
Permission on transaction	Transaction is prohibited unless permitted.	Transaction is permitted unless prohibited
Rigid / Liberal	It was RIGID Law	It is RIGID regarding disclosure of transaction.
Provisions	FERA has 81 sections and was more complex	FEMA has 49 sections and much simple
Features	Presumption of negetive intension (Mens Ria) and joining hands in offence (abatement) existed in FERA	These presumptions of Mens Ria and abatement have been excluded in FEMA
Quantity of Penalty	Five times of the penalty amount	The quantum of penalty has been considerably decreased to three times the amount involved

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, 1973	FEMA, 1999
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.

Institutions involved under FEMA

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

FEMA –Subordinated Legislations

- Initially
  - GoI issued 8 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

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.

Foreign Exchange Management Act, 1999

Section	Particulars
Section 1-2	Short title, **Definitions**
Section 3-9	Regulation and management of **FOREIGN EXCHANGE**:
Section 3	Dealing in Foreign Exchange
Section 4	**Holding of foreign exchange, foreign security or any immovable property situated outside India by a person resident in India**
Section 5	Current Account Transactions
Section 6 **	**Capital Account Transactions. (Debt Instruments and Non-Debt instruments)**
Section 7	Export of Goods and Services
Section 8	Realization and Repatriation of Foreign Exchange
Section 9	Exemptions from Realization and Repatriation
Section 10-12	Authorised Person
Section 13-15	**Contravention and penalties**, power to **compound contravention**
Section 16-35	**Adjudication and appeal**
Section 36-38	Directorate of Enforcement
Section 39-45	Miscellaneous
Section 46 @	**Power to make Rules**
Section 47 @	**Power to make Regulations**
Section 48	Rules and Regulation to laid before Parliament
Section 49	Repeal and Savings
	****Control on non-debt capital flows as equity will be exercised by the Government and Debt capital flows will be exercised by RBI** **@Central Government makes Rules; RBI makes Regulations**

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
(**Central Government makes Rules**; **RBI makes Regulations**)
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

Sec 2(m) Foreign Currency

any currency other than Indian currency

Sec 2(n) Foreign Exchange – Deposits, Credits, BoE, TCs, DDs, LCs payable in FE,

Sec 2(u) Person – Individual, HUF, Company, Firms, agency,

Sec 2(v) Person Resident in India

Sec 2(j) and 5 Current Account

Sec 2 (e) and 6 Capital Account

Dealings in Foreign Exchange

Section 3: (a) **No person shall deal in or transfer any foreign exchange or foreign security to any person not being an Authorized Person**.

b) To make any payment / to receive any payment otherwise not being an AP.

c) To enter in to any financial transaction in India **as consideration for** or **in association with acquisition** or creation or transfer of a right to acquire any asset outside India by any person.

Section 4: Holding of Foreign Exchange: **Save otherwise provided in the Act,** no person resident in India shall acquire, hold, own, posses or transfer any foreign exchange, foreign security or any immovable property situated outside India.

How it operates

❖ **Section 4 of FEMA:**

Blanket prohibition: No person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India

❖ **Section 5 of FEMA:**

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction:

Provided that Central Government may, in public interest and in consultation with RBI, impose such reasonable restrictions for current account transactions as may be prescribed

❖ FEM (Current Account Transaction)Rules, 2000

❖ **Section 6 of FEMA:**

❖ Section 6(1)-Any person may sell or draw forex for a capital account transaction subject to Sections 6(2) and 6(3) gave powers to RBI to prescribe, regulate, prohibit or restrict transactions

❖ Section 6(3) deleted post FinanceAct2015

Notifications now issued by Government

❖ First such notification is sued in2019–RBI regulating in legal vacuum between 2015 and 2019 and 2022

❖ Legislated by Ministry of Finance, Regulated by RBI & Enforced by ED

Capital Account Transaction

Section 2 (*e*): "capital account transaction" means a transaction which alters

the assets or liabilities, including contingent liabilities, outside India **of persons resident in India**

Or

assets or liabilities in India **of persons resident outside India**,

and

includes transactions referred to in sub-section 2A of Section [repealed sub-sec(*3*) of section 6]

Persons resident in India	Persons resident Outside India
Investment by a person resident in India in **foreign securities**.	issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
Foreign currency loans raised in India and abroad by a person resident in India.	
Transfer of immovable property outside India by a person resident in India.	Acquisition and transfer of immovable property in India by a person resident outside India.
Guarantees issued by a person resident in India in favour of a person resident outside India.	**Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.**
Export, import and **holding** of currency / currency notes.	Import and export of currency / currency notes into / from India by a person resident outside India.
Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.	
	Deposits between a person resident in India and a person resident outside India.
Maintenance of foreign currency accounts in India and outside India by a person resident in India.	Foreign currency accounts in India of a person resident outside India.
Taking out of insurance policy by a person resident in India from an insurance company outside India.	
Loans and overdrafts by a person resident in India to a person resident outside India.	
Remittance outside India of capital assets of a person resident in India.	Remittance outside India of capital assets in India of a person resident outside India.
Undertake derivative contracts	Undertake derivative contracts

Capital Account Transactions

Sub-section 2A of Section 6 [Section ~~6(3) (Repealed) }~~

RBI in consultation with Central Govt. may by regulations, prohibit, restrict or regulate:

Transfer or issue of any	❖ **foreign security** by a person resident in India ❖ **security by a person resident outside India** ❖ **security or foreign security by any branch, office or agency in India of a person resident outside India**
Any **borrowing or lending in foreign exchange**	
Any **borrowing or lending in rupees between a person resident in India and a person resident outside India**	
Deposits between person resident in Indian and person resident outside India	
Export, import or holding of **currency or currency notes**	
Acquisition and transfer of **immovable property** other than a lease not exceeding five years	❖ **outside India** by a person resident in India ❖ **in India** by a person resident outside India
Giving a **guarantee or surety** in respect of any debt, obligation or other liability incurred	❖ **by a person resident in India** and owed to a person resident outside India ❖ **by a person resident outside India**

Capital Account Transactions Secion 6(2A)

Debt Instruments

FEM (Debt Instruments) Regulations, 2019

FEM (Overseas Investment) Regulations, 2022

(i) Government Bonds
(ii) Corporate bonds;
(iii) all tranches of securitisation structure which are not equity tranche;
(iv) borrowings by firms through loans; and
(v) depository receipts whose underlying securities are debt securities;

Non-Debt Instruments

FEM Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019; Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and FEMA (Overseas Investment) Rules, 2022.

(i) all investments in equity in incorporated entities (public, private, listed and unlisted);
(ii) capital participation in Limited Liability Partnerships;
(iii) all instruments of investment as recognised in the Foreign Direct Investment policy from time to time;
(iv) investment in units of Alternative Investment Funds and Real Estate Investment Trust and Infrastructure Investment Trusts;
(v) investment in units of mutual funds and Exchange-Traded Fund which invest more than fifty per cent in equity;
(vi) the junior-most layer (i.e. equity tranche) of securitisation structure;
(vii) acquisition, sale or dealing directly in immovable property;
(viii) contribution to trusts; and
(ix) depository receipts issued against equity instruments;

Current Account Transaction

"current account transaction" **means,** any transaction other than a capital account transaction **and** without prejudice to the generality of the foregoing such transaction includes,—

(*i*) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,

(*ii*) **payments due** as interest on loans and as net income from investments,

(*iii*) **remittances** for living expenses of parents, spouse and children residing abroad, and

(*iv*) **expenses** in connection with foreign travel, education and medical care of parents, spouse and children;

Any person may Sell or Draw foreign exchange to and from Authorized Person if such sale or drawal is a Current Account Transaction.

Central Govt, **in public interest**, in consultation with RBI, impose reasonable restrictions.

FEM (Current Account Transactions) Rules, 2000

Schedule I

Foreign exchange withdrawal is prohibited

Examples

- Lottery winnings
- Racing/riding etc.
- Purchase of lottery tickets, banned /prescribed magazines, football pools, sweepstakes etc.
- Commission towards equity investment in JVs/ WoS abroad of Indian companies
- Call Back Services of telephones etc.

Schedule II

Ministry/Department of Central Government approval required

Examples

- Cultural Tours (Ministry of Human Resources Development)
- Hiring charges of transponders (Ministry of I&B) etc.

Schedule III

RBI approval

Required only if exceeds threshold limit

Examples

Individuals within LRS limit of USD 250,000

- Private visits abroad
- Gifts, Donations
- Going abroad for employment
- Maintenance of close relatives abroad
- Business travel
- Medical treatment abroad

Other than Individuals

Consultancy services

- Reimbursement of pre-incorporation expenses
- Donations etc.

Difference between Current and Capital Account Transactions

Illustrations:

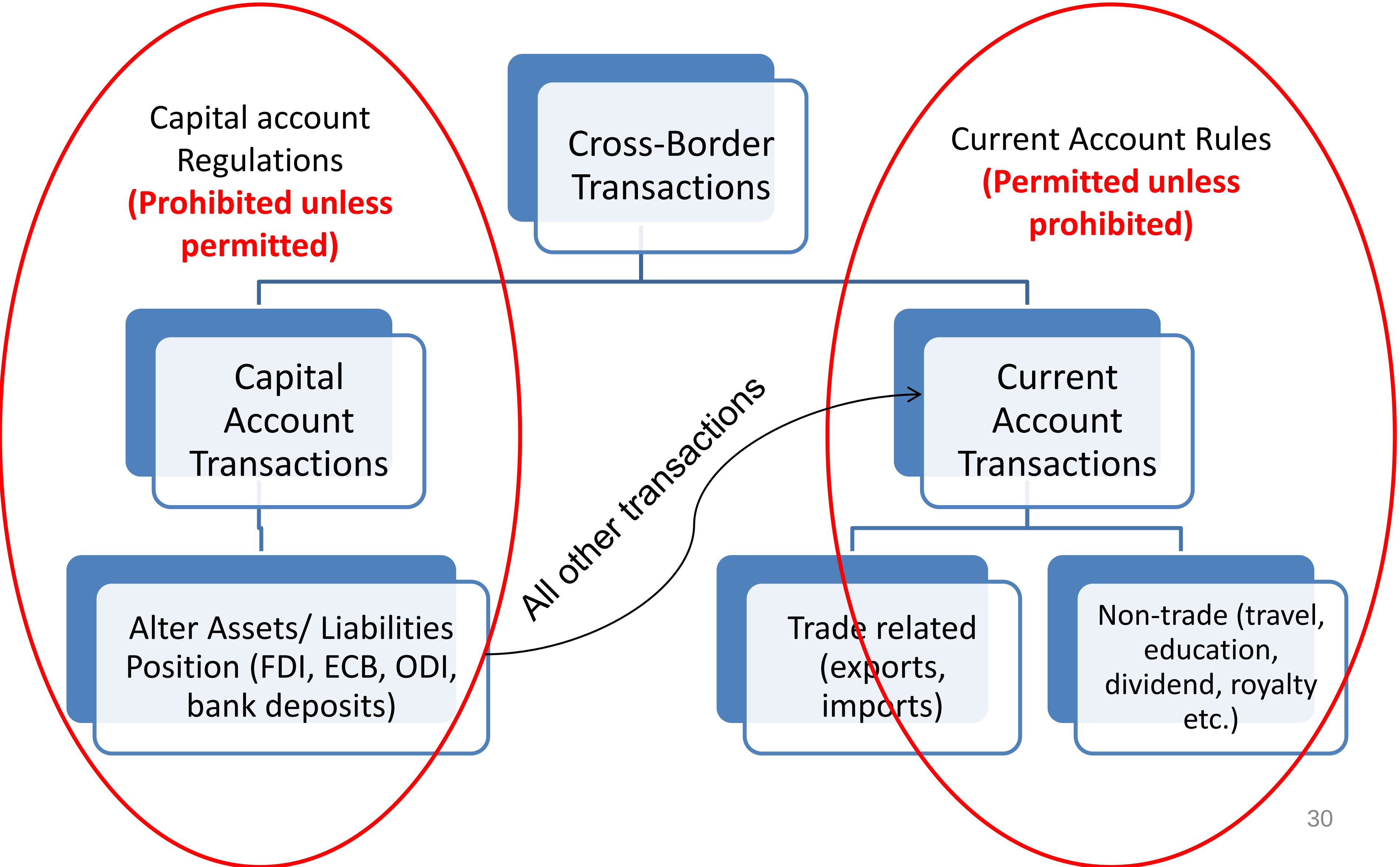
Current Account

- Machinery imported by Resident on normal credit terms
- Payment of Guarantee Fee to non-resident
- House rental payments
- Gold imported into India
- Interest payments
- Travel abroad
- Students Fee, Medical Expenses.

Capital Account

- FDI, Overseas Investment, Guarantees, Immovable Property
- Machinery imported on instalment basis or EMI
- Guarantee provided by a Resident outside India
- Purchase of foreign Immovable property
- Gold purchased and kept in locker abroad
- Loans taken abroad

Classification of Transactions



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;**

Specified purposes

Definition of Person resident in India under FEMA...1/2

1

A person residing in India
for >182 days
during the preceding financial year

A person who has gone out of India or who stays outside India, <u>in either case</u>	A person who has come to or stays in India, in either case, <u>otherwise than</u>
❖ taking up employment outside India, or ❖ carrying on outside India a business or vocation outside India, or ❖ any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period	❖ taking up employment in India, or ❖ carrying on in India a business or vocation in India, or ❖ any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period

To be treated as a person resident in India, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the preceding financial year) but has to also comply with the condition of the purpose/ intention of stay.

