

FEMA, 1999

210

Foreign Exchange Management Act, 1999

8-12 Marks

GIC Act, 1897 Interpretation FEMA, 1999

{8 Marks}

of statutes

{8 Marks}

{8 Marks}

• Economic Reforms → LPG, 1991

Foreign Exchange
Regulation Act

Foreign exchange
Management Act

previous Act :- FERA, 1973 → Now :- FEMA, 1999

1973

1991

1999

FERA, 1973

Economic Reforms

FEMA, 1999

LPG, 1991

→ Liberalisation

→ Privatisation

→ Globalisation

• FEMA, 1999 :-

→ History :- FEMA, 1999

Britishers $\xrightarrow{\text{Replace}}$ FERA $\xrightarrow{\text{change}}$ FEMA 19
1947
↓
Exchange control
law of India
in 1939
↓
FEMA 19

• Why Foreign exchange law :-

→ To facilitate free cross border transaction.

→ Due to change in economic conditions.

→ due to globalisation of capital.

→ To promote cross border trade.

• FERA, 1973 $\xrightarrow{\text{change}}$ FEMA, 1999

→ The Economic reforms in 1991 which leads the permission of free trade in the whole world.

→ Through those reforms, there is free movement of foreign exchange in India, so due to huge increase in foreign exchange, A need is felt by Govt. to manage the foreign exchange reserve rather than regulate.

- FEMA, 1999 has been commenced in India from 1/06/2000
- This Act deals in :- FEMA, 1999
 - Transactions occurred between
 Resident
&
Non-Resident
 - Investment in India from overseas
 Non-Resident
Resident
 - current Account transactions
 - capital Account transactions
 - Foreign exchange must be dealt by AD (Authorised Dealer), money exchangers, off shore BU (Banking Unit)
 - Investigation by Authorities related to Foreign exchange.
 - Adjudication, Appeals, Tribunal related provision.
 - Proceeds from export & ~~separation~~ ^{registration} of foreign exchange in India

• Special Note:-

→ current A/C Transactions → "Freely permissible" → except some Restrictions.

→ Capital A/C Transactions → prohibited except some After getting sanction from RBI & CGA

→ RBI has sole authority to control on the Foreign exchange transactions but investigation of offence related to Foreign exchange management Act, 1999 has been entrusted to a separate authority named as "Directorate of Enforcement" → FEMA Investigation Authority.

• For this Act :- FEMA, 1999 Act ✓ Parliament

Rules

Regulations

Notified by Ministry of finance (MOF)
 (Govt. of India)
 Notified by RBI
 (Reserve bank of India)

preamble :- This act aims to

consolidate & Ammend

(foreign exchange)

the law related to the FE with the objective of

TO facilitate external trade & payment AND promote/develop/maintain

India $\longleftrightarrow$ trade $\longleftrightarrow$ outside

FE Market in India

section 1 : short Title, extent & , commen-

Application cement

Foreign exchange

scope

01/06/2000

Management Act, 1999

whole of India

⊕

This act will also apply on all the Branches, offices & Agencies which are outside India But owned & controlled by Person Resident in India

PRII $\rightarrow$ Person Resident in India

ROI $\rightarrow$ Person Resident outside India

section 2:- definitions

1.

Authorized person

- Authorised Dealer
- Money exchanger
- Off-shore Banking Unit
- Any other person who is authorised by RBI

Foreign exchange means foreign

2.

currency :- Inclusive definition

deposits, credits & bal. payable in any foreign currency

- currency Notes cash in form Bank Notes & coins
- Promissory Notes
- Postal order
- Money order
- cheques, Draft (demand Draft)
- Traveller's cheque
- Letter of credit (LC)
- credit cards or any other such instrument notified by RBI
- Bills of Exchange (BOE)

3.

