

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999  
(FEMA, 1999 → 6 marks)

① Introduction:

Globalisation  $\implies$  Cross Border trade  $\implies$  Capital flows

FEMA '1999  $\Leftarrow$  Need to manage  $\Leftarrow$  Foreign inflows in India

- Preamble: To consolidate & amend laws relating to foreign exchange with the objective of:

Facilitating external trade & payments

& Promoting the development & maintenance of forex market in India

- Section 1: FEMA 1999 extends to:

Whole of INDIA

All branches, offices, agencies outside India controlled by PRI (Person Resident in India)

Contraventions committed outside India by anyone to whom FEMA applies

② Residential status of a person:

- PERSON: Individual, HUF, Co., Firm, AOP / BOI (whether incorporated or not), AJP, any branch / office / agency controlled by them.

- Residential status: Either PRI or PROI

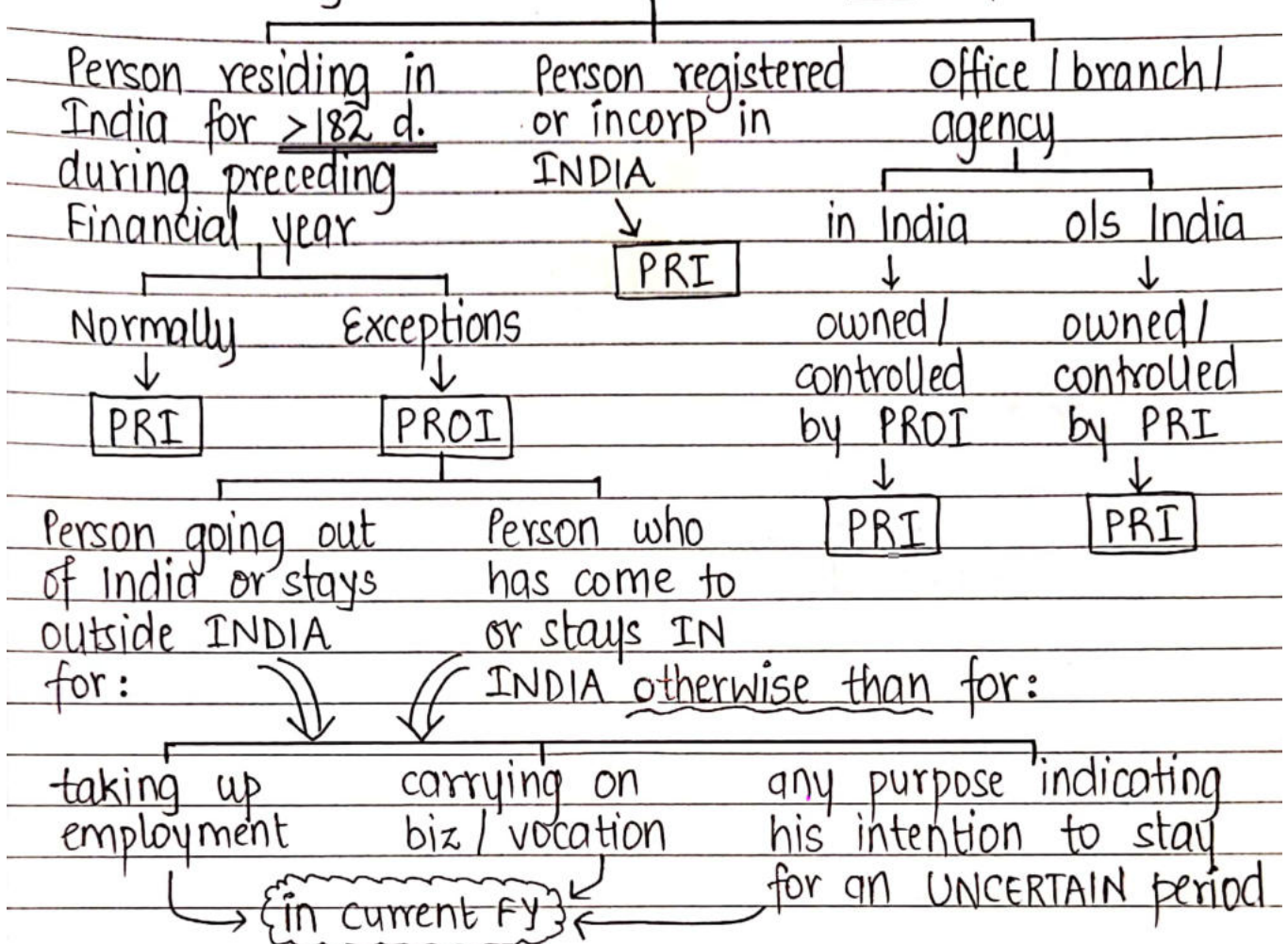
Citizenship  
X

Incorporation  
✓

Days of residence in INDIA  
✓

★ Interpretations have changed from MAY '20 onwards ★

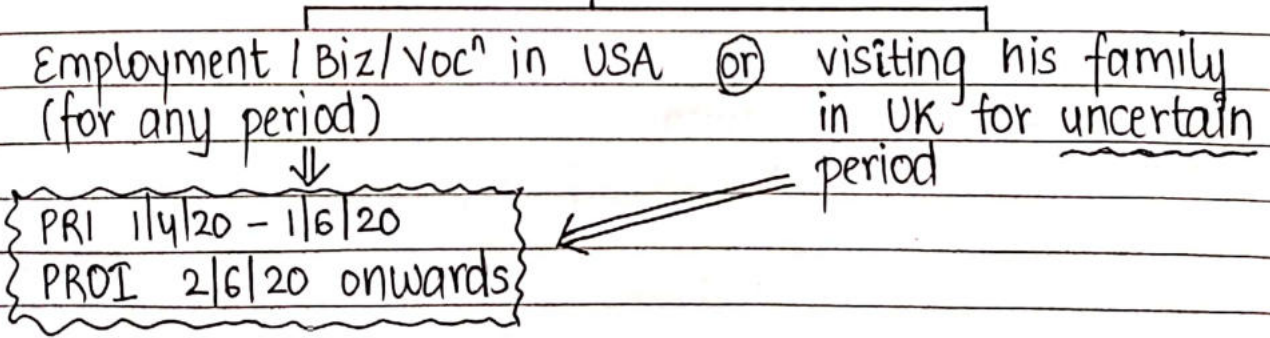