Student going abroad for studies is treated as Non-Resident Indian (NRI) and is eligible for all the facilities available to NRI under FEMA, 1999 –Circular 45 dated 08 December 2003.

If NRI returns to stay in India for an 'uncertain period' he will become a person resident in India and his NRE account should be redesignated as Resident's account (Case law Basant Kumar Sharma vs. Government of India dated February 7, 2013)

The type of visa granted should clearly indicate the intention to stay in India for an uncertain period to determine his residential status in terms of section 2(v) FEMA, 1999.

Person Resident in India: Any person or body corporate registered or incorporated in India (territorial jurisdiction)

an office, branch or agency **in India owned or controlled by a person resident outside India,**

(Example: Liaison Office / Branch Office / Project Office in India)

an office, branch or agency **outside India owned or controlled by a person resident in India;**

(Example: Liaison Office / Branch Office / Project Office Outside India, Project Exports, Joint Ventures, WoS)

(*w*) "person resident outside India" **means a person who is not resident in India;**

FEMA extends to whole of India, Extra territorial jurisdiction
Any contravention committed outside India by any person to whom it applies.

Change of residential status

Section 6(4) of FEMA

Person resident outside India → **Status changed to** → **Person resident in India**

A **person resident in India** may hold, own, transfer or invest in foreign currency, foreign security or any immovable property **situated outside India** if:

- such currency, security or property was **acquired, held or owned by such person when he was resident outside India**

OR

- **inherited from a person who was resident outside India**

Section 6(5) of FEMA

Person resident in India → **Status changed to** → **Person resident outside India**

A **person resident outside India** may hold, own, transfer or invest in Indian currency, security or any immovable property **situated in India** if :

- such currency, security or property was **acquired, held or owned by such person when he was resident in India**

OR

- **inherited from a person who was resident in India**

Section 4 : **Holding of foreign exchange, etc**

Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

37A. Special provisions relating to assets held outside India in contravention of section 4.—(*1*) Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

Compliance with FEMA is must

- FEMA is now more draconian than FERA
- Seizure of assets in India

- Section 37A newly introduced vide Finance Act, 2015 in FEMA
  - Provides that if any person holds any foreign exchange, foreign security or any immovable property outside India in contravention of Section 4 of FEMA, the equivalent value of property in India can be seized
    - No opportunity is to be given to prove that the accused is actually innocent before seizure, only later
    - Exemption for assets under value of Rs. 1 crore

- Can lead to penalty and prosecution

RBI VISION & MISSION

VISION: To evolve appropriate environment in discharging the basic objective of the Foreign Exchange Management Act (FEMA), 1999; To facilitate external trade and payments and to promote orderly development and maintenance of foreign exchange market in India; and **to frame prompt and pro-active policy responses, as part of active capital account management, within the evolving macroeconomic conditions.**

MISSION:

To effectively integrate our country with external world, entrepreneurs both resident and non-resident, with the evolving market dynamics and external sector developments by:

1. Evolving and disseminating rules and regulations in a user-friendly language;
2. Moving towards fuller capital account convertibility in a calibrated manner;
3. Having regular interface rendering effective and efficient customer service with greater transparency;
4. Empowering Authorised Persons and enlarging their role as a conduit to create awareness about the developments;
5. Facilitating hassle-free cross-border transactions;
6. Capturing data on a real time basis to dynamically induce policy changes; and
7. Disseminating data in a transparent manner.

Main Functions of RBI under FEMA

a) Control over dealings in FE by giving general / special permission to deal in FE, excluding cases under Sec 3(a) [Hawala transactions]

b) RBI cannot impose any restrictions on Current Account. This can be imposed by GoI in consultation with RBI.

c) Specifying conditions for payment in respect of Capital Account Transactions Sec 6(2) [Powers of NDIR-2019 and Overseas Investment Rules, 2022 is now with GoI]

d) Prohibit / Restrict / Regulate specified transactions in FE Sec 6(3)

e) Specify (by Regulation) period and manner in which FE due export of goods / services should be received – Sec 8

f) To grant exemption from Realization / Repatriation – Sec 9

g) Granting Authorization to 'Authorized Person' to deal in FE – Sec 10

h) To make Regulations under Sec 47

i) Administer FEM (Non-Debt Instruments) Rules, 2019 ; FEM (Non-Debt Instruments _ Overseas Investment) Rules, 2021

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Main Functions of RBI under FEMA
Approval and Permission

When an approval is required, an action holds good Only, if it is disapproved, it loses its force.

Approval can be granted ex post facto; subject to conditions

As long as law does not state that prior approval is required should be obtained, such approval can be given later with retrospective effect.

Only when Permission is required, the decision does not become effective till permission is obtained.

Directions / Permissions / Approvals issued by RBI have statutory force and can be termed as law in force.

Prescribed: Prescribed by Rules made under this Act

Specify / Specified : To specify by Regulations made under this Act

FEMA is only basic legal framework, the practical aspects are covered in Rules made by GoI, and Regulations by RBI

FEMA authorised RBI to give Directions to 'Authorised Person' to ensure compliance of FEMA,

The Directions will be AP(DIR) Circulars, Regulations, Master Directions, Clarifications, Press Release

What cannot be done directly, cannot be done indirectly.

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)
8	Foreign Exchange Management (Non-Debt Instruments – Overseas Investment) Rules, 2022 [supersession of FEMA 120 and FEMA 7]

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]
31	400	Foreign Exchange Management (Overseas Investment) Regulations, 2022 [Overseas Debt Instrument]

Enforcement Directorate

- Directorate of Enforcement is a specialized financial investigation agency under the Department of Revenue, Ministry of Finance, Government of India, which enforces FEMA, 1999 and PMLA, 2002.

- The origin of this Directorate goes back to 1st May, 1956, when an 'Enforcement Unit' was formed, in Department of Economic Affairs, for handling Exchange Control Laws violations under Foreign Exchange Regulation Act, 1947 (FERA '47)

- Enforcement Unit Bombay and Calcutta

- In the year 1957, this Unit was renamed as 'Enforcement Directorate', and another branch was opened at Madras.

- The administrative control of the Directorate was transferred from Department of Economic Affairs to Department of Revenue in 1960

- With the passage of time, FERA'47 was repealed and replaced by FERA, 1973. For a short period of 04 years (1973 – 1977), the Directorate remained under the administrative jurisdiction of Department of Personnel & Administrative Reforms.

Enforcement Directorate

- Foreign Exchange Management Act, 1999 (FEMA) –

A Civil Law, with officers empowered to conduct investigations into suspected contraventions of the Foreign Exchange Laws and Regulations, adjudicate, contraventions, and impose penalties on those adjudged to have contravened the law.

- Contraventions of FEMA are dealt with by way of adjudication by designated authorities of ED and penalties upto three times the sum involved can be imposed.
- To collect, develop and disseminate intelligence relating to violations of FEMA, 1999, the intelligence inputs are received from various sources such as Central and State Intelligence agencies, complaints etc.
- To investigate suspected violations of the provisions of the FEMA, 1999 **relating to activities such as "hawala" foreign exchange racketeering, non-realization of export proceeds, non-repatriation of foreign exchange and other forms of violations under FEMA, 1999.**

- **To adjudicate cases of violations of the erstwhile FERA, 1973** and FEMA, 1999.
- To realize penalties imposed on conclusion of adjudication proceedings.
- To handle adjudication, appeals and prosecution cases under the erstwhile FERA, 1973

Enforcement Directorate Sec 13, 14 and 15

- **Section 13 Penalties:** If any person contravenes
- any provision of this Act, or
- contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or
- contravenes any condition subject to which an authorisation is issued by the Reserve Bank,
- he shall, upon adjudication**, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable,**
- or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Section 15: Power to compound contravention.—(*1*) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the **Director of Enforcement** or such other officers of the Directorate of Enforcement **and**

officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.

Section 14. Enforcement of the orders of Adjudicating Authority.—(*1*) Subject to the provisions of sub-section (*2*) of section 19, **if any person fails to make full payment of the penalty imposed** on him under section 13 **within a period of ninety days from the date on which the notice for payment of such penalty** is served on him, he shall be **liable to civil imprisonment under this section**.

Enforcement Directorate Sec 36, 37 & 38

36. Directorate of Enforcement.—(*1*) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.

(*2*) Without prejudice to the provisions of sub-section (*1*), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

(*3*) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

37. Power of search, seizure, etc.—(*1*) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

(*2*) Without prejudice to the provisions of sub-section (*1*), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

(*3*) The officers referred to in sub-section (*1*) **shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.**

Enforcement Directorate Sec 37-A Special Provision

37A. Special provisions relating to assets held outside India in contravention of section 4.—(*1*) Upon receipt of any information or otherwise, if the **Authorised Officer** prescribed by the Central Government has reason to believe that

- any foreign exchange, foreign security, or
- any immovable property, situated outside India,
- is suspected to have been held in contravention of section 4,

he may after recording the reasons in writing, by an order,

seize value equivalent, situated within India, **of such foreign exchange, foreign security or immovable property**

Nothing contained in section 15 shall apply to this section, e.e., thers is no Compounding of Contraventions by RBI or ED and there only option is Adjudication by ED itself.

Enforcement Directorate Sec 49 (3)

49. Repeal and saving.—

(*1*) The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (*1*) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

(*3*) Notwithstanding anything contained in any other law for the time being in force, **no court shall take cognizance of an offence under the repealed Act** and **no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.**

Compounding of contraventions under FEMA, 1999

Contents

Background

- Foreign Exchange Regulation Act, 1973 (FERA, 1973) was replaced by the Foreign Exchange Management Act, 1999 (FEMA, 1999). FEMA, 1999 brought foreign exchange contraventions within the ambit of civil law (previously treated as criminal violations)

- The Foreign Exchange (Compounding Proceedings) Rules, 2000 effective from June 1, 2000, only empowered the RBI to compound contraventions relating to Section 7, 8 and 9 of the FEMCAT Rules. Vide GSR 609 (E) dated 13-09-2004, RBI was empowered to compound all the contraventions of FEMA 1999 except Section 3(a) which deals with money laundering i.e., dealings in foreign exchange with a person other than an authorised person

- To provide comfort to the citizens & corporate community by minimizing transaction costs, while taking a serious view of the wilful, malafide & fraudulent transactions.

Relevant Rules, Provisions and Guidelines

- Foreign Exchange Management Act – 1999
  - Section 13 & 15
- Foreign Exchange (Compounding Proceedings) Rules, 2000
- RBI Master Directions on Compounding

What is compounding of contravention ?

Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and Rules/ Regulations / Notification / Orders / Directions / Circulars issued thereunder.

Compounding process begins **with voluntary admission of contravention by the applicant.**

The Reserve Bank is empowered to compound any contraventions as defined under section 13 of FEMA, 1999 except the contravention under section 3(a) ibid, for a specified sum after offering an opportunity of personal hearing to the contravener.

Sec 3(a) of FEMA, 1999 Willful, *malafide* and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.

Who can apply for compounding?

Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank in the specified form alongwith a certified copy of memorandum (issued by the RBI).

In case of suo motu compounding applications the copy of memorandum may not be attached.

Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement

Statutory Provisions

Foreign Exchange Management Act, 1999

Section 15 - Power to compound contravention

(1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorized in this behalf by the Central Government in such manner as may be prescribed.

(2) Where a contravention has been compounded under sub- section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

Statutory Provisions

Foreign Exchange Management Act, 1999

<u>Section 13</u> – Penalties

(1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Statutory provisions
Foreign Exchange (Compounding Proceedings) Rules 2000

Rule	Particulars
Rule 1	Short Title and commencement
Rule 2	Definitions
Rule 3	Compounding Authority – Authorised by Government < DD / DLA in DoE or AGM of RBI
Rule 4 (1)	If any person contravenes any provisions of the FEMA 1999, except clause (a) of section 3 of that Act AGM- ₹ 10 lakhs and below DGM-More than ₹ 10 lakhs but less than ₹ 40 lakhs GM - ₹ 40 lakhs or more but less than ₹ 100 lakhs CGM- ₹ 100 lakhs or more No compounding for non-quantifiable contravention
Rule 4 (2)	Nothing contained in sub-section (1) shall apply to 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 these rules. Explanation—For the purposes of this rule, 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.

Statutory provisions
Foreign Exchange (Compounding Proceedings) Rules 2000

Rule	Particulars
Rule 4(3)	Every officer specified under sub-rule (1) of rule 4 of the Reserve Bank of India shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank of India.
Rule 4(4)	Every application for compounding any contravention under this rule shall be made in Form to the Reserve Bank of India.
Rule 5	Powers to DoE –If any person contravenes provisions of Section 3 (a) of FEMA…
Rule 6	Where any contravention is compounded before the adjudication of any contravention under section 16, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded. The Foreign Exchange (Compounding Proceedings) Rules, 2000

Statutory provisions
Foreign Exchange (Compounding Proceedings) Rules 2000

Rule	Particulars
Rule 7	Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16, such compounding shall be brought by the authority specified in rule 4 or rule 5 in writing, to the notice of the Adjudicating Authority and on such notice of the compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be discharged.
Rule 8	Procedure for compounding.— (1)The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. (2)The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible and not later than 180 days from the date of application. "Provided that with respect to any proceedings initiated under Rule 4, the Enforcement Directorate is of the view that the said proceedings relates to a serious contravention suspected of money laundering, terror financing or affecting the sovereignty and integrity of the nation, the Compounding Authority shall not proceed with the matter and shall remit the case to the appropriate Adjudicating Authority for adjudicating contravention under Section 13"

Statutory provisions
Foreign Exchange (Compounding Proceedings) Rules 2000

Rule	Particulars
Rule 9	Payment of amount compounded.—The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of rule 8, shall be paid by demand draft in favour of the Compounding Authority within fifteen days from the date of the order of compounding of such contravention.
Rule 10	In case a person fails to pay the sum compounded in accordance with rule 9 within the time specified in that rule, he shall be deemed to have never made an application for compounding of any contravention under these rules and the provisions of the Act for contravention shall apply to him.