Export

Import

Taking out of India to a place outside India

Goods OR services

Bringing into India from a place outside India

Goods OR services

Render to a person from India to outside India

4. Foreign security :- Any security either shares debentures stock Bond Any other such Instrument which are expressed or denominated in foreign currency

It also Includes all those securities which are expressed in foreign currency But those Redemption (Repayment) in India currency or any return in Indian currency Dividend OR Interest

5. Transfer :- sale
:- purchase
:- Gift
:- Pledge
:- Mortgage
:- Loan
:- Any other form of transfer

Right

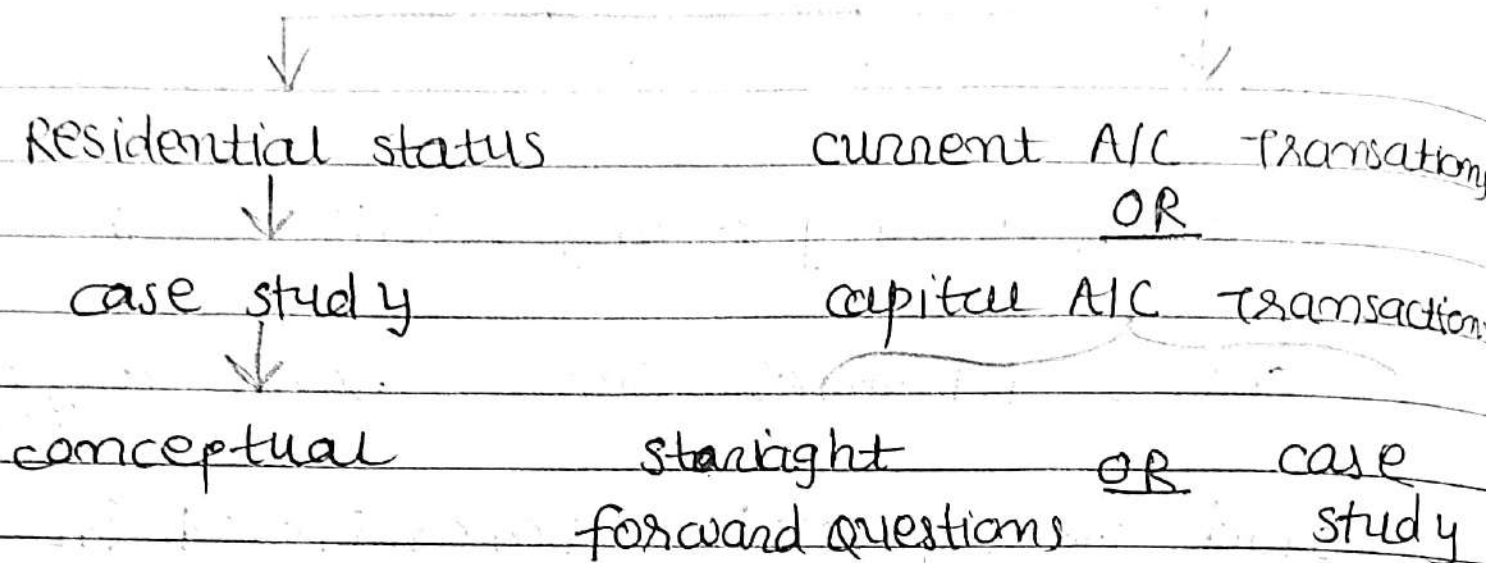
Title

Ownership

Possession

Lien

lawful



6. Residential status :-

Person Resident in India Resident outside India

7. Person :- Inclusive definition

- :- Individual
- :- Companies
- :- Firm (partnership)
- :- HUF (Hindu undivided family)
- :- AOP (Association of person whether incorporated or not)
- :- ATP (Artificial judicial person)
- :- All Agencies, Branches, offices which are situated outside India, which are owned & controlled by person Resident in India

Now this person has been bifurcated into 2 parts.

Person Resident in India Person Resident outside India

8. Person Resident in India :-

* Individual *

A person who resides in India for more than 182 days in India during the preceding financial year.

Person who has gone out of India or stays outside India for the following 3 Reasons.

A person who has cause in India or stays in India for the Reason other than these 3 Reasons.

