



CHAPTER 3 - THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

- ⇒ The Foreign Exchange Regulation Act, 1973 in India was replaced on June 2000 by the Foreign Exchange Management Act, 1999.
- ⇒ The **FERA** was passed in **1973** at a time when there was **acute shortage of foreign exchange** in the country. It had a controversial 27 years stint during which many bosses of the Indian corporate world found themselves at the mercy of the Enforcement Directorate.
- ⇒ Moreover, any offence under **FERA** was a **criminal offence liable to imprisonment**, but **FEMA** makes offences relating to foreign exchange **civil offences**.
- ⇒ **FEMA** had become the need to support the **pro-liberalization policies** of the Government of India.
- ⇒ Further **FEMA** aims to **promote foreign payments** and **trade in the country**. Another important objective of the FEMA is to encourage the orderly maintenance and development of the foreign exchange market in India.
- ⇒ Foreign Exchange Regulation Act, 1973 (**FERA**) was a **relatively strict Act**, that had as its main **objective to control** the foreign exchange movement to and from India.
- ⇒ Foreign Exchange Management Act, 1999 (**FEMA**), is mainly intended to **manage the flows** of foreign exchange and encourage FDI in India.
- ⇒ **As the name indicates, the Act is to 'manage' not to 'regulate'; hence FEMA is investor friendly. FEMA lays down that "everything is permitted unless what is not covered, controlled or prohibited".**

PREAMBLE, EXTENT, APPLICATION AND COMMENCEMENT OF FEMA, 1999

(A) Preamble: This Act aims to consolidate and amend the law relating to foreign exchange with the objective of —

- (i) facilitating external trade and payments and
- (ii) for promoting the orderly development and maintenance of foreign exchange market in India.

(B) Extent and Application [Section 1]:

- (a) The Act extends to the whole of India.
- (b) It shall also apply -
 - to all branches, offices and agencies outside India owned or controlled by a person **resident in India**,
 - and to any contravention thereunder committed outside India, by any person to whom this Act applies.

(c) Commencement: The Act shall come into force w.e.f. 1st June 2000.

Enforcement of FEMA

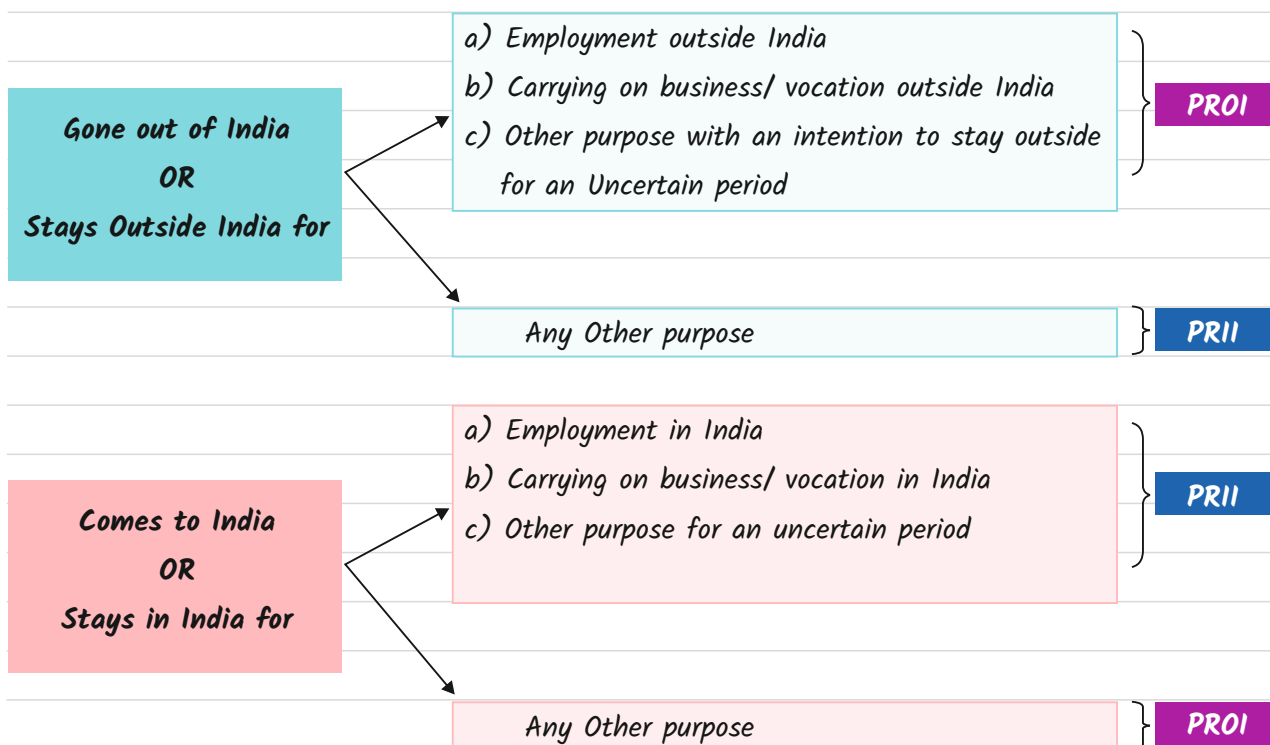
Though RBI exercises overall control over foreign exchange transactions, enforcement of FEMA has been entrusted to a separate '**Directorate of Enforcement**' formed for this purpose. [Section 36].