• Determining Residential Status (PRI definition):



\* Mantra → Employment / Biz / Voc<sup>n</sup> / uncertain period stay  
 jahaan ka, resident wahaan ka !!!

\* Examples for all points: Assume this is FY 20-21:

- Resides in India >182 d. in FY 19-20 ⇒ PRI wef 1/4/20
- Resides in India >182 d. in FY 19-20 and goes outside India on 1<sup>st</sup> June 2020 for:



- Resides in India > 182 d. in FY 19-20 and leaves India, for employment in USA, on 11/2/19 and comes to India on 2/7/20 for purpose:

≠ Emp ≠ Biz ≠ Voc<sup>n</sup> ≠ for uncertain period

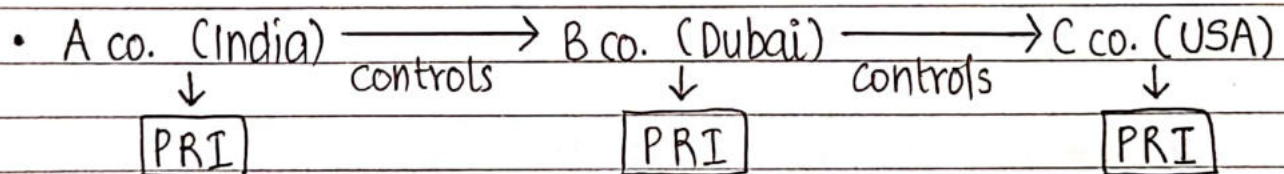
2/12/19 - 1/7/20 ⇒ PROI  
2/7/20 onwards ⇒ PROI

- In the above eg., if he comes to India on 2/7/20 for:

Emp / Biz / Voc<sup>n</sup> / any purpose indicating his  
↓ ↓ ↓ intention to stay for uncertain  
(for any no. of days) no. of days

2/12/19 - 1/7/20 ⇒ PROI  
2/7/20 onwards ⇒ PRI

- RIL Ltd. incorporated in India has 98% income from sales in USA ⇒ **PRI**



- A co.'s branch located in London → **PRI**
- PROI company's branch in India → **PRI**

★ What about "upto 182 days" in India in last FY?