(i) For taking Employment
(ii) For carrying any Business outside India including vocation
(iii) For any other purpose in which circumstances indicate that stay outside India for an uncertain period.

(i) For taking employment
(ii) For carrying Business OR vocation
(iii) For uncertain period

such person will not be called as Person Resident in India.

such person is not to be called as resident in India.

So, if a person who even doesn't reside in India for more than 182 days in preceding F.Y. But he has come in India for:-
employment B/S OR vocation uncertain period
such person is Resident in India

If a person reside more than 182 days in India in preceeding F.Y. } But he has gone outside India for
 employment or B/S or vacation for uncertain period

such person is not person Resident in India

* For Artical person *

A company incorporated in India. Branch, Agency, office in India. Branch, Agency, office outside India.
 ↓ ↓
 PRI earned & controlled earned & controlled

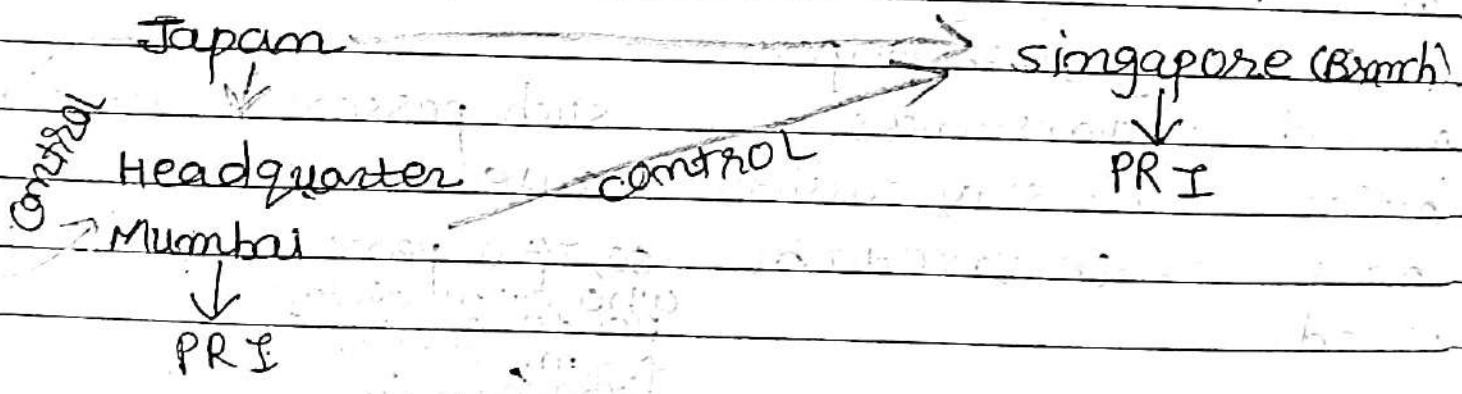
By a PROI

By a PRII

Example :-

~~PROI~~ PROI
 PR II

~~PROI~~ PRII
 PROI



• Individual :-

(1) person Reside in India in the P.F.Y for more than 182 days?

yes

NO

Don't decide the Residential status at this level.

(2) If answer of above question is 'yes'?

check whether he has gone out of India in CY?

yes

NO

Reasons for going outside of India

PR II

3 Reasons

other than 3 Reasons

employ-
ment

B/S
OR
vacation

Uncertain
Period

PR II

PRO I

(3) If the person has not resided in India for more than 182 days in the P.F.Y?

Now check whether he has come in India in CFY?

yes

NO

NON T

Now check the 3 Reasons
of coming into India

Employment
B/S or vacation
Indefinite uncertain period

PR II

other than
These 3 Reasons

PRO I

Example :- ^{more than} 182 Days
1/04/21 31/03/22 1/11/22 31/03/23

17 yes

27 Is he gone out of India in c.f.y.

yes

Reasons

3 → PRO I

other than → PR II

Example :- If a person who has gone out of India and holds green card of US, so after having green card he will become US citizen and now there are no chances of return to India (so indefinite period out of India)

so, This is one of 3 Reasons & he will become PRO I.