Statutory provisions
Foreign Exchange (Compounding Proceedings) Rules 2000

Rule	Particulars
Rule 11	No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of the Act.
Rule 12	Contents of the order of the Compounding Authority.—(1) Every order shall specify the provisions of the Act or of the rules, directions, requisitions or orders made thereunder in respect of which contravention has taken place alongwith details of the alleged contravention. (2) Every such order shall be dated and signed by the Compounding Authority under her / his seal.
Rule 13	Copy of the order.—One copy of the order made under rule 8 (2) shall be supplied to the applicant and the Adjudicating Authority as the case may be.

Compounding Authority

- The Compounding Authority shall exercise the powers to compound any contravention subject to the direction, control & supervision of the Governor of Reserve Bank.

- Compounding Authority as defined under Rule 4 of Compounding Rules, means an Officer of the RBI not below the rank of AGM.

- The Compounding Authority becomes *functus officio* once he/she passes the compounding order and it is communicated to the applicant. In other words, once a compounding order is communicated to the applicant, even the **compounding authority cannot amend, rescind, or revoke the order.**

Compounding Authority

<u>Determination of Compounding Authority based on the quantum of contravention :</u>

- Assistant General Manager – ₹ 10 lakhs or below
- Deputy General Manager - more than ₹ 10 lakhs but less than ₹ 40 lakhs
- General Manager - ₹ 40 lakhs or more but less than ₹ 100 lakhs
- Chief General Manager - ₹ 100 lakhs or more.

Authority is determined based on the quantum of contravention. In case multiple contraventions are covered under a single compounding application, the Compounding Authority is decided based on the highest amount of contravention.

Compounding and Adjudication

- Where any contravention is compounded before the adjudication of any contravention under section 16, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.

- Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16, such compounding shall be brought by the authority specified in rule 4 or rule 5 in writing, to the notice of the Adjudicating Authority and on such notice of the compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be discharged.

- 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.

- No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of the Act.

Issues under Examination

3. **DoE & RBI – Overlapping of Powers**

An applicant for compounding is required to declare whether he / she / entity is under DoE investigation. If the applicant is under investigation, DoE is requested to offer its comments within 30 days so as to enable RBI to proceed with the compounding.

Issues - No provision exists under FEMA or Compounding Proceedings Rules, 2000 to return a compounding application with an advice to the applicant to obtain an 'NOC' from the DoE or on the grounds that DoE has not given their 'No Objection' for proceeding with the compounding.

Current Practice – If no response is received from DoE within 30 days from date of RBI letter, a reminder is sent to DoE requesting to furnish comments / no objection under proviso to rule 8 (2) of Compounding Proceedings Rules, 2000 and/ or Section 37A of FEMA 1999 within 7 days. If no response is received to the above reference, we may process the compounding application based on the merits of the case. However, if specific objection is raised by DoE pertaining to one or all of the conditions mentioned in proviso to rule 8 (2) of Compounding Proceedings Rules, 2000 and/ or Section 37A of FEMA 1999, compounding application is returned to the applicant and the case shall be remitted to the concerned adjudicating authority.

Compounding and Court decisions

Can a compounding application be returned if matter is under DoE investigation?

RBI is empowered to compound contraventions of all provisions of FEMA except Section 3(a) relating to money laundering . DoE cannot compel RBI to return an application on the ground that investigation / adjudication proceedings are pending before DoE.

- **Asrani Inns & Resorts Private Limited** -

  Contravention - related to availing ECB from shareholders for purchasing land and construction of hotel - loan not adhering to ECB guidelines under automatic route

- RBI returned application on the ground that the matter was under DoE investigation (action as advised by the DoE).

- **Writ Petition before HC of Bombay** – Court upheld the Petition. RBI was directed to process the compounding application and take a considered decision in accordance with the law. DoE directed not to pursue the adjudication proceedings for a specified period, to enable completion of compounding proceedings.

Compounding and Court decisions

Can the amount imposed under compounding order be reviewed?

A compounding order, once issued, is not open to appeal. The applicant has the option not to pay the amount imposed in the order and in case a person fails to pay the sum compounded within the prescribed time limit, he shall be deemed to have never made the application for compounding.

I. <u>JVL Agro Industries private Limited</u> –
<u>Contraventions under FEMA 120</u> – Delay in obtaining UIN, delay in submission of
APRs and delay in reporting issue of Corporate Guarantee.

- Aggrieved with the amount imposed, the applicant did not pay the penalty within the prescribed time period
- matter was referred to DoE for investigation
- Applicant's plea in the Writ Petition:

  i)contravention was not quantifiable

  and

  ii)proper reasons were not stated in the Order to conclude that the contraventions had been committed.
- The WP was rejected by the Court and the applicant was directed to abide by the terms of the Compounding Order.

Compounding and Court decisions

Can the amount imposed under compounding order be reviewed?

<u>Gati Limited</u> -

<u>Contraventions</u>: Company issued FCCBs for refinancing old FCCBs issued earlier. Company is engaged in the services sector and as per extant ECB guidelines, companies engaged in the services sector were not eligible for raising ECB under auto route.

- The company failed to pay the compounding penalty withi the prescribed time period.
- Matter was referred to DoE for investigation.
- The company filed a Writ Petition challenging the amount imposed in the compounding order.
- Court directed the applicant to deposit the full penalty amount with RBI, pending a final decision of the Court in the matter.

Compounding and Court decisions

Can penalty be accepted after 15 days of date of the Order?

Rule 9 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 provides that the amount imposed in the compounding order should be paid within 15 days of the date of the order, failing which it shall be deemed that the compounded application was never made.

- As an exception, however, in the matter of JVL Agro Industries Private Limited, the Court was of the view that as the petitioner had shown an unconditional willingness to comply with the compounding order, the ends of justice would be met if the Compounding Authority considered the request of the petitioner to pay the penalty even after the expiry of the prescribed period, subject to costs.

Compounding and Court decisions

Is it mandatory for RBI to compound?

- In the case of Brentfield Travels Company Private Limited, the High Court of Judicature at Bombay took a view that there is no absolute right to compounding. It is for the Competent Authority to decide whether a contravention is 'technical', 'material' or 'sensitive'. Where a contravention is of 'sensitive' nature and, prima facie, involves money laundering, national and security concerns involving serious infringements of the regulatory framework, RBI may recommend the matter to DoE for further investigation. This is a reasonable and bonafide exercise of power.

- However, time and again, the Courts have taken a view that where an application for compounding is submitted to RBI and the contravention does not fall under Section 3(a) of FEMA, 1999, then subject to all other administrative requirements being in place, RBI can compound the contravention, even where DoE investigation is simultaneously in progress.

Compounding and Court decisions

Is it mandatory for RBI to compound?

I. <u>Krishiraj Trading Limited and 3 others</u>

<u>Contravention under FEMA 120</u>-The company, along with three others, made joint investment in a JV abroad. However, prior to making remittance towards investment in equity shares of the JV, a corporate guarantee was issued by the applicant and other joint investors to secure a credit facility for the JV from an overseas branch of an Indian bank. The JV used the proceeds to invest in the Indian group companies.

- The company filed an application for compounding but later withdrew the application stating that no contravention existed.
- RBI referred the matter to DoE for investigation.
- The applicant again filed compounding application with RBI which were returned on the ground that the matter was under investigation of DoE.
- After the DoE passed an adjudication order imposing penalty, the applicant moved the Bombay High Court citing wrongful return of compounding application by RBI and seeking directions to RBI to compound their application.

Compounding and Court decisions

- The Court noted that the compounding application could not be filed only in case an appeal against an adjudication order has been filed. In this case therefore, there was no embargo on RBI from considering the compounding applications, subject to completion of administrative requirements.

- Accordingly, the RBI processed the compounding applications and passed the orders. The four applicants did not, however, pay the amount imposed. As no payment was received within 15 days, the matter was referred to DoE and the approvals granted subject to compounding were treated as withdrawn.

Compounding and Court decisions

II. <u>Brentfield Travels Company Private Limited</u> –

<u>Contravention</u> : Shares were issued by the company to two non-residents against which, inward remittance was directly received in the NRO account of resident investor and not in the account of the Company. The amount was not received through normal banking channels. The money was utilized for purchase of immovable property.

- Matter was referred to DoE for further investigation and compounding application was returned.

Compounding and Court decisions

- Aggrieved, the company filed a Writ Petition in the HC at Bombay.

- The Court accepted the plea that where a contravention is of ‘sensitive’ nature and, prima facie, involves money laundering, national and security concerns involving serious infringements of the regulatory framework, RBI may recommend the matter to DoE for further investigation. This is a reasonable and bonafide exercise of power.

Compounding and Court decisions

II. <u>NDTV Limited</u> –

<u>Background</u> : Foreign Exchange (Compounding Proceedings) Amendment Rules, 2017 notified on February 20, 2017

- Proviso to Rule 8(2): [Provided that with respect to any proceeding initiated under rule 4, if the Enforcement Directorate is of the view that the said proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, the Compounding Authority shall not proceed with the matter and shall remit the case to the appropriate Adjudicating Authority for adjudicating contravention under section 13.]

Compounding and Court decisions

- Procedure after the 2017 amendment
- In cases where the applicant declares to be under ED investigation/adjudication, a reference is made to ED requesting to convey their comments/objections within a period of thirty days as to:

i) whether the investigations relate to contraventions

ii) the present position of the investigation

iii) whether DOE has any objection,

iv) In case DOE has an objection to the compounding proceeding in this matter, whether the provisions contained in section 37A of FEMA 1999 or any of the three conditions specified in the proviso to Rule 8(2) of the Foreign Exchange (Compounding Proceedings) Amendment Rules, 2017 are attracted.

Compounding and Court decisions

- Wherein in response to a reference from the Reserve Bank an objection to compounding is raised by DoE clearly indicating the applicable legal provisions, the compounding application is returned

- Restrictions imposed on the compounding powers of the Reserve Bank under rule 4 are limited to only the specific grounds

- In the similar matter of New Delhi Television Limited Vs. Reserve Bank of India & others (Writ petition No. 2026 of 2017) the Bombay High Court in its judgement dated June 26, 2018 held that:

Contd..

Compounding and Court decisions

- *'if the Enforcement Directorate is of the view that the compounding proceedings relate to a serious contravention suspected of money laundering, the Enforcement Directorate would have to satisfy this court that there is some material available with it, based on which, it communicated to the RBI its view as in this case. That would ensure that the RBI is not unnecessarily and unjustifiably prevented from exercising its discretionary powers to compound a particular contravention inviting penalty under section 13 of the FEMA. They can be interdicted only when the Enforcement Directorate is of the view as above.' (Paragraph 88 of the judgment)*

Compounding and Court decisions

- *If the RBI is not allowed to proceed and exercise its statutory power, which is also is discretionary, only because the Enforcement Directorate has communicated a view in general and vague terms, then, as is rightly urged before the court, the Enforcement Directorate would on every occasion intervene and interfere with the RBI's powers and take it over. It would then be possible for the Enforcement Directorate to control the exercise of the power vesting in the RBI and this would totally defeat the object and purpose of the FEMA. Thus, on such a vague and general materials, as are contained in the original record, the court do not find that it should allow the Enforcement Directorate to interdict the compounding proceedings in the present case.' (Paragraph 105 of the judgment)*

Compounding and Court decisions

- In the absence of a specific response from DoE , there is no option but to proceed with the compounding process. However, the following clause is added in the Order:
- ‘*It has been declared in the application/undertaking dated ---furnished by the applicant’s authorized representative that the applicant was not under any enquiry/investigation/adjudication by any agency as on the date of the application and has, in this regard, not informed of initiation of any such enquiry/investigation/adjudication proceedings against it thereafter as required in terms of the said undertaking. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made/undertaking furnished and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations/undertakings are subsequently discovered to be false and/or incorrect.*’

Foreign Exchange (Compounding Proceedings) Rules, 2000			
Rule 4 (RBI)		Rule 5 (DoE)	
AGM	Upto Rs 10 lakhs	Deputy Director	Rs 5 lakhs or below
DGM	More than 10 lakhs Upto Rs 40 lakhs	Additional Director	Rs 5 lakhs more than rupees five lakhs but less than Rs 10 lakhs,
GM	More than 40 lakhs Upto Rs 100 lakhs	Special Director	Rs 10 lakhs but less than Rs 50 lakhs rupees
CGM	More than 100	Special Director with Deputy Legal Adviser	Rs 50 lakhs or more but less than Rs 100 lakhs
		Special Director	More than Rs 100 lakhs

Accounts Maintained By Non-Residents in India

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. USD 1 mio per year

- **Balances in accounts held by Non Residents are assets; hence they require regulation.**

- Two types of accounts are held by Non-Residents in India:
  1. INR Account
  2. FCY Account

- Regulated in terms of FEMA 5R dated April 1, 2016

Relevant Terminologies

- **Resident**: As defined under section 2(v) of FEMA
- **NRE**: Non-Resident External account (Schedule 1 of 5R)
- **FCNR (B)**: Foreign Currency Non-Resident (Bank) account (Schedule 2 of 5R)
- **NRO**:NRO account means a Non-Resident Ordinary account (Schedule 3 of 5R)
- **SNRR**: Special Non-Resident Rupee Account (Schedule 4 of 5R)
- **Escrow Account**: Schedule 5 of 5R
- **Permissible Currency**: a foreign currency which is freely convertible
- **PIO**: Person of India Origin

Non-Resident External Rupee Account (NRE)

- **By NRIs and OCI/PIOs only**

- To park overseas savings remitted to India
- Savings, current, recurring or fixed deposit account, etc
- Should be re-designated as resident accounts or funds should be transferred to RFC account immediately upon the return of the account holder to India
- Repatriation is allowed to the non-resident nominee of the deceased account holder
- Special series of cheques are issued
- Overdrawings upto a limit of INR 50,000 are allowed
- Income from 'interest' is exempted from Income Tax

Foreign Currency Non-Resident (B) Account (FCNR)

By NRIs and OCI/PIOs only

- To Park overseas savings without converting into INR in Designated Currencies as determined by RBI from time to time – Any Convertible Currency

(US, CAD,JPY,EURO, AED etc)

- **Only in the form of Term Deposits**
- Permissible debits/credits and terms and conditions for loans/overdrafts/joint account/repatriation of balances are same as those for NRE accounts
- When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity. On maturity, the deposits should be converted into resident rupee deposit account or RFC account.