Normally  
↓  
**PRI**

Comes to India in current FY  
for Emp / Biz / Voc<sup>n</sup> / uncertain period  
↓  
**PRI** as per RBI circular

Example: Mrs. A stayed in USA in FY 19-20 and came to India on 11/4/2020 → for employment

↓  
[PRI] wef 11/4/2020

\* NOTES:

- RBI circular no. 45 of 2003:

Mr. A resides for >182d. in India last year and leaves India on 11/8/20 for pursuing higher studies in USA.

Normally if he goes for empl biz. etc.

↓  
Then only he is [PROI]

As per RBI circular, students will be considered as

[PROI] since they start working there to take care of studies & stay costs

- Case study of AIR-HOSTESS:

she is employed by British Airways (Head office → UK). She flies 12 days a month & takes break for 18 days. During her break, she is accommodated at Mumbai, which made her stay >182d. in that year, in India.

She will be [PROI] next year since she stayed in Mumbai while she was EMPLOYED by British Airways. She did not come to India for taking up employment.

Also, when she was accommodated in Mumbai, it was due to her job requirements and it should be called as 'STAY' in India and not 'RESIDE' in India.

IF Mumbai branch of British Airways had employed her, then she would've been [PRI].

③ SECTION 3: Dealing in Forex / Foreign security etc.

Save as otherwise specified in this act / rules / regulations,  
No person shall:

Deal with / transfer forex or foreign security to any person $\neq$ Authorised person	eg. PROI came to India and sold \$1000 to friend ↳ VIOLATION ✓
Make payment to or for the credit of or on behalf of PROI	eg. PRI pays insurance premium for PROI sister ↳ VIOLATION ✓
Receive any payment from anyone other than an authorised person	eg. Restaurant accepted \$45 from foreign tourist ↳ VIOLATION ✓
Enter into financial trans <sup>n</sup> <u>IN INDIA</u> as consideration for, or in association / creation / trfr of rights to acquire any asset <u>OUTSIDE INDIA</u> by any person	eg. Mr. A paid ₹75000 to Indian agent, who in turn asked American agent to pay \$1000 to Mr. A's bro in USA (= HAWALA) ↳ VIOLATION ✓

Authorised Person = Authorised by RBI u/s 10

Authorised Dealer      Money changer      Offshore banking unit (OBO)

eg. Banks, Hotels, Tour agents, etc.

④ SECTION 4: Holding of Forex

Save as provided elsewhere in this act / rules / regulations,  
PRI cannot acquire / own / hold / trfr

Forex      Foreign Security      Immov property o/s India

⑤ SECTION 8: Realisation & Repatriation of Forex

If any Forex is due / has accrued to PRI, then PRI shall take steps to REALISE & REPATRIATE such forex to India within the period & manner specified by RBI.

⑥ SECTION 9: Exemption from realisation & repatriation

SEC 4 & 8 shall not apply to:

Possession of forex or foreign coins upto a limit	Foreign currency account upto a limit	Forex acquired or recd before 8/7/1947 held in India & any income accrued on it	Forex held by a PRI upto a limit, if such forex was acquired by Gift / inheritance from above-mentioned person & income accrued on it
Forex acquired from biz / trade / vocation / services / gifts / honorarium / inheritance or any legitimate means upto a limit			