⇒ Residential status is to be checked for a particular date. Not for a particular year. Residential status in Income Tax Act, 1961 is to be checked for a particular year to check the taxability on income of previous year.

⇒ The status of HUF, Association of person is generally & practically will be PRTI as they can not go outside India. So, there is no question of checking the No. of days in such case.

• Special Note :-

→ If a person who has gone out of India as a student & in previous even if he resides for more than 182 days, still he is considered as PRTI, even if he has not gone out from India for employment
 → Business or Vocation
 → For Indefinite period

But as per circular issued by RBI these student work in foreign for take care of their studies finance, they will be treated as person resident outside India (PRTI).

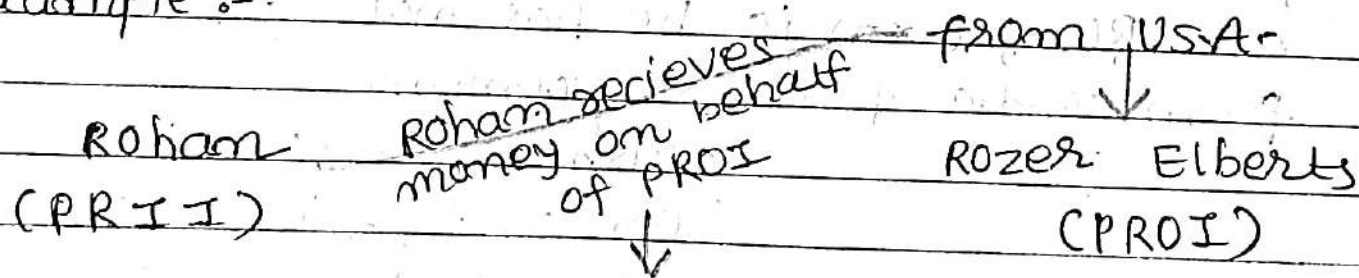
Section 3 :- Dealing in Foreign Exchange

- No person shall
- (i) deal in foreign exchange or foreign securities otherwise than through Ap
 - (ii) make payment or to the credit of any person resident outside India
 - (iii) Recieve on the order or on the behalf PROI otherwise than through Ap.

Special Note :- If any person who is PRII recieves any money on the Behalf of PROI, shall payment is prohibited u/s 3 of FEMA, 1999

But yes, payment may be recieved by PRII on behalf of PROI through an Authorised person is allowed.

Example :-



AND Rohan does not have Inwards Remittance, then it is deemed Rohan has Recieved money on behalf of PROI without Authorised person.

such receipt of money by Rohan is prohibited
 u/s 3 of FEMA, 1999

(iv) No person shall enter into financial transaction in India as a consideration for acquiring or creation any assets outside India.

(CHAWALA TRANSACTION)

→ So, this sec. 3 Basically Regulates

INFLOW } foreign Exchange
 outflow }
 without Authorised person

→ This section applicable on Both

PROI
 PRII

special Note :- All these 4 transactions are generally prohibited by section 3 of FEMA, 1999 BUT they can be allowed after the special permission of RBI.

Section 4 :- Holding of Foreign Exchange

Any person who is Resident in India

→ can not

hold possess own acquire transfer

foreign exchange foreign security Any immovable property

outside India

Exceptions (allowed) :- Any other prov. of this act allows.

If any notification published by RBI / CG with some Rules & conditions.