Non-Resident Ordinary Account (NRO)

By NRIs and OCI/PIOs or any person Resident outside India

Individuals/Entities of Pakistan nationality/ ownership requires approval of RBI.

Entities of Bangladesh ownership requires approval of Reserve Bank

individual/s of Bangladesh nationality – FRRO/FRO Registration- Bank's AML/KYC Policy

- By any person resident outside India for bonafide transactions in rupees
- **Current/savings/recurring or fixed deposit accounts**
- Balances in NRO accounts are not eligible for remittance outside India without the general or specific approval of Reserve Bank. Funds received by way of remittances from outside India in foreign exchange which have not lost their identity as remittable funds will only be considered by Reserve Bank for remittance outside India

Non-Resident Ordinary Account (NRO)

- NRO accounts may be designated as resident rupee accounts on the return of the

  account holder to India
- An NRI or a PIO may remit through an authorised dealer an amount, not exceeding USD 1 million per financial year, out of the balances held in the NRO accounts (In t/o FEMA 13R)

Exemptions

- INR accounts of foreign diplomats/diplomatic personnel/ family members
- Deposits by diplomatic missions/diplomatic personnel in special rupee accounts
- Deposits in FCY accounts by diplomatic missions/ diplomatic personnel/non-diplomatic staff
- Deposits in rupee accounts by persons resident in Nepal and Bhutan.
- Deposits of any multilateral organization/subsidiary/ affiliate bodies/their officials in India of which India is a member nation.

Basis of Difference	NRE	NRO	FCNR
Eligible Persons	NRI/OCI	NRI/OCI or any person resident outside India- Exceptions Pakistan /Bangladesh	NRI/OCI
Purpose	NRE account is for depositing income earned outside India in India.	NRO Account is for depositing income that one earns in India.	FCNR account is for depositing earnings in foreign currency in an Indian account.
Deposit Currency	Foreign Currency	Indian Rupee	Any convertible Currency
Withdrawal Currency	Indian Rupee	Indian Rupee	Foreign Currency
Taxation in India	Not taxable in India	Taxable	Not taxable in India
Exchange Rate Risk	NRE account has foreign exchange risk due to currency fluctuations	No foreign exchange risk	No foreign exchange risk
Repairability	The deposits and the interest earned on them are fully repatriable.	Deposits made in this account are repatriable to the NRI's country of residence with certain limits.	The deposits and the interest earned on them are fully repatriable.
Joint Account with NRI	Permitted	Allowed	Permitted
Joint Account with Indian Resident	Not Permitted	Permitted	Not Permitted
Types of Accounts	Current Account, Savings Account, Recurring and Fixed Deposits	Current Account, Savings Account, Recurring and Fixed Deposits	Term deposits only
Loan against deposit	The loan is given in	Available in Indian	Available in foreign

FEMA in Changed Situations
Recent Changes

Finance Act, 2015

Finance Act, 2016

Finance Act, 2017

International Financial Services Centre Authority Act, 2019

FEMA in Changed Situations
Recent Changes Finance Act, 2015

The Finance Act of 2015 had proposed certain amendments to the ***FEMA*** under Capital Account Transactions.

- Notified on 15-10-2019 by inserting Section 2A.
- **Capital Account Transactions Classified as Debt Instruments and Non-Debt Instruments.**
- Non-Debt Instruments – Central Government has power to make Rules in consultation with RBI.
- ***Debt Instruments:*** *Dated Government Securities / Treasury Bills, Non-Convertible Debentures / Bonds, Commercial Papers by Indian Companies,* Listed non-convertible/ redeemable preference shares or debentures
- ***Non-Debt Instruments:*** *All investments in Equity Investments: Public , Private, Listed and Unlisted Capital participation in LLP, All Instruments recognized as FDI as per FDI Policy,* acquisition, sale or dealing directly in immovable property
- **Foreign Exchange Management (Non-debt Instruments) Rules, 2019**: Foreign Investment in India and Acquisition of Immovable Property in India dated 17-10-2019
- Foreign Exchange Management (Non-debt Instruments - Overseas Investment) Rules, 2021. (Not yet Notified by GoI / RBI)

Debt Instruments: ***Section 6(7)*** to FEMA read as under- *For the purposes of this section,, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.*

FEMA in Changed Situations
Recent Changes, 2015

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

- It has the provisions to deal with the problem of the Black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.

- The person has disclosed his/her undisclosed income and due compliance with Section 59 the Black Money Act, the person can apply for regularization such assets to RBI. RBI has notified FEMA 348 dated 25-09-2015 and AP DIR 18 dated 30-09-2015 subject to taxes and penalties under the provisions of Black Money Act have been paid.

- **37A. Special provisions relating to assets held outside India in contravention of section 4.—**(*1*) Upon receipt of any information or otherwise, if the **Authorised Officer** prescribed by the Central Government has reason to believe that
- any foreign exchange, foreign security, or
- any immovable property, situated outside India,
- is suspected to have been held in contravention of section 4,

he may after recording the reasons in writing, by an order, **seize value equivalent, situated within India**, **of suchforeign exchange, foreign security or immovable property**

- **Nothing contained in section 15 shall apply to this section**

FEMA in Changed Situations
Recent Changes Finance Act, 2016

It is an insertion to Section14 of FEMA, Enforcement of Orders of Adjudicating Authority:

- 14A. (1) Save as otherwise provided in this Act, the Adjudicating Authority may, by order in writing, authorise an officer of Enforcement not below the rank of Assistant Director to recover any arrears of penalty from any person who fails to make full payment of penalty imposed on him under section 13 within the period of ninety days from the date on which the notice for payment of such penalty is served on him.

IFSCA – FEMA Sec 44A

- After the International Financial Services Centres Authority Act, 2019 the new Sub-section was introduced:
- **44A. Powers of Reserve Bank not to apply to International Financial Services Centre**.— Notwithstanding anything contained in any other law for the time being in force, the powers exercisable by the Reserve Bank under this Act,—
- (*a*) shall not extend to an International Financial Services Centre set up under sub-section (1) of section 18 of the Special Economic Zones Act, 2005 (28 of 2005);
- (*b*) shall be exercisable by the International Financial Services Centres Authority established under sub-section (1) of section 4 of the International Financial Services Centres Authority Act, 2019, in so far as regulation of financial products, financial services and financial institutions that are permitted in the International Financial Services Centres are concerned.]

FEMA in Changed Situations
Recent Changes

Press Release by Ministry of Finance dated 05-09-2016

Special Investigation Team (SIT) on Black Money asks RBI to develop institutional mechanism to track illicit financial flows out of country in light of identified gaps in the regulatory framework

- Foreign Exchange Transactions Electronic Reporting System (FET–ERS) to Capture PAN for all transactions.
- Export Outstanding Data
- Monitoring of Advance Remittances against Imports
- RBI has introduced EDPMS , IDPMS, FIRMS
- International Trade Settlement in INR through Spl VOSTRO account.

FEMA in Changed Situations
Recent Changes

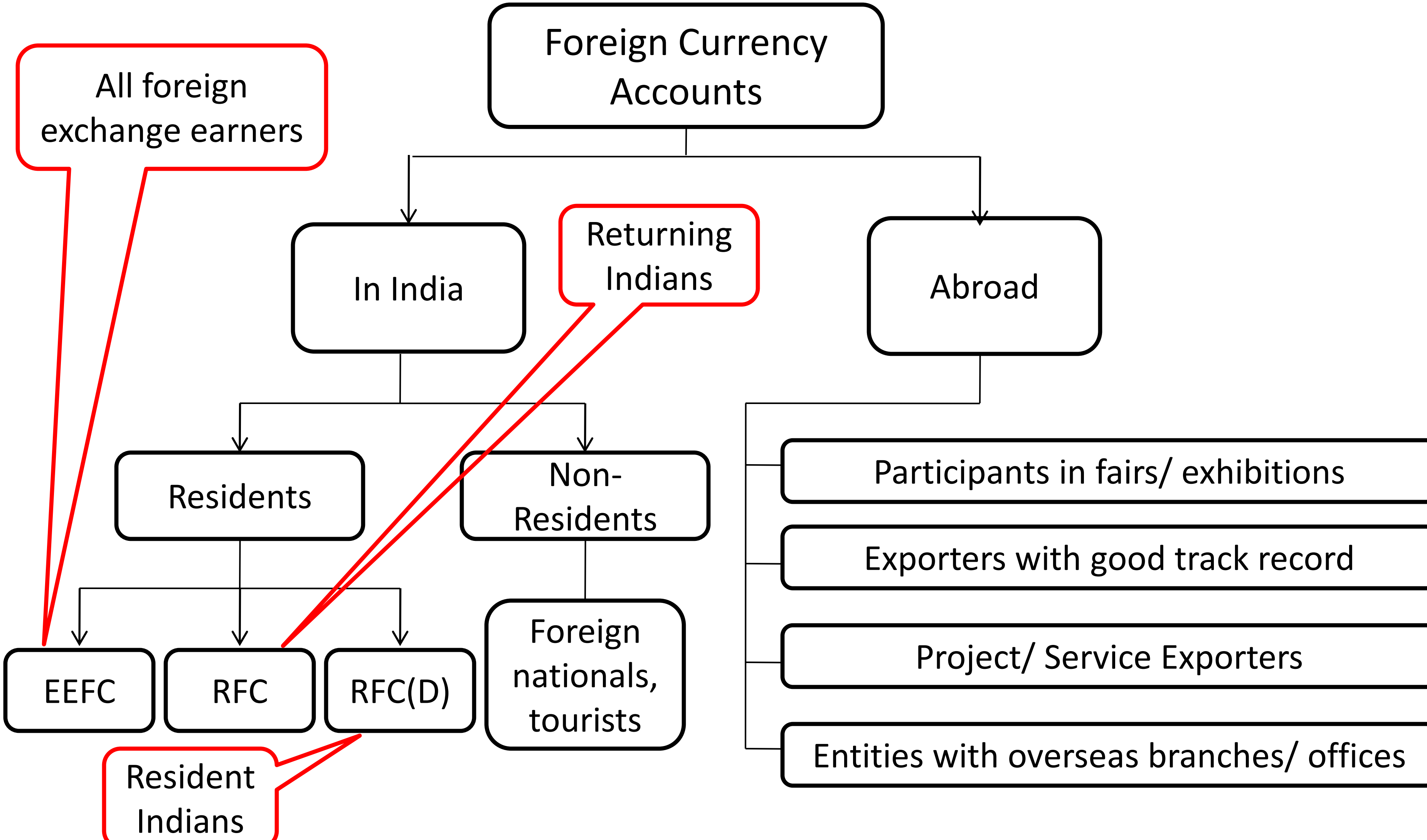
- "FDI" or "Foreign Direct Investment" means investment through equity instruments by a person resident outside India in an unlisted Indian company; or in ten per cent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

- Foreign Investments – Boarder Countries Press Note 3 of 2020 dated 17-04-2020.
- an entity of a country, which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval.

- In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction or purview of the above provisos, such subsequent change in beneficial ownership shall also require government approval.

Is FEMA Relevant Now.