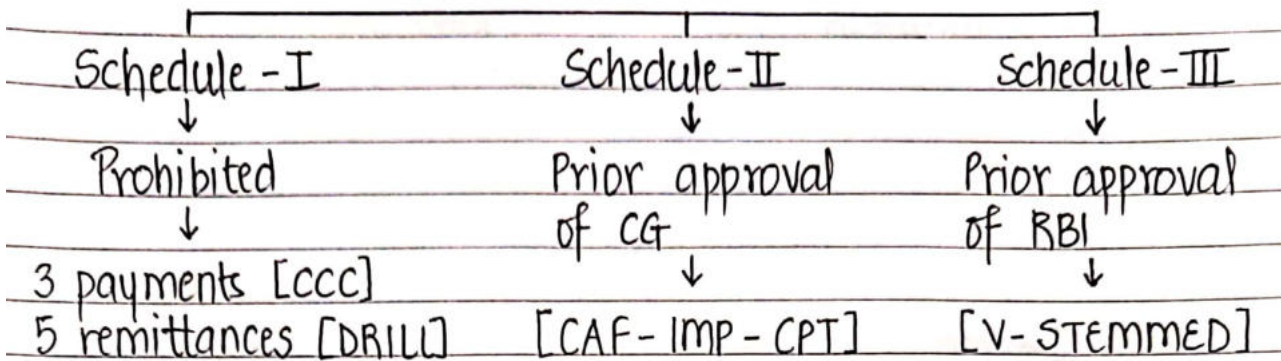
All limits → specified by RBI → not in syllabus!

⑦ SEC 5: Current Account Transactions

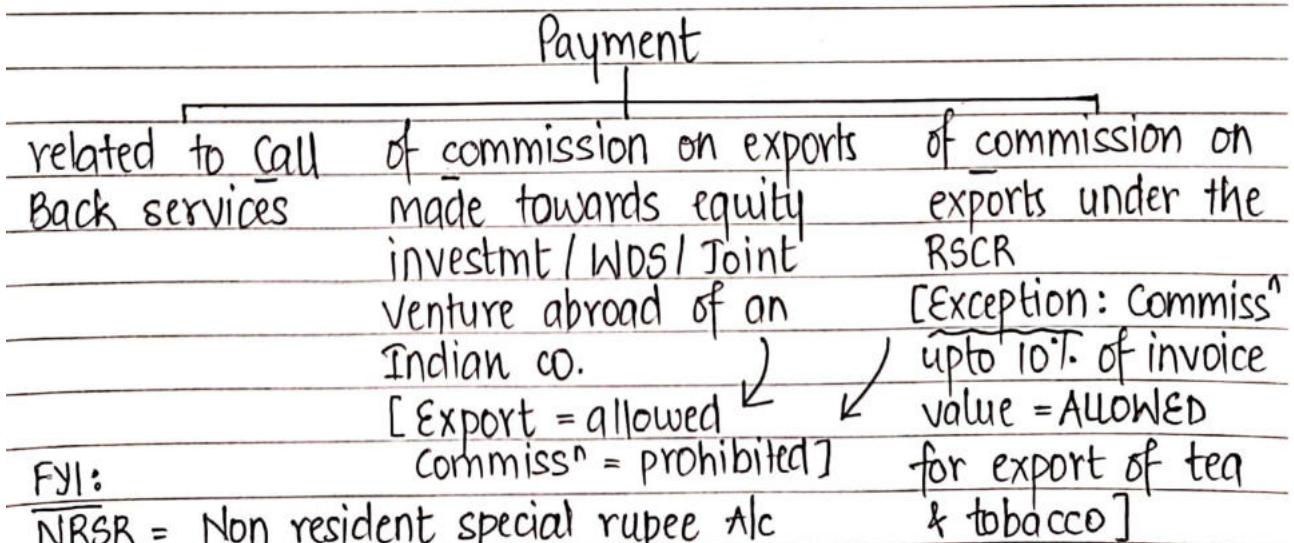
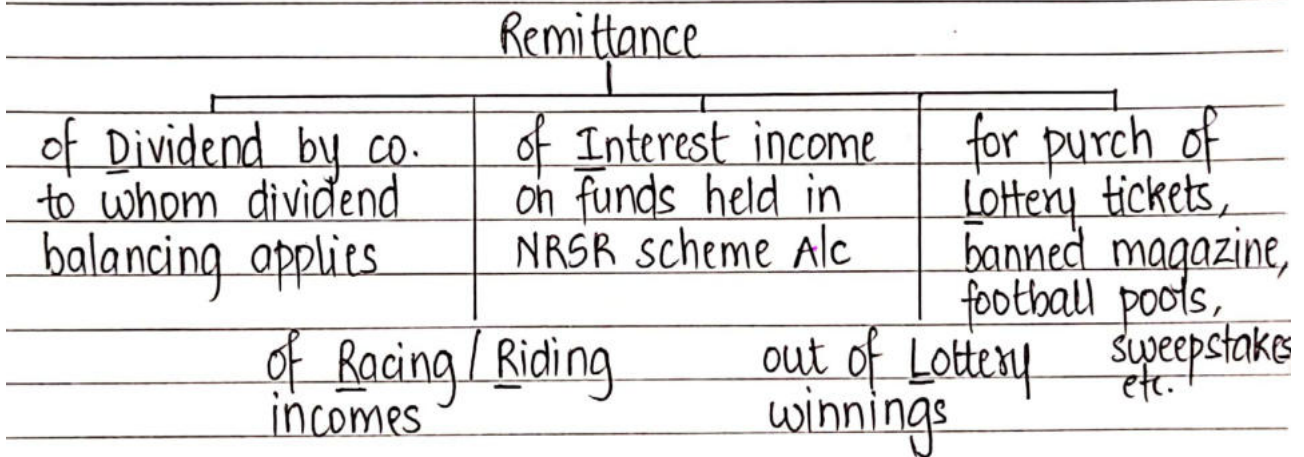
- Any person may sell / buy forex to / from an Authorised Person if such sale / drawal = current Alc transaction
- SEC 2 → Current Alc transaction: It is a transaction (≠ capital transaction) that includes (but not limited to):