Section - 5 :- Current A/C Transactions

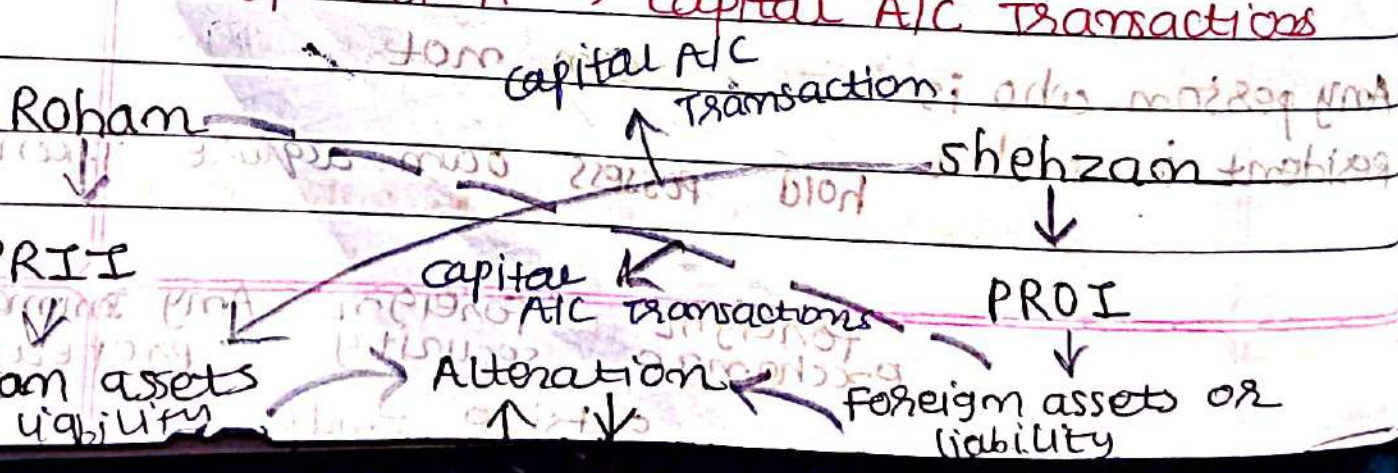
Allowed → freely allowed

Except some → list
 RBI
 CG

current A/C transactions

Prohibited Transactions for Transaction for
 Transactions which approval of RBI is required which approval of CG is required

Section: 2 of FEMA → capital A/C Transactions



capital A/C Transaction

Definition u/s 2

list

current A/C Transactions

u/s 6

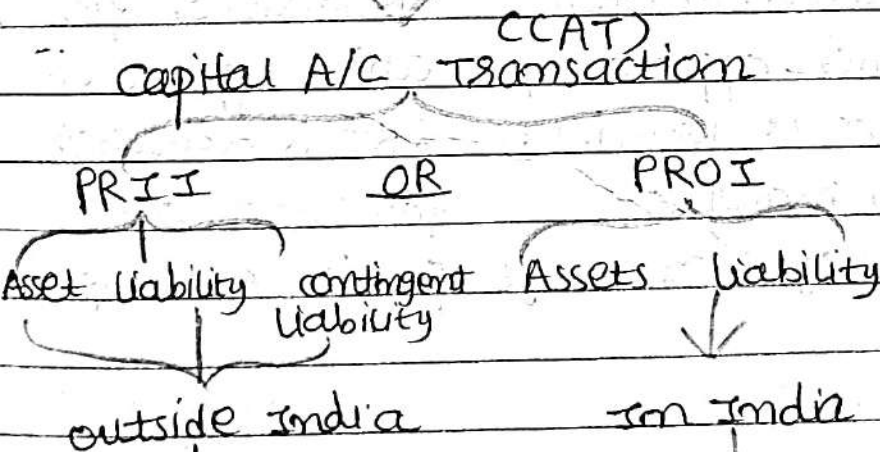
u/s 5

Any Transactions which alters assets, liability, contingent liability outside India for person resident in India (Rohan)

& Any transactions which alters assets, liability in India for person resident outside India (Shezaan)

Any Transaction which is not capital A/C transactions & It includes :-

- (i) Payment made for ordinary course of B/s, availability short term loan or Banking facility
- (ii) Int. paid on loans & Dividend received on Investment
- (iii) Remittance for living expenses



- (iv) Remittance for foreign travel
 - (v) Medical exp.
 - (vi) Education exp.
- Living o/s India
- parents spouse children