Relevant Definitions	
"Person" [Section 2(u)]	Includes -
	(i) an Individual,
	(ii) a Hindu Undivided Family,
	(iii) a Company,
	(iv) a Firm,
	(v) an Association of Persons or Body of Individuals, whether incorporated or not,
	(vi) every Artificial Juridical Person, not falling within any of the preceding subclauses, and
	(vii) any agency, office or branch owned or controlled by such person.
Person Resident in India [Section 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 stay in India, in either case, otherwise than-
	(a) for or on taking up employment outside India, or
	(a) for or on taking up employment in India, or
	(b) for carrying on outside India a business or vocation outside India, or
	(b) for carrying on in India a business or vocation in India, or
	(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.
	(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.
	(ii) any person or body corporate registered or incorporated in India,
	(iii) an office, branch or agency in India owned or controlled by a person resident outside India,
	(iv) an office, branch or agency outside India owned or controlled by a person resident in India.
	Points to be noted:
	⇒ The Act uses the word " residing " and not " stays ". "Stay" is a physical attribute, while "residing" denotes an element of permanence.
	⇒ Residing during the current financial year is not considered. The residing during the course of the " preceding financial year " is taken into account.
	⇒ Employment, Carrying on business or vocation, or any other purpose etc. used in the first clause denotes that the first clause is applicable to Individuals . It may not be extendable to HUF, AOP or BOI or agencies.



Person Resident in India (PRII) - Sec 2(v): Individual residing in India for more than 182 days during the previous financial year.



Person resident outside India [Section 2(w)]	A Person who is not resident in India.
Authorised Person [Section 2(c)]	Authorised Dealer, Money Changer, Off-Shore Banking Unit or any other person for the time being authorised u/s 10(1) to deal in Foreign Exchange or Foreign Securities