Payment wrt foreign trade, biz, interest on loan or investments	Payments due wrt foreign edu, travel and medical care of →	Remittances for living expenses of → <span style="border: 1px solid black; padding: 2px;">self / spouse / kids / parents</span>	short term bank / credit facility in ordinary course of biz.
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⑧ Restrictions under FEM (Current Account Transaction) Rules, 2000:



A] Schedule I: Drawal of forex is prohibited for-



FYI:

NRSR = Non resident special rupee Alc

RSCR = Rupee State Credit Route

Sweepstakes = lottery contests where winners get products/goods

\* Drawal of forex = prohibited (Rupee can be used for all above transactions ✓)

B) Schedule II: CG's prior approval is needed for

Transaction	Approval of
C- <u>Cultural Tours</u>	Ministry of Human Resource Development, Dept of Education & Culture
A- <u>Advertisement</u> in foreign print media for purposes, other than promotion of Tourism / Foreign Investments / International bidding, by SG and its PSU (only if amt exceeds \$ 10000)	Ministry of Finance, Dept of Economic Affairs "Print" only (other modes are freely allowed)
F- Remittance of freight of vessel chartered by PSU	Ministry of surface transport (Chartering wing)
I- Payment of import through ocean transport by PSU or Govt dept on CIF basis ( $\neq$ FOB or FAS)	"
M- <u>Multimodal transport operators</u> making remittance to their agents abroad	RC needed from Director general of shipping (DGS)
P- Remittance for membership of <u>Protection &amp; Indemnity (P&amp;I) club</u>	Ministry of Finance (Insurance division)
C- Remittance of <u>Container Detention charges</u> exceeding rate prescribed by DGS	Ministry of surface transport (DGS)
P- Remittance of <u>Prize money / sponsorship of sports activity</u> abroad, by persons other than International / National / state level sports-bodies (if amt exceeds \$ 100000)	Ministry of human resource development (Dept of youth affairs & sports)

T- Remittance of hiring charges of Transponders by TV channels & Internet service providers (ISP)	Ministry of Information & Broadcasting (TV) Ministry of communication & IT (for ISP)
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c) Schedule III - RBI's prior approval needed for:

Facilities for Individuals

≠ Individuals

[V-STEMMED]

[DC2P]

→ For Individuals: They can draw upto \$ 2,50,000 p.a. freely for V-STEMMED & other current A/c transactions (not covered in sch I & II) under LIBERALISED REMITTANCE SCHEME (LRS). Drawal > \$ 250000 shall need RBI's prior approval. In 3 cases (S, E<sub>1</sub>, M<sub>1</sub>) drawal can be > 250000\* without RBI approval.