Foreign Currency Accounts - A Schematic Representation



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

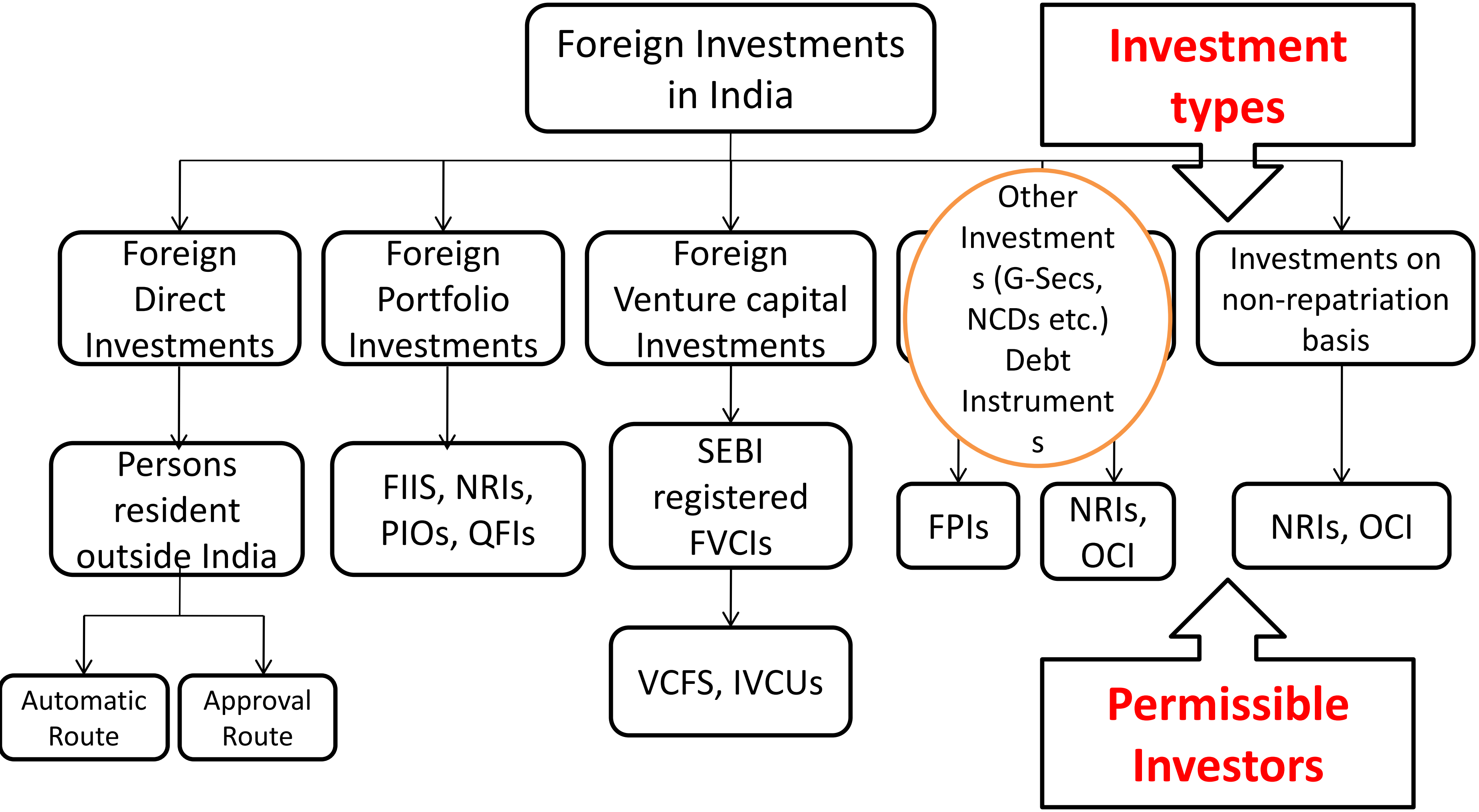
Commercial loans from abroad (bank loans, trade credit, securitized instruments (e.g. bonds, preference shares, FCCB etc.) - quantitative, cost and end-use and tenor restrictions

- 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)

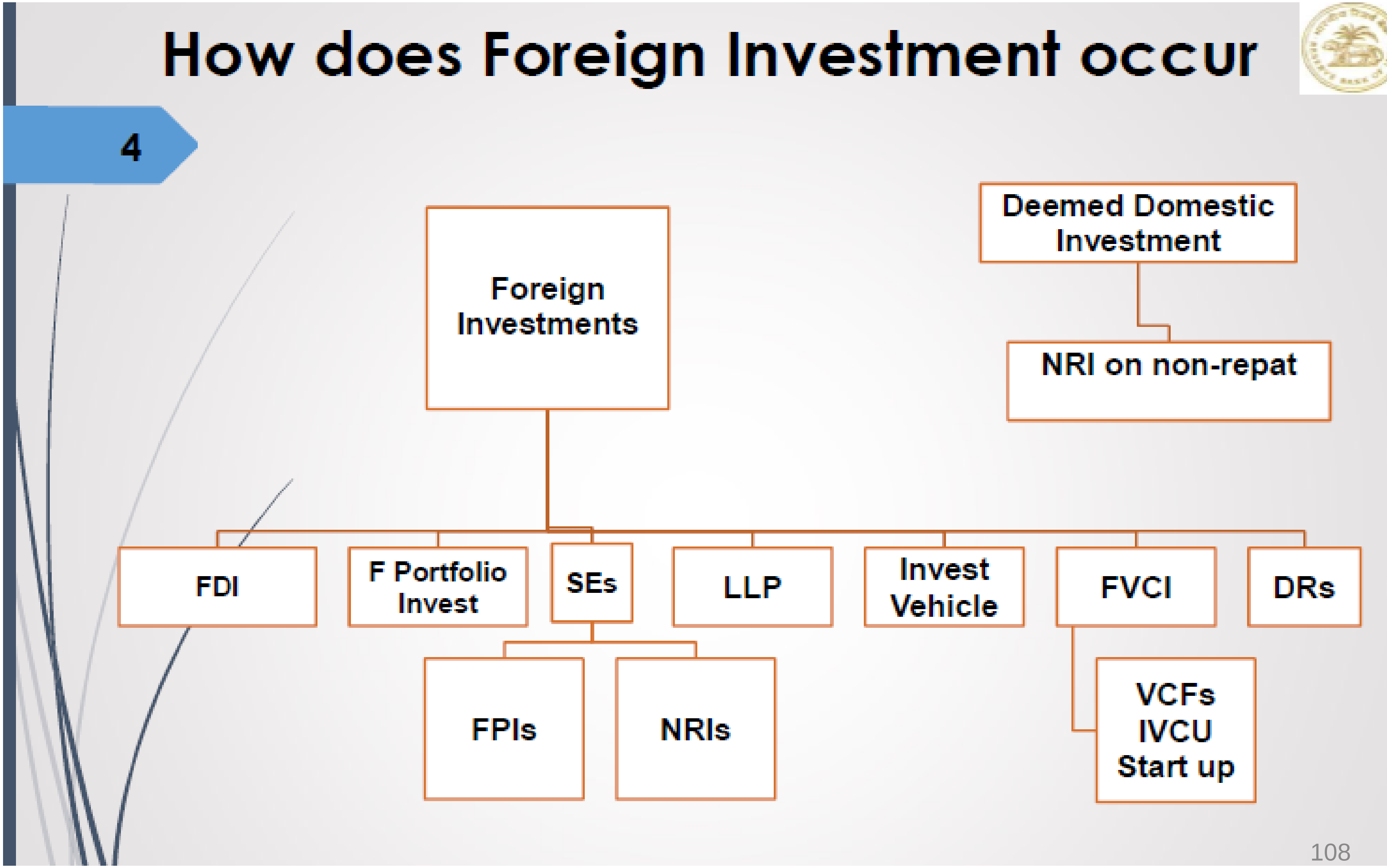
Overseas Direct Investments

- Overseas Investment and Portfolio investments
  - Automatic Route
    - 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 or upto USD 1 bn
  - 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

Preference hierarchy of Capital Account Transactions

- ❖ Nature of flows
- ❖ **Equity** over **Debt**
- ❖ **FDI** over **Portfolio**
- ❖ **Debt** for Capital Formation
- ❖ **Rupee Denominated Debt** over **Forex Denominated Debt**
- ❖ **Long Term** over **Short Term**
- ❖ **Sequencing**
- ❖ **Real sector including infrastructure**
- ❖ **Financial Sector**
- ❖ **Individuals**

FEM CAT Rules

Schedule - I	
[18][Transactions which are Prohibited	
1.	**Remittance out of lottery winnings,**
2.	**Remittance of income from racing / riding etc. or any other hobby,**
3.	**Remittance for purchase of lottery tickets, banned / proscribed magazines, football pools, sweepstakes etc.,**
4.	Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies,
5.	Remittance of dividend by any company to which the requirement of dividend balancing is applicable,
[11][6.	Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.]
7.	**Payment related to "Call Back Services" of telephones,**
8.	Remittance of interest income on funds held in Non Resident Special Rupee Account Scheme.

FEM CAT Rules – Sch II Requires Govt Approval

Schedule - II

[19][Transactions which require prior approval of the Central Government
(See Rule 4)]

Purpose of Remittance		Ministry / Department of Govt. of India whose approval is required
1.	Cultural Tours	Ministry of Human Resources Development, (Department of Education and Culture)
[4][2.	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 Public Sector Undertakings.	Ministry of Finance, Department of Economic Affairs.]
3.	Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport, (Chartering Wing)
4.	Payment of import [15][through ocean transport] by a Govt. Department or a PSU on c.i.f. basis (i.e. other than f.o.b. and f.a.s. basis)	Ministry of surface Transport, (Chartering Wing)
5.	Multi-modal transport Operators making remittance to their agents abroad.	Registration Certificate from the Director General of Shipping

FEM CAT Rules – Sch II Requires Govt Approval

[16][6.	Remittance of hiring charges of transponders		
	(a)	TV Channels	Ministry of Information and Broadcasting
	(b)	Internet service providers	Ministry of Communication and Information Technology"]
7.	Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping		Ministry of Surface transport (Director General of Shipping)
[25][8.	****]		
9.	Remittance of prize money / sponsorship of sports activity abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds US$ 100,000		Ministry of Human resources Development (Department of Youth Affairs and Sports)
[17][10.	****]		
11.	Remittance for membership of P & I Club.		Ministry of Finance (Insurance Division)

FEM CAT Rules Schedule-III –
Prior Approval beyond USD 250,000

Facilities for individuals-		
1.	Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.	
	(i)	Private visits to any country (except Nepal and Bhutan)
	(ii)	Gift or donation.
	(iii)	Going abroad for employment
	(iv)	Emigration
	(v)	Maintenance of close relatives abroad
	(vi)	Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment / check-up.
	(vii)	Expenses in connection with medical treatment abroad
	(viii)	Studies abroad
	(ix)	Any other current account transaction

FEM CAT Rules Schedule-III – other than Individual

The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India.

(i)	Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for-	
	(a)	creation of Chairs in reputed educational institutes,
	(b)	contribution to funds (not being an investment fund) promoted by educational institutes; and
	(c)	contribution to a technical institution or body or association in the field of activity of the donor Company.
(ii)	Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.	
(iii)	Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.	
	Explanation :-For the purposes of this sub-paragraph, the expression "infrastructure' shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000.	
(iv)	Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses."	

Liberalized Remittance Scheme (LRS)

The Scheme is only for resident individuals, minors, consolidated family members.

Amount: USD 250,000 per FY

Purpose: For any **permitted current or capital account transaction or a combination of both.**

The Scheme NOT available: Corporates, partnership firms, HUF, Trusts, etc.

Date	Feb 4, 2004	Dec 20, 2006	May 8, 2007	Sep 26, 2007	Aug 14, 2013	Jun 3, 2014	May 26, 2015
LRS limit (USD)	25,000	50,000	1,00,000	2,00,000	75,000	1,25,000	2,50,000

Liberalized Remittance Scheme (LRS)

Prohibited Transactions:

- Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty.
- Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.
- Remittance for trading in foreign exchange abroad.
- Capital account remittances, directly or indirectly, to countries identified by the Financial Action Task Force (FATF) as “non- cooperative countries and territories”, from time to time.
- Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

Liberalized Remittance Scheme (LRS)

Permitted Current Account Transactions

Individuals: Limit USD 250,000

- **Private visits to any country (except Nepal and Bhutan)**
- **Gift or donation, Going abroad for employment**
- **Emigration, Maintenance of close relatives abroad**
- **Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up, Expenses in connection with medical treatment abroad.**
- **Studies abroad.**
- **Any other current account transaction which is not covered under the definition of current account in FEMA 1999**.

Liberalized Remittance Scheme (LRS)

Permitted Capital Account Transactions

Individuals: Limit USD 250,000.

(i) opening of foreign currency account abroad with a bank;

(ii) purchase of property abroad;

(iii) making investments abroad- acquisition and holding shares of both listed and unlisted overseas company or debt instruments; acquisition of ESOPs (the Scheme is in addition to acquisition of ESOPs linked to ADR / GDR and acquisition of qualification shares); investment in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes;

(iv) setting up WOS / JV **(with effect from August 05, 2013)** outside India for bonafide business subject to the terms & conditions stipulated in Notification No FEMA.263/ RB-2013 dated March 5, 2013;

(v) extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 1956.

Liberalized Remittance Scheme (LRS)

Purpose	Amount in USD in Financial Year.
Private visits , Gift/donation Going abroad on employment , Emigration , Maintenance of close relatives abroad , Business trip	250,000 Over the amount requires prior approval of Reserve Bank of India.
Medical Treatment.	2,50,000 or its equivalent per FY without insisting on any estimate from a hospital/doctor . Above 250,000: General permission based on the estimate from the doctor in India or hospital/ doctor abroad. A person who has fallen sick after proceeding abroad may also be released foreign exchange by an AD (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India.