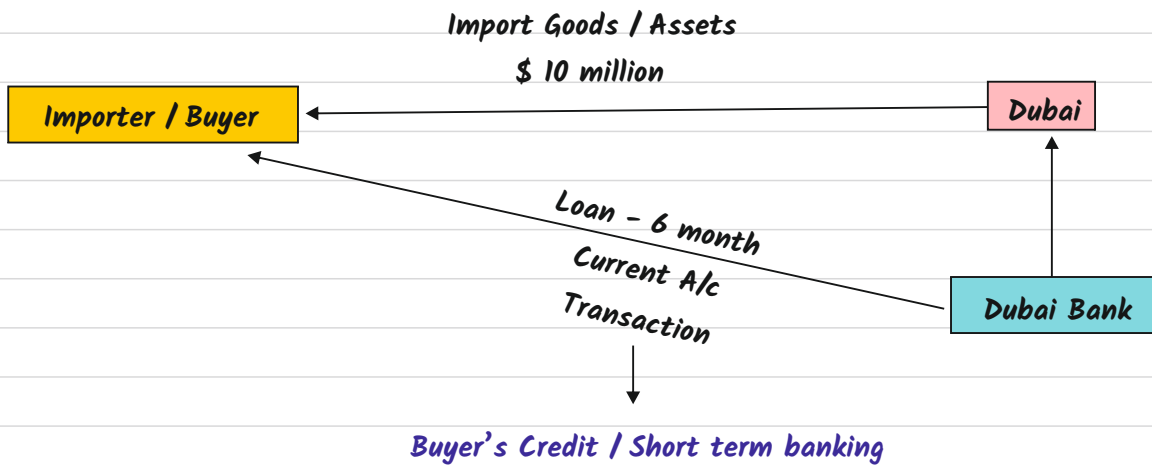
Capital Account Transaction [Section 2(e)]

means a transaction which alters the

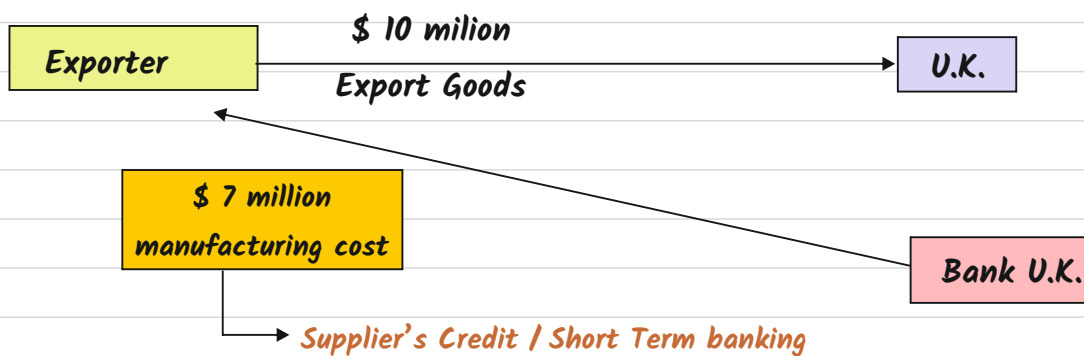
assets or liabilities including contingent liabilities outside India of persons resident in India	Or	assets or liability in India of persons resident outside India
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Buyers Credit - Current a/c Transaction



Supplier's Credit - Current A/c Transaction



Current Account Transaction [Section 2(j)]	Means	&	Includes
	A transaction other than a Capital Account Transaction	without prejudice to the generality of the foregoing such transaction	(a) Payments due in connection with foreign trade, other current business, services, and short- term banking and credit facilities in the ordinary course of business,
			(b) Payments due as interest on loans and as net income from investments,
			(c) Remittances for living expenses of parents, spouse and children residing abroad, and
			(d) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

In simple words

Current Account Transaction: Transactions other than Capital Account Transaction.

Examples:

1. Foreign trade – short term credit.
2. Income from investment, interest on loan.
3. Living expenses of family abroad.
4. Foreign travel, education, medical etc.