V- Private visit to any country (≠ Nepal / Bhutan)

S- Studies abroad

T- Travel for biz, attending conference / training, medical exp, check-up abroad or accompanying as attendant to a patient going abroad for a medical treatment / check-up

E<sub>1</sub>- Emigration (to settle abroad)

M<sub>1</sub>- Medical treatment abroad

M<sub>2</sub>- Maintenance of close relatives abroad

E<sub>2</sub>- Employment abroad

D- Donation / Gift

& Any other curr A/c transac<sup>n</sup> (other than sch I & II)

★ For S, E<sub>1</sub>, M<sub>1</sub> → Individuals can draw > \$ 250000 without RBI's approval if REQUIRED BY UNIVERSITY (for S), EMIGRATION COUNTRY (for E<sub>1</sub>) and MEDICAL INSTITUTE OFFERING TREATMENT (for M<sub>1</sub>).

\* A person resident but not permanently resident in India

Who is citizen of a foreign state ( $\neq$  PAKISTAN)

or

Who is citizen of India who is on deputation to an office/branch of F.co. or subsi/JV of F.co. in INDIA

may make remittance of an amt upto net salary (after tax/PF/deductions) freely ✓



\* Person resident but not permanently resident in INDIA is a person who is resident on account of:

his employment/deputation of a 'specified duration'

or

his specific job or any assignment whose duration  $\leq$  3 years

\* A person ( $\neq$  Individual) may avail forex facility under LRS as per above limits for abovementioned purposes.

→ Facilities for persons other than Individuals: The following shall require RBI's prior approval- [DC2P]

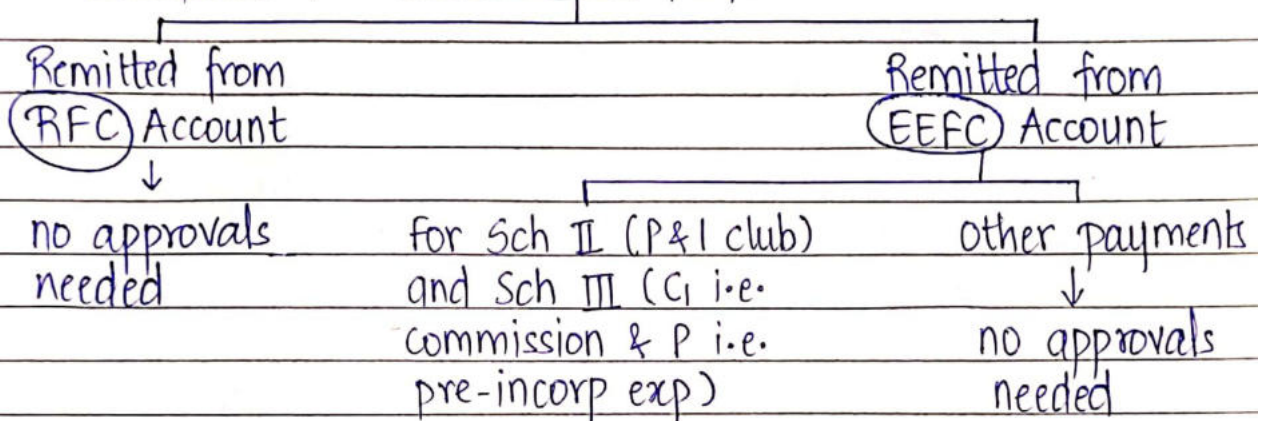
	Amounts Exceeding:
D- Donations for: <ul style="list-style-type: none"> <li>Creation of chairs in reputed educational institutes</li> <li>Contri to fund (<math>\neq</math> inv fund) promoted by edu institutes</li> <li>Contri to technical institute/body in field of donor co.'s activity</li> </ul>	1% of forex earnings during last 3 FY (OR) USD 50 LAKHS
C <sub>1</sub> - Commission to agents abroad for sale of resi flats/comm plots in INDIA → limit "per transaction"	USD 25000 (OR) 5% of inward remittance (SP)
C <sub>2</sub> - Consultancy service fee for: <ul style="list-style-type: none"> <li>Infra project →</li> <li>Other projects / other consultancy (service = procured from abroad) →</li> </ul>	USD 100L per project USD 10 L per project