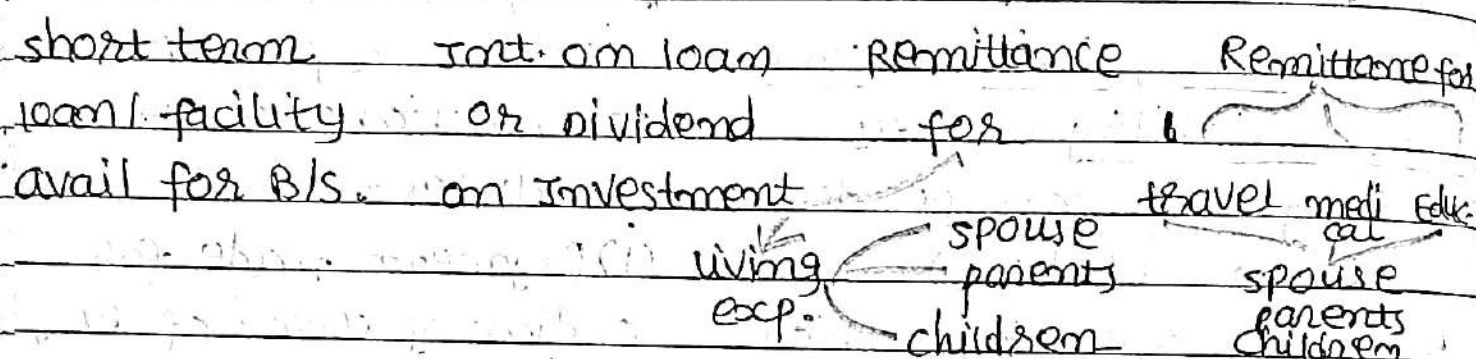
- (vii) Remittance for parents spouse children

current A/C Transactions

↓

Which are not capital A/C Transaction

Includes :-



current A/C Transactions (CUAT)

Transactions which are prohibited for which drawl of foreign exchange	Transactions for which approval of G.O.T is Required for drawl of foreign exchange	Transactions for which approval of RBI is required for drawl of foreign exchange
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↓

schedule: 1

↓

schedule: 2

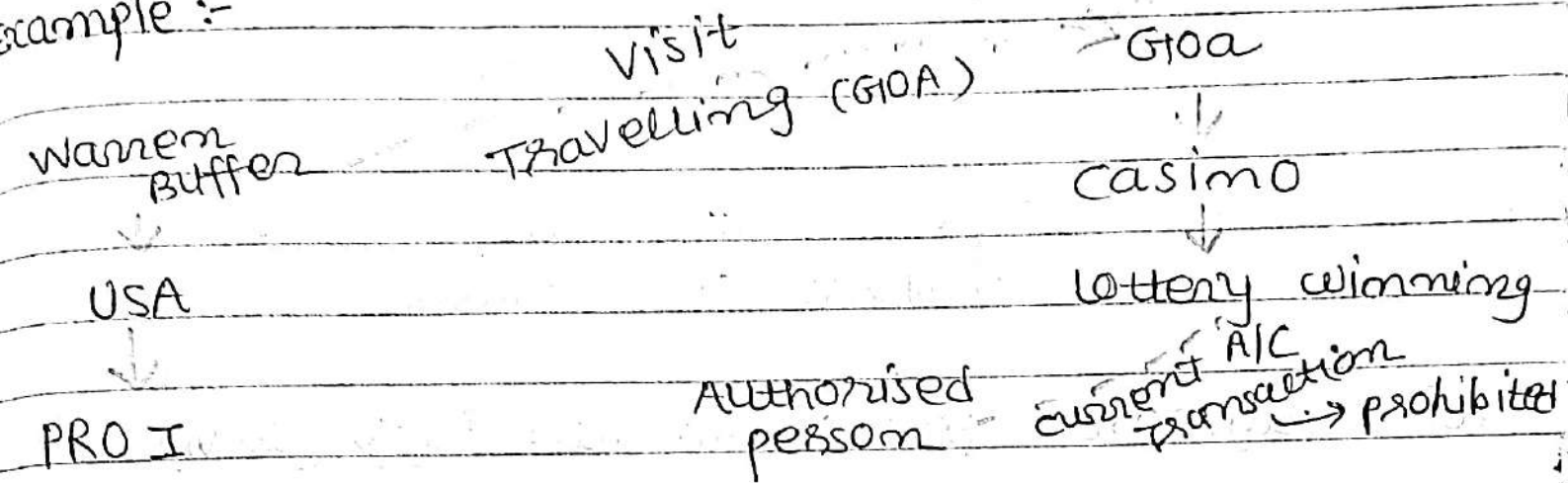
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schedule: 3