OTHER DEFINITIONS [SECTION 2]

Currency [Section 2(h)]	Includes all – (a) Currency Notes, (b) Postal Notes, (c) Postal Orders, (d) Money Orders, (e) Cheques, (f) Drafts, (g) Travellers' Cheques, (h) Letters of Credit, (i) Bills of Exchange and Promissory Notes, (j) Credit Cards or (k) such other similar instruments, as may be notified by RBI.
Currency Notes [Section 2(l)]	Means and Includes Cash in the form of Coins and Bank Notes.
Export [Section 2(l)]	“Export”, with its grammatical variations and cognate expressions means – (i) the taking out of India to a place outside India any goods, (ii) provision of services from India to any person outside India.
Foreign Currency [Section 2(m)]	Any Currency other than Indian Currency.
Foreign Exchange [Section 2(n)]	Means Foreign Currency, and Includes – (i) Deposits, Credits and Balances payable in any Foreign Currency, (ii) Drafts, Travellers' Cheques, Letters of Credit or Bills of Exchange, expressed or drawn in Indian currency but payable in any Foreign Currency, (iii) Drafts, Travellers' Cheques, Letters of Credit or Bills of Exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.
Foreign Security	Means any Security, in the form of Shares, Stocks, Bonds, Debentures, or any other instrument denominated or expressed in Foreign Currency, and Includes securities expressed in Foreign Currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency.
Import [Section 2(p)]	Import means bringing into India any goods or services.
Transfer [Section 2(ze)]	Includes Sale, Purchase, Exchange, Mortgage, Pledge, Gift, Loan or any other form of transfer of right, title, possession or lien.



REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

Dealing in foreign exchange, etc. [Section 3]

No person shall-

- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person (AP);

Example: A PROI comes to India and would like to sell US\$ 1,000 to his friend who is resident in India. The friend offers him a rate better than the banks. This cannot be done as it would amount to dealing in foreign exchange.

- (b) make any payment to or for the credit of any person resident outside India in any manner;

Example: A PROI has an insurance policy in India. He requests his brother in India to pay the insurance premium. This will amount to payment for the credit of non-resident. This is not permitted.

- (c) receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Example: A foreign tourist comes to India and he takes food at a restaurant. He would like to pay US\$ 20 in cash to the restaurant. The restaurant cannot accept cash as it will be a receipt otherwise than through Authorised Person. The restaurant will have to take a money changers license to accept foreign currency.

Explanation—For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

Example to Illustrate:

Scenario:

1. Person A: A resident in the United States.
2. Person B: A resident in India.
3. Person C: Another resident in India.
4. Restaurant: Located in India, wants to receive payment for services from Person A.

Steps:

1. Foreign Payment Intention:
 - Person A (the foreign resident) wants to pay for services or goods in India, like a meal at a restaurant.
2. Indirect Payment without Remittance:
 - Instead of sending the payment directly from the US to the restaurant, Person A sends the payment to Person C in India (a resident).
3. Payment to Restaurant:
 - Person C then pays the restaurant on behalf of Person A without a corresponding inward remittance from outside India.



Explanation of Violation:

⇒ Direct Remittance:

- For the payment to be legal, Person A should directly remit the payment to the restaurant through an authorised person (like a bank or licensed money changer).

⇒ Indirect Payment without Inward Remittance:

- In the example, Person C pays the restaurant without an actual remittance coming from outside India. This transaction circumvents the legal channel and is deemed as receiving payment otherwise than through an authorised person.

Summary:

The clause is designed to prevent indirect or informal channels of payment that bypass the legal financial system, ensuring that all foreign payments are properly tracked and regulated through authorised persons.

- (d) enter into 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.

Example: Transactions covered by this sub-section are known as Hawala transactions. An Indian resident gives Rs. 70,000 in cash to an Indian dealer. For this transaction, the brother in Dubai will get US\$ 1,000 from a Dubai dealer. The two dealers may settle the transactions later. However, transaction is not permitted.

The above transactions may be carried on:

- (a) as otherwise provided in this Act; or
(b) with the general or special permission of the Reserve Bank.

Explanation — For the purpose of this clause, “**financial transaction**” means

⇒ making any payment to,

or

⇒ for the credit of

⇒ any person,

or

⇒ receiving any payment for,

⇒ by order or on behalf of

⇒ any person,

⇒ or

⇒ drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

This section imposes blanket restrictions on the specified transactions. This section applies to PRIs and PROs. The purpose of this section is to regulate inflow and outflow of Foreign Exchange through Authorised dealers and in a permitted manner.