Liberalized Remittance Scheme (LRS)

Purpose	Amount in USD in Financial Year.
students for pursuing their studies abroad	USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University. Beyond USD 2,50,000: General permission to allow remittances (without seeking prior approval of the Reserve Bank of India) based on the estimate received from the institution abroad.
Purchasing objects of art	Subject to Foreign Trade Policy

Liberalized Remittance Scheme (LRS)

Private Visit: DD in the resident individual's own name or in the name of beneficiary.

Foreign Currency Account Abroad: With a bank outside India. **Transactions** connected with or arising from remittances eligible under this Scheme only.

Foreign Currency Account in India: NO.

Fund based non Fund based Facility: Only to facilitate current account remittances under the Scheme.

Banks should not extend any kind of credit facilities to resident individuals to facilitate capital account remittances under the Scheme.

Liberalized Remittance Scheme (LRS)

Facility to grant loan in rupees to NRI/ PIO close relative under the Scheme:

The loan is free of interest and the minimum maturity of the loan is one year.

The loan amount should be within the overall limit under the LRS – USD 250,000. It is individuals responsibility to ensure that he / she has not exceeded the limits.

The loan shall be utilized for meeting the borrower's personal requirements or for his **own business purposes in India.**

The loan should not utilized for business of chit fund, Nidhi company,

Agricultural or plantation activities or in real estate business, or construction of farm houses, or Trading in Transferable Development Rights (TDRs).

Liberalized Remittance Scheme (LRS)

Facility to grant loan in rupees to NRI/ PIO close relative under the Scheme:

The loan amount should be credited to the NRO a/c of the NRI / PIO.

The loan amount shall not be remitted outside India

Repayment: Inward Remittance, Debit to NRE a/c , FCNR, NRO, Sale proceeds of Immovable property, sale proceeds of equity shares held by NRI / PIO.

Gift to Close Relative: Credit to NRO of NRI/PIO. It would be the responsibility of the resident donor to ensure that the gift amount is within the LRS limit and all the remittances made by the donor during the financial year including the gift amount have not exceeded the limit prescribed under the LRS.

Liberalized Remittance Scheme (LRS)

Clarification on remittance by sole proprietor under LRS.

In a sole proprietorship business, there is no legal distinction between the individual / owner and as such the owner of the business can remit USD up to the permissible limit under LRS. If a sole proprietorship firm intends to remit the money under LRS by debiting its current account then the eligibility of the proprietor in his individual capacity has to be reckoned. Hence, if an individual in his own capacity remits USD 250,000 in a financial year under LRS, he cannot remit another USD 250,000 in the capacity of owner of the sole proprietorship business as there is no legal distinction.

Liberalized Remittance Scheme (LRS)

Will the expenses incurred by an LLP to sponsor the education expense of its partners who are pursuing higher studies for the benefit of the LLP will be outside the LRS limit of such individuals (partners)?

LLP is a body corporate and has a legal entity separate from its partners. Therefore, if the LLP incurs/sponsors the education expense of its partners who are pursuing higher studies for the benefit of the LLP, then the same shall be outside the LRS limit of the individual partners and would instead be deemed as residual current account transaction undertaken by the LLP without any limits.

Liberalized Remittance Scheme (LRS)

The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittances for capital account transactions.

Due diligence of the account.

Bank statement for the previous year. Not available latest Tax Assessment Order Return.

The AD should ensure that the payment is received out of funds belonging to **the person seeking to make the remittances**, by normal baking channels, Debit Cards, Credit Cards etc.

The AD should certify that the remittance is not being made directly or indirectly by /or to ineligible entities and that the remittances are made in accordance with the instructions contained herein.

FORM A2

(To be completed by the applicant)

AD Code No.______________________________________

Form No.______________________________________

(To be filled in by the Authorised Dealer)

(For payments other than imports and remittances covering intermediary trade)

Currency________ Amount _____Equivalent to Rs. ______

(To be completed by the Authorised Dealer)

Application for Remittance Abroad

I/We ____

(Name of applicant remitter)

PAN No. ____

(For remittances exceeding USD 25,000 and for all capital account transactions)

Address____

authorize

____

(Name of AD branch)

To debit my Savings Bank/ Current/ RFC/ EEFC A/c. No. ______________________

together with their charges and

* a) Issue a draft : Beneficiary's Name ______________________________

Address ______________________________

* b) Effect the foreign exchange remittance directly –

1) Beneficiary's Name ______________________________
2) Name and address of the bank ______________________________
3) Account No. ______________________________

* c) Issue travelers cheques for ______________________________

* d) Issue foreign currency notes for ______________________________

Amount (specify currency) ______________________________

* *(Strike out whichever is not applicable) for the purpose/s indicated below*

Sr. No.	Whether under LRS (Yes/No)	Purpose Code	Description
		As per the Annex	

(Remitter should put a tick (√) against an appropriate purpose code. In case of doubt/ difficulty, the AD bank should be consulted).

[6] Inserted vide AP (Dir) series Circular 50 dated February 11, 2016. Prior to insertion it read as Annex 1, which has sin been replaced with effect from the same date.

Declaration
(Under FEMA 1999)

1. *# I, ...(Name), hereby declare that the total amount of foreign exchange purchased from or remitted through, all sources in India during the financial year* including this application *is within the overall limit of the Liberalised Remittance Scheme prescribed by the Reserve Bank of India and certify that the source of funds for making the said remittance belongs to me and the foreign exchange will not be used for prohibited purposes.*

Details of the remittances made/transactions effected under the Liberalised Remittance Scheme in the current financial year (April- March) *.........*

Sl. No	***Date***	***Amount***	***Name and address of AD branch/FFMC through which the transaction has been effected***

2. *# The total amount of foreign exchange purchased from or remitted through, all sources in India during this calendar year including this application is within USD ______________________________ (USD ________________) the annual limit prescribed by Reserve Bank of India for the said purpose.*

3. *# Foreign exchange purchased from you is for the purpose indicated above.*

 # (Strike out whichever is not applicable)

Signature of the applicant

(Name)
Date:

Certificate by the Authorised Dealer

This is to certify that the remittance is not being made by/ to ineligible entities and that the remittance is in conformity with the instructions issued by the Reserve Bank from time to time under the Scheme.

Name and designation of the authorised official:
Stamp and seal

Signature:

Date:

Place:

LRS Data

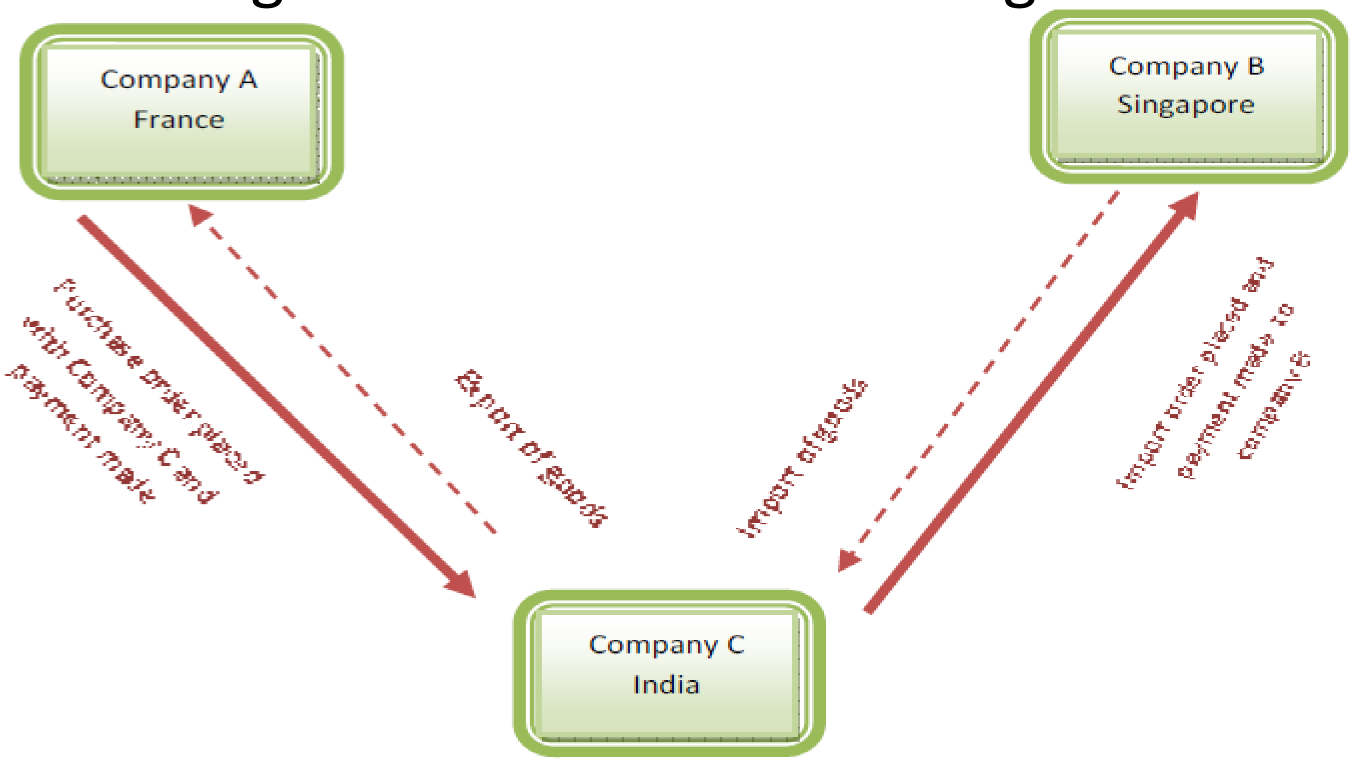
No. 35: Outward Remittances under the Liberalised Remittance Scheme (LRS) for Resident Individuals

(US$ Million)

Item	2021-22	2021	2022		
		Sep.	Jul.	Aug.	Sep.
	1	2	3	4	5
1 Outward Remittances under the LRS	**19610.77**	**1970.01**	**1982.44**	**2667.81**	**2671.40**
1.1 Deposit	830.05	60.09	79.96	72.02	79.30
1.2 Purchase of immovable property	112.90	9.36	11.65	12.24	14.64
1.3 Investment in equity/debt	746.57	73.55	59.71	53.53	76.54
1.4 Gift	2336.29	210.23	216.33	221.31	243.73
1.5 Donations	16.55	0.85	1.18	1.57	0.98
1.6 Travel	6909.04	580.35	1015.27	1469.73	1402.67
1.7 Maintenance of close relatives	3302.37	295.25	292.72	330.70	366.47
1.8 Medical Treatment	37.79	3.32	4.29	4.95	4.67
1.9 Studies Abroad	5165.33	718.32	276.03	467.52	424.95
1.10 Others	153.88	18.71	25.30	34.25	57.46

Merchanting Trade - Introduction

In common parlance, international trade denotes import by a buyer in one Country from a seller in another country and re-sale in his own country or export to a buyer in a third country, involving movement of goods as shown in the diagram below :



Merchanting Trade - Introduction

In the case of **Merchanting Trade**, the import leg and export leg of the transaction are completed **without the goods actually entering the borders of the importer's country.**

Upon instructions of the importer, the seller delivers the goods directly to the ultimate buyer **either in his own country or a third country** as depicted in the diagram below :