schedule: 1 → CUAT → prohibited Transactions

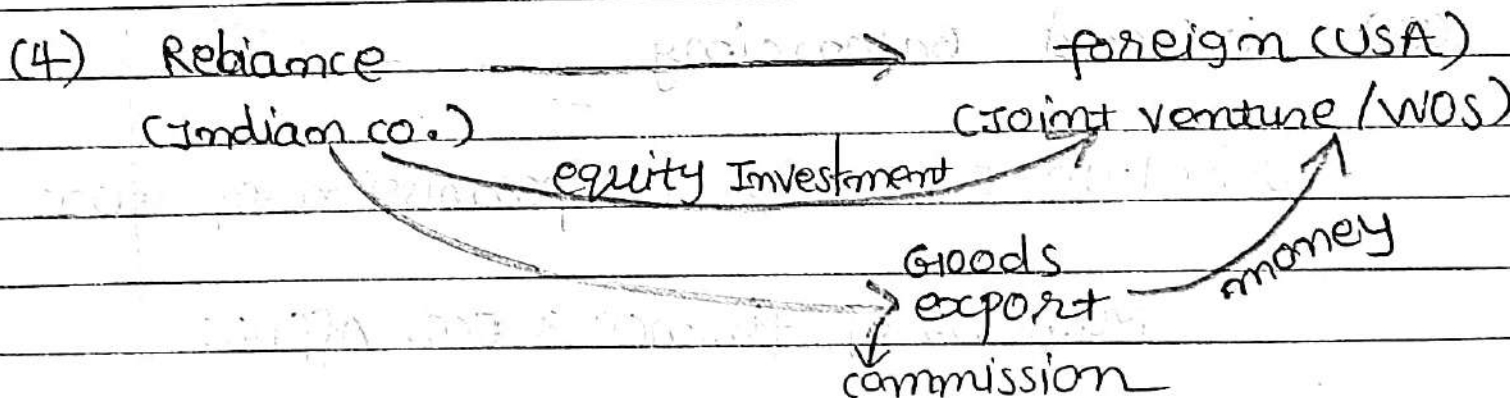
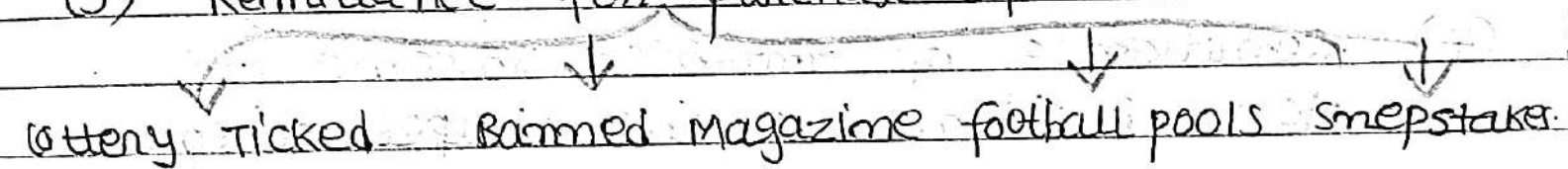
(1) Remittance of lottery winnings

Example :-



(2) Remittance from Income of Riding / Racing or any such kind of Activity / hobby.