P- Remittance by an entity in India by way of reimbursement of pre-incorporation expenses

↑ 5% of investment brought to INDIA  
 (or)  
 USD 1 LAKH

\* Exemption for Sch III payments → If a person is on a visit abroad, then he can incur it freely using an INTERNATIONAL CREDIT CARD ✓

\* Exemption for Sch II & III payments:



(9) SEC 6: Capital Account Transactions -

- A person may sell / draw forex to / from an Authorised person for capital account transactions.
- CG/RBI may place any conditions / restrictions on above
- PRI may hold / own / trfr foreign currency / foreign sec / Immov prop outside India if it was:

Acquired / held / owned by that person when he was PROI

Inherited from PROI

- PROI may hold / own / trfr Indian currency / Indian sec / Immov prop in India if it was:

Acquired / held / owned by that person when he was PRI

Inherited from PRI

FYI: RFC Alc = Resident Foreign Currency Alc

EEFC Alc = Exchange Earners Foreign Currency Alc

- SEC 2 → What is a Capital Acc transaction?

Any transaction which:

alters assets, liabilities, contingent liabilities outside India

↓  
of PRI

alters assets & liabilities in India

↓  
of PROI

- SEC 6 → Transactions which can be carried out freely i.e. without restrictions:

Amortisation of loan

Repayment of loan instalments

Depre of direct investmt in ordinary course of business

⑩ FEM (Permissible Capital Account Transactions) Regulations, 2000:

SCHEDULE I

↓  
Permissible transac<sup>n</sup> by PRI

SCHEDULE II

↓  
Permissible transac<sup>n</sup> by PROI

REG 4

↓  
Prohibited transac<sup>n</sup>

SCH I (for PRI)	SCH II (for PROI)
Invest in foreign securities	Invest in securities of Indian body corp or in capital of firm / association in India
Trfr of Immov prop ols India	Acq <sup>n</sup> / Trfr of immov prop in India
Guarantee in favour of PROI	Guarantee in favour of PRI
Export / Import / Hold currency loan / overdraft to / from PROI	Export / Import currency
Foreign currency loan raised in India / Abroad	Deposits between PRI & PROI

Maintenance of foreign currency Alc in India & outside India	Maintenance of foreign currency Alc in India
Remittance, outside India, of capital assets	Remittance, outside India, of capital assets
Undertake derivative contracts	Undertake derivative contracts
Taking out Insurance policy from insurance co. outside India	-

### REG 4: Prohibitions

#### A) for PRI (Individuals):

- Cap Alc Schedule I → max \$ 250000 pa
- Curr Alc Schedule III → max \$ 250000 pa
- Cap Alc Sch I (+) Curr Alc Sch III = max \$ 250000 pa
- Drawal of forex for cap Alc transac<sup>n</sup> upto \$ 250000 cannot be remitted directly / indirectly to "Non co-operative countries" declared by Financial Action Task force (FATF)

> \$2.5L needs RBI Approval

↓  
FYI: KOREA, IRAN

#### B) PROI cannot make investment in India in any co., firm, etc. which is engaged, or proposes to engage in:

- |                 |  |                               |           |                |
|-----------------|--|-------------------------------|-----------|----------------|
| Trading in TDRs | Real Estate's biz or construc <sup>n</sup> of farmhouses | Agri or plantation activities | Nidhi co. | Chit Fund biz. |
|-----------------|--|-------------------------------|-----------|----------------|

(Shortcut = TRANC)

#### c) PRI cannot undertake capital Alc transac<sup>n</sup> with a person / entity of Democratic People's Republic of Korea.

But for existing transactions? ⇒ close / settle / dispose it within 180 days from date of notification (7/3/2019).

NOTES:

- For investment in Chit funds → If Registrar of chits or an officer authorised by SEI can allow chit-funds to accept subscription from NRIs through Banking channel and on non-repatriation basis, without any limit.
- Real Estate biz excludes:

Development of Townships

construc<sup>n</sup> of resi/comm premises, roads, bridges

SEBI registered REITs

In short, investment in above 3 by PFI = ALLOWED!