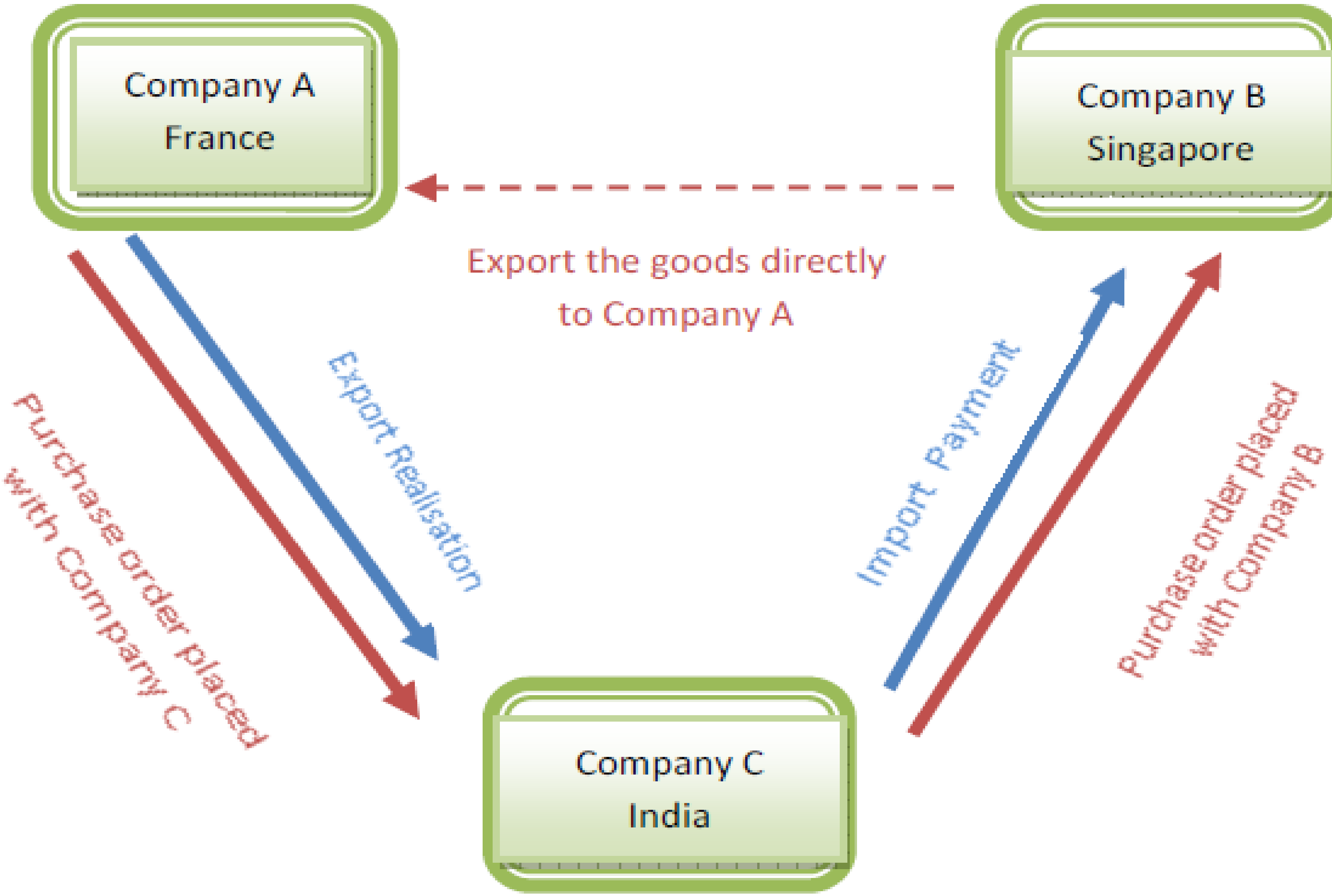
Merchanting Trade - Introduction

Company A of France places an order on Company C in India for supply of certain spares and makes payment for the same. Company C, which trades in such spares, then places a purchase order with Company B of Singapore and pays for it. **This is the merchanting import leg of the transaction.**

It also requires Company B of Singapore to directly export the goods to Company A in France.

Here one can note that **the goods ordered with Indian company will not enter the boundary of India** but will be directly exported to Company A by Company B on behalf of the Indian Company C. **This is the merchanting export leg of the transaction.**

Merchanting Trade - Introduction



MTT – RBI Guidelines

AP DIR No. 9 dated 24.08.2000 (Instructions taken from ECM)

AP DIR No.4 dated 19.07.2003 (Short Term Credit i.ie., Buyer's Credit / Suppliers Credit NOT available) – New Guidelines Now Available

Import liablity should be exinguished without any delay. MTT should be completed within 6 months. - Changed to 9 months

AP DIR No. **106 dated 19.06.2003 (**transactions do not involve foreign exchange outlay for a period exceeding three months) : **Now Four Months**

AP DIR No.115 dated 28-03-2015 ; AP DIR No. 20 dated 23-01-2020

MD -Imports of Goods and Services.

Notification No. FEMA 8 on Guarantees

Foreign Trade Policy 2015-2020.

Merchanting Trade

Technical Committee on Services / Facilities to Exporters (Chairman: Shri G. Padmanabhan) to further liberalise and simplify the procedure.

Suggestions received from merchanting traders and trade bodies, the guidelines on merchanting trade transactions have been further reviewed.

The merchanting traders have to be genuine traders of goods and not mere financial intermediaries.

Confirmed orders have to be received by them from the overseas buyers. AD banks should satisfy themselves about the capabilities of the merchanting trader to perform the obligations under the order. **The overall merchanting trade should result in reasonable profits to the merchanting trader.**

Merchanting Trade Transactions Policy

1. Goods acquired shall not enter Domestic Tariff Area

- Goods should NOT undergo any transformation.

Exception: **Some cases, for processing/value-addition may undergo – AD Satisfaction/DE required.**

2. Goods permitted for exports / imports under the prevailing FTP , as on the date of shipment and all **the rules, regulations and directions applicable to exports (except EDF) and imports (except BoE) shall be complied with.**

3. The merchanting traders shall be genuine traders of goods and not mere financial intermediaries.

Confirmed orders must be received by them from the overseas buyers.

4. The merchanting trade shall result in profit which shall be determined by subtracting import payments and related expenses from export proceeds for the specific MTT

MTT – Operational Guidelines

1. Both legs of the transaction should be routed through the same AD bank. (Questions)

2. The entire MTT shall be completed within an overall period of nine months and there should not be any outlay of foreign exchange beyond four months. (Questions)

3. The commencement of MTT:

(a) Commencement -Date of shipment / export leg receipt or import leg payment, whichever is first.

(b) The completion - Date would be the date of shipment / export leg receipt or import leg payment, whichever is the last .

4. Short-term credit either by way of suppliers' credit or buyers' credit may be extended for MTT to the extent not backed by advance remittance for the export leg, including the discounting of export leg LC by the AD bank, as in the case of import transactions.

[We have one MTT fraud case-investigation]

5. Letter of Undertaking (LoU)/ Letter of Comfort (LoC) shall not be issued for supplier's/ buyer's credit. [Policy]

Merchanting Trade – Operational Guidelines

6. Advance Payment against Import Leg:

(a) USD 500,000 Advance payment for the import leg may be allowed on demand made by the overseas seller. In case Export Leg remittance is not received before outward remittance.

(b) Beyond USD 500,000 **per transaction:**

(i) BG or an unconditional, irrevocable SBLC from an international bank of repute.

(ii) Overall prudential limits on allowing such advance payments by a customer may be fixed by the AD bank.

(iii) Overall prudential limits on allowing such advance payments by a customer may be fixed by the AD bank – Limit generally not more than-Export Leg

MTT – Operational Guidelines

Letter of Credit:

LC to the supplier for the import leg is permitted against confirmed export order,

Tenor: **Foreign Exchange outlay four months should be adhered. Over all Nine Months should be adhered to.**

Additional: LC/Guarantee should be in line with Guarantees and Co-acceptances and FEMA 8 on Guarantees.

Third Party Payments: **Third party payments for export and import legs of the MTT are not allowed.**

[Difference between Third Party Payments and Third Country – Case Study]

One-to-One Matching: Each MTT should be treated independent transaction. – Discuss. Different ADs

MTT – Operational Guidelines

Default: Default in MTT should be reported to RBI on HY basis – June / December

All defaults should be regularized with the approval of RBI.

Caution Listing: Merchant traders with outstanding of 5% or more of their annual export earnings shall be liable for caution listing.

Who will do Caution Listing?

Single AD parameter is applicable or total MTT of all ADs?

What is the process? Reg 16 of FEMA 23 R will apply?

If MTT Caution Listed whether he could do Imports and Exports.?

MTT Caution Listed is equivalent to Exporter Caution Listed under Exports ?

MTT – Operational Guidelines

Write Off:

(i) unrealized amount of export leg, without any ceiling (??) [in normal exports ceiling defined]

(ii) MTT buyer is insolvent/goods damaged/ auctioned etc – DE required.

(iii) AML/KYC guidelines – **Transactions should not be under Investigations under FEMA**.

Agency commission is not allowed in MTTs:

Exceptional cases may be allowed:

(i) Request from MTT

(ii) MTT should be completed.

(iii) If payment is allowed MTT should not be in LOSS.

Regularization: If any deviations AD to approach RBI.

MTT should be closed after regularization.

What about Payments / Receipts under Import Leg / Export Leg?

High Sea Sales

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RESERVE BANK OF INDIA
srdesai1960@gmail.com
srdesai0306@outlook.com
Tel No. 7032751594

High Sea Sale

Imports could be

(a) Direct imports

(b) Imports through agent

(c) import by transfer of documents.

High Sea Sale

Sale in the course of import -

Many importers, acting as agents, import goods and the documents are transferred to ultimate buyer. Such buyer usually clears goods from Customs. This is ‘sale in the course of import” if the documents are transferred (i.e. endorsed in favor of buyer) before goods are cleared from customs.

In other words goods are sold when they are stored in customs bonded warehouse, before clearance from warehouse.

It has been held that goods continue to be in customs barrier when they are in customs bonded warehouse.

Import would be completed only when goods cross customs barrier and not when they land in India or enter territorial waters.

High Sea Sale

KNOW ABOUT HIGH SEA SALES:-

High Sea sales (HSS) is a sale carried out by the carrier document consignee to another buyer **while the goods are yet on high seas**

or

after their dispatch from the port/ airport of origin and before their arrival at the port / airport of destination.

High Sea Sale

'A', an overseas seller supplies goods to 'B' an Indian buyer. Once after completion of necessary export procedures, A submits all necessary documents to his bank at seller's place.

'B', enters in to an agreement of sale with Resident C under high sea sale, **once after movement of goods from the territorial border of overseas exporter/seller but before arrival of goods at the territorial border of India.**

B accepts documents from his bank, B remits invoice value of goods to A as per terms and conditions.

The Bill of Lading (or airway bill) is endorsed by B and transfers the title of goods in favor of C.

High Sea Sale

B prepares invoice to C in local currency (INR). B delivers endorsed original Bill of lading (or airway bill), his invoice in local currency along with import invoice, packing list, certificate of origin, insurance certificate and other necessary documents if any for import clearance duly endorsed. A retains a copy of all documents which he delivers to C.

C files Bill of entry along with other import documents delivered by A with customs authorities. C pays necessary import customs clearance charges with import duty if any or

B can also under take customs clearance and delivery to C, if B does not want to know the actual contract price of A and B. In this case, B is filing documents on behalf of C to hide the selling price between A and B.

Once after completion of import customs clearance procedures, C delivers a copy of bill of entry to B. **B files the said bill of entry and other copies of import documents and high sea sale documents with his bank.**

High Sea Sale Major Documents required for import clearance under high sea sale.

1. High Sea Sale Agreement:

A High Sea Sale Agreement entered between high sea buyer and high sea seller before arriving cargo at territorial jurisdiction of importing country. Means, the high sea sale agreement must be dated before arrival of goods at a territorial border of an importing country.

2. **Sale Invoice/ Commercial Invoice.**

Commercial invoice / Sale invoice is another document required for import customs clearance procedures under High Sea Sale business. **Such commercial invoice under high sea sale must be in local currency of importing country, and not in foreign currency.** The details of goods sold with rate and total invoice value is mentioned in such commercial invoice under High Sea Sale.

High Sea Sale Major Documents required for import clearance under high sea sale.

3. Consignee Copy of Bill of Lading:

A consignee copy of Bill of Lading has to be enclosed along with other importing documents under High Sea Sale. As bill of lading is a document of Title, such bill of lading copy has to be endorsed in favor of high sea buyer by transferring title of goods to him.

4. Import Invoice:

Another required document for import customs clearance at importing country is Import Invoice.

Import Invoice is not and Sale Invoice.

Import Invoice under High Sea Sale means, the invoice.

High Sea Sale Major Documents required for import clearance under high sea sale.

5.Originally issued by first seller under High Sea Sale.

High Sea Sale transaction could be effected more than two times. So, the import invoice issued by first seller to first buyer is needed as one of the requirements of documents under High Sea Sale.

Import invoice must be endorsed by high sea seller in favor of high sea buyer.

6.Import Packing List.

7. Certificate of Origin:

8.Insurance Certificate:

Balance of Payment and FOREX MARKET

Years of turnaround

- **1991 - Downward correction of exchange rate**
- **1992 - LERMS (Liberalized Exchange Rate Management System)**
- **1993 - Modified LERMS**
- **1994 – Current Account Convertibility**
- **1997 – Move towards Capital A/C Convertibility**
- **2000 – FEMA replaced FERA/IMF loans repaid**
- **2002 - Money Laundering Act,**
- **Feb 2003 - IMF designates India as Creditor under its FTP (Financial Transaction Plan)**
- **2004 – Reserves exceeds external debt**

EXCHANGE RATE

- Exchange rate is market determined since 1992 as in most developed countries

- Switched over to direct system of quoting exchange rates since 2nd August, 1993

Foreign Exchange Market in India

Tier-I

Regulator: Reserve Bank of India
Regulation: Foreign Exchange Management Act, 1999

Tier - II

Authorised Dealers, Money changers, Off-shore Banking Units

Tier-III

Buyers and sellers: exporters, importers, individuals, Corporates, FIIs, Non-Residents, NRIs etc.

Constitution of the forex market

- The daily turnover of foreign exchange is around US $ 35 billion. The global turnover is about US $ 6 trillion.
- RBI has laid down detailed guidelines regarding the activities that can be undertaken by each of these entities.
- Residents and non-residents with genuine foreign currency exposures are permitted to undertake foreign exchange derivative transactions to hedge their exposure subject to certain terms and conditions.
- Public sector banks account for major share of merchant transactions, while private & foreign banks have greater share of inter bank transactions.

Regulation of Forex Market

- Fully regulated through FERA, 1973
  - Centralised powers with RBI
  - Violations were equal to criminal offence –cases proceeded with Enforcement Directorate
  - Documentations prescribed by RBI
- Liberalisation through FEMA, 1999
  - Powers delegated to the Authorised Dealers
  - Violations are of civil nature – compounding powers for Enforcement Directorate and RBI
  - Documentation decided by the Authorised Dealers
  - Moving away from micro management of forex transactions to Macro management of forex flows.