Holding of foreign exchange [Section 4]

Except as 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.

This section prevents Indian residents to acquire, hold, own, possess or transfer any foreign exchange, foreign security or immovable property abroad. Then through separate notifications, acquisition of these assets has been permitted subject to certain conditions and compliance rules.

Example: If an Indian resident receives bank balance of US\$ 10,000 from his uncle in London, the Indian resident cannot hold on to the foreign funds. He is supposed to bring back the funds as provided in section 8.

Current account transactions [Section 5]

1. Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a **Current Account Transaction**. The Central Government may, in public interest and in consultation with the RBI, impose such **reasonable restrictions** for Current Account Transactions as may be prescribed.
2. **Current Account Rules:** The permissibility of Current Account Transactions are provided in Foreign Exchange Management (Current Account Transactions) Rules, 2000 -

Rule	Schedule	Transaction
3	I	Prohibited Transactions/ drawal
4	II	Permissible Commercial Transactions requiring CG approval
5	III	Permissible Personal Transactions requiring RBI approval if drawal exceeds prescribed limit

Note: The general rule to be understood is that Current Account transactions are freely permitted unless specifically prohibited and Capital Account transactions are prohibited unless specifically or generally permitted.

'Current Account Transaction'

Example: An Indian resident imports machinery from a vendor in UK for installing in his factory. As per accounts and income-tax law, machinery is a "capital expenditure". However, under FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor is owed anything in the other country. Hence it is a Current Account Transaction.



Example: An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. As per accounts and income-tax law, for the credit period of 3 months, there is a liability of the Indian importer to the UK vendor. Technically under FEMA also, it is a liability outside India. However, under definition of Current Account Transaction [Section 2(j)(i)], “short-term banking and credit facilities in the ordinary course of business” are considered as a Current Account Transaction. Hence, import of machinery on credit terms is Current Account Transaction.

Example: A Person Resident in India transfers US\$ 1,000 to his NRI brother in New York as “gift”. The funds are sent from the PRII's Indian bank account to the NRI brother's bank account in New York. Under accounts and income-tax law, gift is a “capital receipt”. However, under FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA. The transaction is over. Hence, it is a Current Account Transaction.

If gift is a current account transaction, why is there a restriction under Current Account regulations? It is because while there is no restriction on Current Account transactions, some reasonable restrictions can be imposed. Otherwise, people may transfer funds abroad under the garb of current account transactions.

If however the PRII gives a PROI a gift **in India in Indian currency**, for the PROI it will result in funds lying in India (alteration of Indian asset). For PRII, there is no creation of asset or a liability. As this transaction creates an asset in India for the PROI, it is a Capital Account transaction.

In a similar manner, if a PROI gives a gift to a PRII by remitting funds in India, there is no restriction. However, if the PROI gives the funds abroad, the resident cannot keep it abroad. He has to bring it to India.

A. Schedule I Prohibited Transactions: Drawal of foreign exchange by any person for the following purpose is prohibited, namely-

- (i) a transaction specified in the Schedule I, or
- (ii) a travel to Nepal and/or Bhutan, or
- (iii) a transaction with a person resident in Nepal or Bhutan.

SCHEDULE I

1. Remittance out of **Lottery Winnings**,
2. Remittance of income from **racine / riding** etc. or any other hobby,
3. Remittance for **purchase of lottery tickets**, banned / prescribed 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,



6. Payment of **Commission on Exports** under Rupee State Credit Route, except commission upto 10% of Invoice Value of exports of tea and tobacco,
7. Payment related to "**Call Back Services**" of Telephones, and
8. Remittance of **interest income on funds** held in Non-Resident Special Rupee (NRSR) A/c Scheme.