(3) Remittance for purchase of



A payment of commission on export made towards as an equity investment in JV or WOS of Indian company in abroad.

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(5) Indian co. — Export
 Indian (₹) (Rupee state credit route) Russia
 commission paid in foreign exchange
 But Goods — Tea allowed 10% of
 & foreign exchange Invoice
 Tobacco

(6) Payment Related to call Back services

in case of international calling

for reduction of calling charges

(7) Remittance of interest income on
 Non-Resident special Rupee scheme.

(8) Dividend Balancing

schedule 2: → CUAT → permission of GOI

Ministry of finance & Eco. Affairs

Advertisement in foreign
 print media voice / T.V.

Tourism other than Exempt
 foreign investment these
 Inter. Bidding. state Govt. (PSU) other than
 Exempt NO permission

≥ 1,00,000 \$

No permission
Required

permission of
MDF.

:- As per Ministry :-

Ministry	Activity which permission ①
(1) Human Resource development	1) cultural Tour
	2) <u>price Money / sponsorship of any sport Activity</u>
	other than sports Body
	sports Body
	↓
	≥ 1,00,000 \$
	No permission required
(2) Ministry of Finance	1) Advance in foreign print media By PSU / SOA exceeding \$10K
	2) Remittance for membership of P & I club.
(3) Ministry of surface Transport	1) payment of foreign from vessel by PSU
	2) payment of import on c/f

Basis by PSU / Govt. depart.

3) Detention charges payable exceeding the rate prescribed by DG of shipping.

(4) Department of Shipping (Reg. certificate)

1) multimodal transport paying commission to agent at abroad.

(5) Department of Information Technology

Hiring charges payable to transponder

Broad castly

T.V. channel

ISP (Internet service provider)

CUAT

Schedule 3: ↑ Permission require from RBI

Limit of \$ 250,000

For Individuals

For other than Indis

1) private visit (Nepal/Bhutan)

1) Donation

educ. insti o/s India

• for creation of chair

• Fund managed by

X educ. insti.

• Techn. Insti. in the

filed of donor co.

WEL

2) Gift / Donation

3) Employment

4) Emigration (higher limit all)

as per country of emigration

5) Maintenance of close Relative

6) Business purpose Trip

7) Medical expenses
(Higher limit as per
doctor's estimation)

1% of foreign earning
of last 3 year
OR

\$ 50 Lakh

Attendent limit is separate

8) Education Expenses
(Higher limit as per
estimation of school/college/
University)

2) For sale of

Resident flats commercial plot
in India

Any amt in excess of this
amt require the permission of
RBI

commission to agent abroad
(US \$ 25000
OR
5% of
Inward Remittance)

3) consultancy
services

Infrastructure → \$ 1 Cr

other than → \$ 10 lakh

4) Pre Incorporation Expenses
reimbursement

5% of investment
Brought in India

OR

US \$ 1,00,000

Higher

If want to withdraw more than limit then
the permission of RBI is required.

Capital A/C Transactions

schedule 1

schedule 2

schedule 3

Permissible capital

Permissible capital

Prohibited

A/C Transactions

A/C Transactions

Transactions only

in case of PRII

in case of PROI

for PROI

• Special Note :-

(1) Capital A/C Transactions which are permissible by RBI either under sch. 1 or sch. 2

Any person can draw or sell foreign exchange for such CAT from A.P. or to A.P.

(2)

In consultation
with RBI

→ which type of CAT
which involves debt

→ Amt upto which drawal
of foreign exchange

→ Any other condition

(3) RBI In consultation
with CG

class of capital A/C
Transaction which don't
involve debt
Instruments

upto which Amt
foreign exchange
can be drawn

Any other
conditions.

schedule 1 :- Permissible Trans. for PPT

schedule 3 :- Prohibited Trans. for PPT

- NIDHI CO.

- chit fund

- Agriculture & plantation

- Real estate

- TDR (Transferable Dev. Rights)

↓
Township, comm. plots & Residential Roads & Bid

PROJ → permissible → RBI