Authorized Persons

- Authorized Dealers:

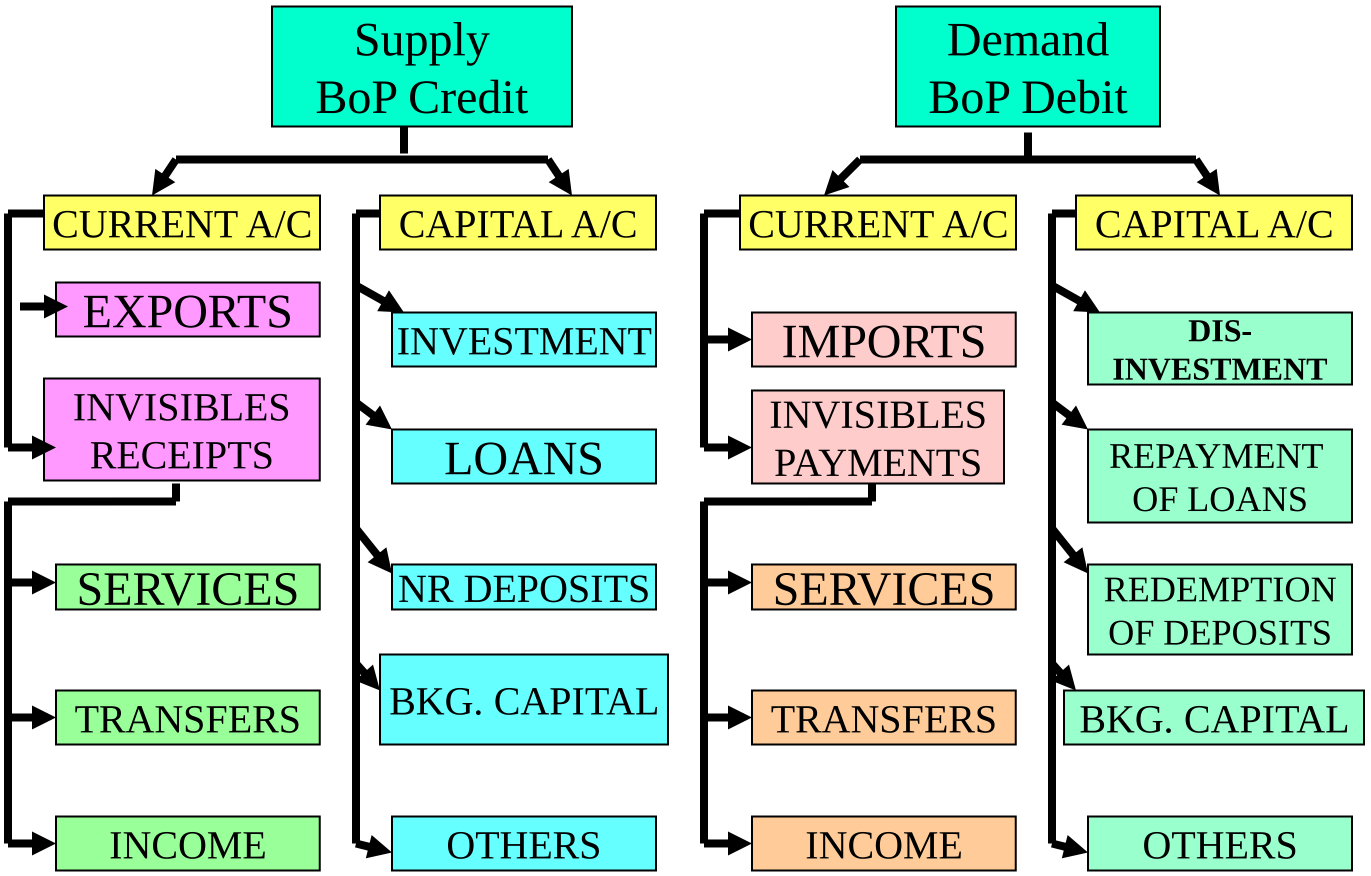
A - Category branches - maintaining independent foreign currency accounts in their own names

B - Category branches - Do Not maintain independent foreign currency accounts but have the power to operate the accounts maintained by the A category branches

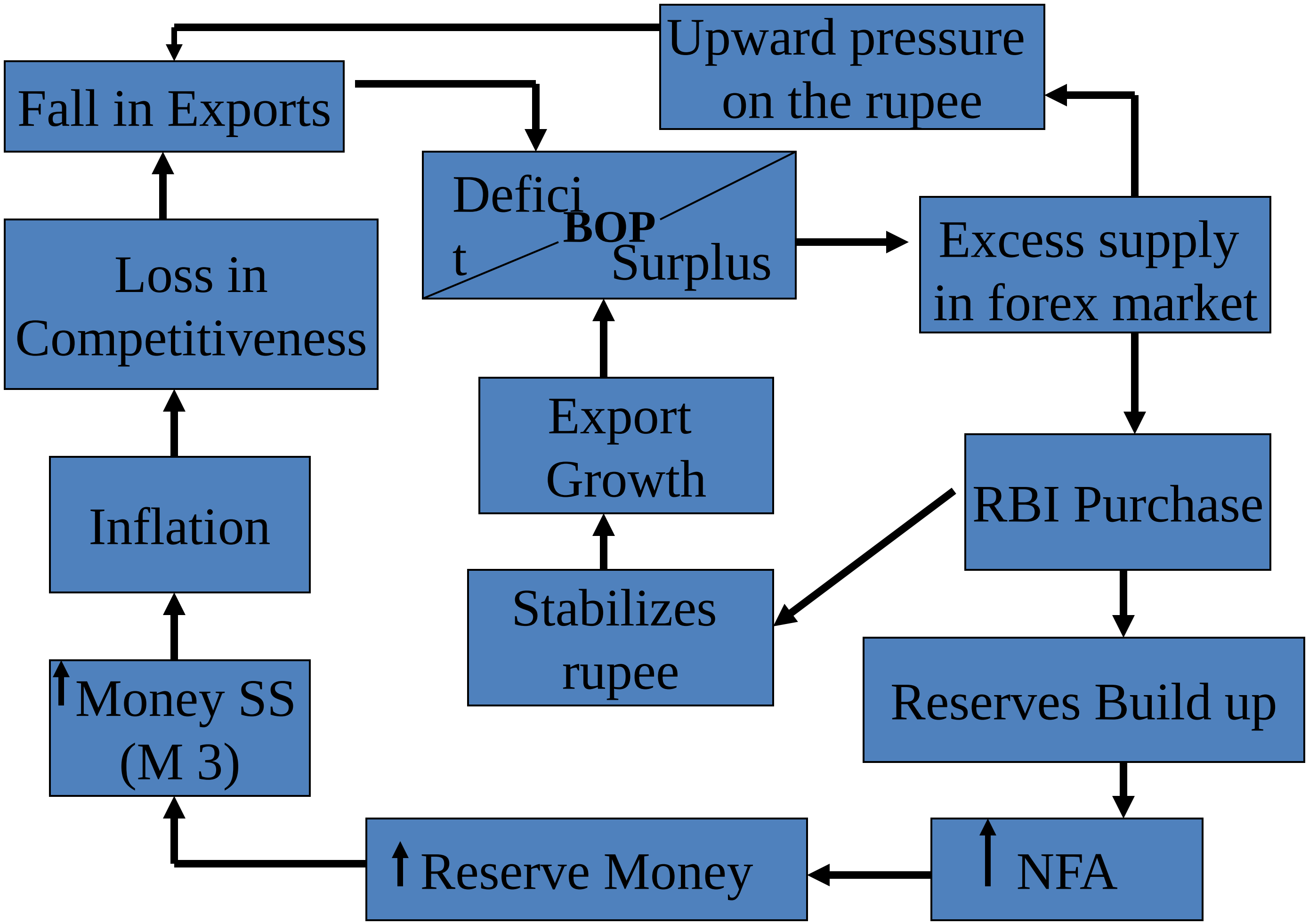
C - Category branches which route all their transactions through either A or B category branches.

- Money Changers – FFMCs/RMCs
- RBI Licenced Entities
- MTSS
- Off-Shore Banking Units - THE INTERNATIONAL FINANCIAL SERVICES CENTRES – GIFT City

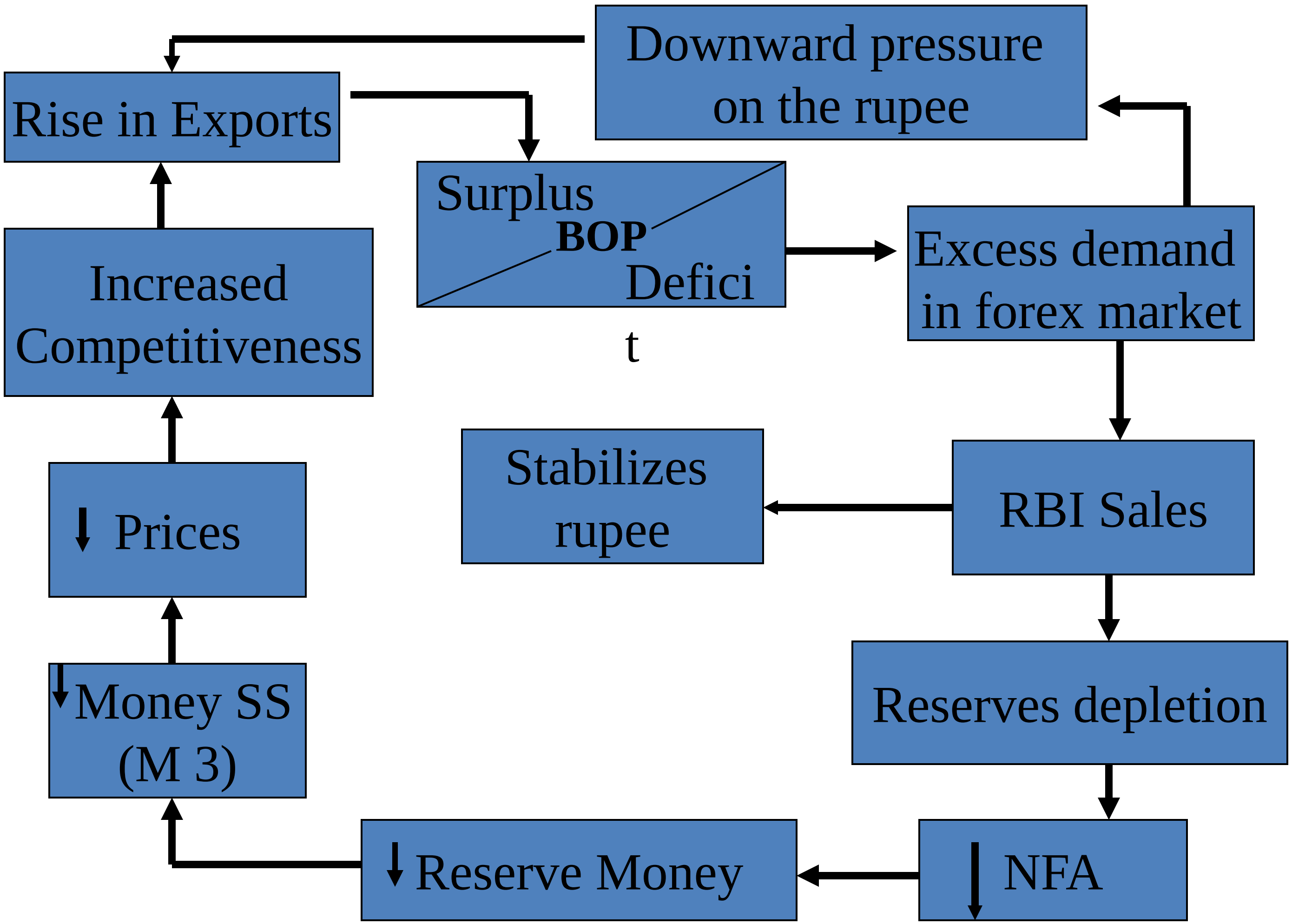
BOP & FOREX MARKET



EXCESS SUPPLY OF FOREX IN THE MARKET



EXCESS DEMAND OF FOREX IN THE MARKET



Forex Transaction and its settlement

RBI buys US$ 1,000,000 from Bank of Baroda, Mumbai

Transaction Date (01-10-2021)

Amount – US$ 1,000,000
Exchange Rate US$1=Rs. 74.50

Value Date (05-10-2021)

1. RBI pays Rs 7,45,00,000 to BOB by credit to Current Account
2. RBI receives US$ 1,000,000 to its Nostro account with Federal Reserve Bank of New York, New York

SETTLEMENT OF US DOLLAR FUNDS IN NEW YORK

RESERVE BANK

NOSTRO A/C
With FED, NY

BANK OF BARODA

NOSTRO A/C
With
BARCLAYS BANK
NEW YORK

Credited to
RBI's A/c

New York clearing
System (CHIPS)

Prepares a pay
Order and present
Through New York
Clearing system

Fictitious Offers- What Can The Public Do ?

Modus Operandi - Lure

Attractiv
from a
lotte
job
inh
em

Impe
RBI of
web site

Say money lying in
RBI

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
nts for individuals

RBI calls up
ttery
rom

any
award
etc.

and genuine
of RBI is www.
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

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