B. SCHEDULE II Permissible Commercial Transactions requiring CG approval

Transaction	Approval from
1. Cultural Tours.	Ministry of Human Resource Development (Department of Education and Culture)
2. Advertisement in foreign print media for purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by State Govt or its PSUs.	Ministry of Finance (Department of Economic Affairs)
3. Remittance of Freight of any vessel chartered by PSU.	Ministry of Surface Transport (Chartering Wing)
4. Payment for import through ocean transport by a Government Dept / PSU on CIF basis (i.e. other than FOB or FAS basis).	Ministry of Surface Transport (Chartering Wing)
5. Multi-modal transport operators making remittances to their agents abroad.	Registration Certificate from the Director General of Shipping
6. Remittance of Hiring charge of Transponders - (a) TV Channels (b) Internet Service Providers	Ministry of Information & Broadcasting, Ministry of Communication & Information Technology.
7. Remittance of Container Detention Charges exceeding the rates prescribed by Director General of Shipping.	Ministry of Surface Transport (Director General of Shipping)
8. Remittance of Prize Money / Sponsorship of sports activity abroad by a person other than International / National / State Level Sports Bodies, where the amount exceeds USD 1 Lakh.	Ministry of Human Resources Development (Department of Youth Affairs and Sports)
9. Remittance for membership of P & I Clubs.	Ministry of Finance (Insurance Division)

C. SCHEDULE III Permissible Personal Transactions requiring RBI approval if drawal exceeds prescribed limit

1. **Individuals:** Individuals can avail of Forex facility for the following purposes within the limit of **USD 2,50,000 only**. Any additional remittance in excess of USD 2,50,000 for the following purposes shall require prior approval of RBI:
 - (a) Private Visits to any country (except Nepal and Bhutan),
 - (b) Gift or Donation,



- (c) Going abroad for employment,
- (d) Emigration,
- (e) Maintenance of close relatives abroad,
- (f) Travel for business, or attending a conference or specialised training or for meeting expenses or for meeting medical expenses, or check-up abroad, or for accompanying as Attendant to a patient going abroad for medical treatment / check-up.
- (g) Expenses in connection with medical treatment abroad,
- (h) Studies abroad,
- (i) Any other current account transaction:

Notes:

- ⇒ For (d), (g) and (h), the Individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme, if it is so required by a country of Emigration, Medical Institute offering treatment or the University, respectively.
- ⇒ If an Individual **remits** any amount under the Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 by the amount so remitted.
- ⇒ For a person who is resident but not permanently resident in India and—

- (a) is a citizen of a foreign State other than Pakistan, or
- (b) is a citizen of India, who is on deputation to the Office or Branch of a Foreign Company or Subsidiary or Joint Venture in India of such Foreign Company, may make remittance upto his Net Salary (after deduction of Taxes, Contribution to Provident Fund and other deductions).

Explanation: For this purpose, a Person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed 3 years, is a resident but not permanently resident.

- ⇒ A Person **other than an individual** may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the Liberalised Remittance Scheme for the purposes mentioned hereinabove.

2. Persons other than Individual: The following remittances by Persons other than Individuals shall require prior approval of RBI -

- (a) Donations exceeding 1% of their Foreign Exchange Earnings during the previous 3 financial years or USD 50,00,000, whichever is less, for -
 - ⇒ Creation of Chairs in reputed Educational Institutes,
 - ⇒ Contribution to Funds (not being an Investment Fund) promoted by Educational Institutes, and
 - ⇒ Contribution to a Technical Institution or Body or Association in the field of activity of the Donor Company.
- (b) Commission, per transaction, to Agents abroad for sale of Residential Flats or Commercial Plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is **more**.
- (c) Remittances exceeding USD 10,00,000 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.

(d) Remittances exceeding 5% 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.

3. Procedure: Procedure for drawal or remit of any Foreign Exchange under Schedule III shall be the same as applicable for remitting any amount under the Liberalised Remittance Scheme.

If the transaction is not listed in any of the above three schedules, it can be freely undertaken.

Exemption for remittance from RFC Account – No approval is required where any remittance has to be made for the transactions listed in Schedule II and Schedule III above from an Resident Foreign Currency (RFC) account.

Exemption for remittance from EEFC Account – If any remittance has to be made for the transactions listed in Schedule II and Schedule III above from Exchange Earners' Foreign Currency (EEFC) account, then also no approval is required. However, if payment has to be made for the following transactions, approval is required even if payment is from EEFC account:

- Remittance for membership of P & I Club.
- Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more.
- 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.

Exemption for payment by International Credit Card while on a visit abroad – If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.

Note: Liberalised Remittance Scheme (LRS): Under the Liberalised Remittance Scheme (LRS), all resident individuals, including minors, are allowed to freely remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. This is inclusive of foreign exchange facility for the purposes mentioned in Para I of Schedule III of Foreign Exchange Management (CAT) Amendment Rules 2015, dated May 26, 2015.

In case of remitter being a minor, the LRS declaration form must be countersigned by the minor's natural guardian. The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.

Consolidation of remittance of family members – Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.

Exception: Clubbing is **not permitted** by other family members for **capital account transactions** such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/investment/property.



Different Types of Account

RFC (Resident Foreign Currency) Account

Example:

Mr. Kumar worked in the USA for several years and accumulated savings in US dollars. He has now returned to India for good. To avoid currency conversion losses and to continue holding his savings in US dollars, he opens an RFC account with an Indian bank.

Mr. Kumar can use the funds in his RFC account to pay for his child's education in the USA or invest in foreign stocks without worrying about currency conversion.

EEFC (Exchange Earners' Foreign Currency) Account

Example:

ABC Exports Ltd. is an Indian company that exports software services to clients in Europe and receives payments in euros. To manage their foreign currency earnings more efficiently and avoid frequent conversion costs, they open an EEFC account.

ABC Exports Ltd. uses the funds in their EEFC account to pay for importing hardware from Germany, paying their foreign consultants, and covering travel expenses for their staff attending conferences abroad, all without converting euros to Indian Rupees.

Capital account transactions [Section 6]

Section 6 Capital Account Transactions read with Regulation 3 & Regulation 4 of FEM (Capital Account Transactions) Regulations, 2015

Regulation 3		Regulation 3	Regulation 4
Permissible CAT		Sec 6 (2) Proviso	Prohibited investment by PROI
PRI	PROI	RBI shall not impose any restriction on the drawal of foreign exchange for – (a) payments due on account of amortisation of loans (Repayment of foreign loan), or (b) for depreciation of direct investments in the ordinary course of business (Recapitalization of foreign subsidiary).	(i) Chit Fund (ii) Nidhi Company (iii) Agricultural or plantation activities (iv) Real-estate business (v) Trading in Transferable Development Rights
Sch I	Sch II		



1. Restriction [Sec. 6(1)]: Any person may sell or draw foreign exchange to or from an Authorised Person for a Capital Account Transaction, subject to the provisions of Sec.6(2). Sec.6(2) empowers the RBI to specify, in consultation with the Central Government -

(a) any class or classes of capital account transactions involving debt instruments which are permissible, [CG may consult with RBI shall prescribe for transactions not involving debt instruments as permissible u/s 6(2A)]

(b) the limit up to which foreign exchange shall be admissible for such transactions,

(c) any conditions which may be placed on such transactions.

However, RBI or the Central Government shall **not** impose any restriction on the drawal of foreign exchange for payments due on account of amortisation of loans, or for depreciation of direct investments in the ordinary course of business.

2. Holding etc. of Currency, Security and Property [Sec. 6(4) & 6 (5)]:

(a) 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.
- ⇒ Foreign Currency Accounts opened and maintained by such a person when he was resident outside India.
- ⇒ Income earned through employment or business or vocation outside India taken up or commenced when such Person was Resident Outside India (PROI), or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India.
- ⇒ Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.
- ⇒ A person resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions is not in contravention to FEMA provisions.

(b) 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.

Note:

"Debt Instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.



3. Branches etc. of Non-Residents [Sec. 6(6)]: Without prejudice to the provisions of Sec.6, the RBI may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

Capital account transaction is basically split into the following categories under **Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000-:**

- (i) transaction, which are permissible in respect of persons resident in India and outside India.
- (ii) transaction on which restrictions cannot be imposed; and
- (iii) transactions, which are prohibited.

SCHEDULE I The list of permissible classes of transactions made by persons resident in India is:	SCHEDULE II The list of permissible classes of transactions made by persons resident outside India is:
(a) Investment by a person resident in India in Foreign Securities.	(a) Investment in India, by a person resident outside India, that is to say - <ul style="list-style-type: none"> ⇒ 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.
(b) Foreign Currency Loans raised in India and abroad by a person resident in India.	
(c) Transfer of immovable property outside India by a person resident in India.	(b) Acquisition and transfer of immovable property in India, by a person resident outside India.
(d) Guarantees issued by a person resident in India in favour of a person resident outside India.	(c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
(e) Export, import and holding of currency / currency notes.	(d) Import and export of currency / currency notes into / from India, by a person resident outside India.



(f) Loans & Overdrafts (Borrowings) of a person resident in India, from a person resident outside India.	(e) Deposits between a person resident in India and person resident outside India.
(g) Maintenance of Foreign Currency Accounts in India and outside India by person resident in India.	(f) Foreign Currency Account in India of a person resident outside India.
(h) Taking out of insurance policy by a person resident in India, from an Insurance Company outside India.	
(i) Loans and Overdrafts by a person resident in India, to a person resident outside India.	
(j) Remittance outside India, of capital assets of a person resident in India.	(g) Remittance outside India, of Capital Assets in India of a person resident outside India.
(k) Undertake Derivative Contracts	(h) Undertake Derivative Contracts

Note: A Resident Individual may draw from an Authorised Person, foreign exchange not exceeding USD 2,50,000 per financial year or such amount as decided by RBI, for a capital transaction specified above. Where the drawal exceeds USD 2,50,000 per financial year or such amount as decided by RBI for any capital transaction, the limit specified in the Regulations relevant to the transaction shall apply to such drawal.

No part of the foreign exchange of USD 2,50,000, drawn shall be used for remittance directly or indirectly to **countries notified as non-cooperative countries and territories by Financial Action Task Force (FATF)** from time to time and communicated by RBI to all concerned.

PROHIBITED CAPITAL ACCOUNT TRANSACTIONS: Under the FEM (Permissible Capital Account Transactions) Regulations, 2000, no person **resident outside India** shall make investment in India, in any form, in any Company or Partnership Firm or Proprietary Concern or any entity, whether incorporated or not, which is engaged or proposes to engage -

1. in the business of Chit Fund, or
2. as Nidhi Company, or
3. in agricultural or plantation activities, or
4. in **real-estate business** or **construction of farm houses** or

Note: "Real Estate Business" shall **not** include development of townships, construction of residential/commercial premises, Roads or Bridges and Real Estate Investment Trusts (REITs) registered and regulated under SEBI (REITs) Regulations 2014)

5. in trading in Transferable Development Rights (TDR's).



Note: TDR means certificates (which are transferable in part or whole) issued in respect of category of land acquired for public purpose by Central / State Govt in consideration of surrender of land by the owner, **without** monetary compensation.

6. No person resident in India shall undertake any capital account transaction which is not permissible with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea, until further orders, unless there is specific approval from the Central Government to carry on any transaction.

The existing investment transactions shall be closed/liquidated/disposed/settled within a period of **180 days** from the date of issue of this Notification, unless there is specific approval from the Central Government to continue beyond that period.

Thus, a capital account transaction is permitted only if it is specifically permitted under the regulations. If the transaction is not stated as generally permitted, a prior specific approval is required.

