FEMA, 1999

FEMA 1999 replaced FERA 1973

7 chapters:
- Preliminary – Sec 1 & 2
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  - Sec 2 – Definitions
- Reg(n) mgmt – Sec 3-9
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  - Sec 5 ★ – Current a/c Transactions → FEM Rules, 2000 [by CG] (+) Sch I, II, III
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(Sec 10 onwards: not in syllabus)

Sec 1: Extent & Application
(1) Whole of India
(2) Branch/office o/s India controlled by PRII
(3) contravention o/s India by person to whom act applies.

Sec 2: Definitions:

(c) Authorised Person – authorised dealer
- money changer
- offshore banking unit
- other person authorised to deal in forex

(h) Currency – currency notes, postal notes, postal orders, money orders, cheques, letter of credit, BOE, promissory notes, credit cards, drafts etc...

(i) Currency notes – bank notes, coins
(m) Foreign currency – other than Indian currency

(l) Export – taking any goods out of India to a place o/s India.
- services from India to any person o/s India.

(n) Forex – foreign currency (+)
- → deposit, credits, bal. payable in foreign currency.
- → drafts, TC, L/C, BOE drawn in ₹ but payable in FC [Indian paper that allows you to use it in another country]
- → " " " " drawn o/s India payable in ₹ vice-versa.

(o) Foreign security – share, stock, bond, debenture etc. } denominated in foreign currency (+) securities expressed in FC where redemption/int/div. in ₹

(p) Import – bringing any goods/services into India

(ze) Transfer – sale, purchase, exchange
- pledge, mortgage, loan
- gift
- t/f of right, title, possession, lien.

Person:
- (u) Person (same as 2(31) of IT) – Ind, HUF, Co., Firm, AOP, BOI, AJP (+) agency/office/branch controlled
- (v) PRII ★
- (w) PROI – person who is not resident in India

(v) PRII (point in time not period in time) ~~citizenship~~

- Part I – Individuals reside > 182 day in PFY
- Part II – BC inc. in India
- Office/Branch/agency:
  - Part III – in India owned/controlled by PROI
  - Part IV – o/s India owned/controlled by PRII

overriding:
exclude: if person gone o/s India in CFY for ① Employment ② Business or vocation ③ other purpose intention to stay o/s uncertain period
include: if person comes or stays in India in CFY for ① ② ③

reside > 182 days in PFY?
- Yes → goes out/stay o/s India in CFY?
  - No → PRII
  - Yes → 3 purpose? → No → PRII; Yes → PROI
- No → come/stay in India during CFY?
  - No → PROI
  - Yes → 3 purpose? → No → PROI; Yes → PRII

★ गया या आया दोनों same day PRII count

Sec 3 Dealing in forex
No person
- deal/t/f forex to any person other than AP ✓ — Eg: selling USD to friend ✗
- make payment on behalf of PROI ✗ — Eg: paying PROI's insurance premium ✗
- recv any payment on behalf of PROI ✗ AP ✓ — Eg: paying restaurant bill in USD ✗
- enter into financial transaction in India for acquisition of asset o/s India. ✗ Hawala transactions ✗

करना है तो – as provided in Act / RBI permission

Indian → 70,000 ₹ → Indian Dealer (settle later); brother in Dubai ← 1000 US$ ← Dubai dealer

Sec 4 Holding of forex

No PRII
- acquire, hold, own, possess, t/f → forex, foreign security, immovable prop. o/s India.

Notifications से permit किया है subject to conditions & rules.
Eg: uncle से london में USD 10K लिया ✗

CAPITAL & CURRENT A/c Transactions — "Current a/c are freely permitted unless specifically prohibited & cap a/c are prohibited unless generally permitted."

2(j) Current A/c Transactions other than capital & includes
- foreign trade payments, current business, services, short term credit [upto 6m]
- int on loans (+) income from investments.
- remittance – living expense abroad — parent/spouse/children
- foreign travel, education, medical care expense

Note: Purchasing asset like machine → immediate payment = no asset/liab under FEMA = current a/c
→ payment ↓ 6m credit = liab under FEMA but 6m↓ = current a/c

Gift = no asset/no liab = current a/c
but PRII → PROI in ₹ in India can't take away ∴ Funds lying in India = Indian asset = capital a/c

Sec 5 Current a/c Transactions
sell/draw forex from AP ✓
reasonable restrictions under FEM [Current a/c] Rules, 2000
- Sch I – Prohibited
- Sch II – govt. approval
- Sch III – RBI approval

if not listed, it can be freely undertaken

(i) Sch I [Prohibited]
- remittance of lottery winnings
- " of racing/riding/hobby
- " for purchase of lottery tickets, banned magazines, football pool, sweepstakes etc.
- " of dividend by co. [div. balancing applicable]
- " of interest on NR Special Rupee scheme a/c
- Payment – 'call back services' of telephone
- " of comm on exports under Rupee State credit route except 10% of invoice of tea & tobacco.
- " " " " made towards equity investment in JV/100% subs of Indian Co. abroad.

(ii) Sch II [prior approval → Govt.]

Purpose of remittance	Ministry/Dept [जिसकी है चाहिए]	
Cultural Tour	HR	Education & culture
Prize money/sport sponsorship > US$ 1L ~~Int/National/State level sports body~~	HR	Youth affairs & sports
Ad. in foreign print media; Tourism ✗; Foreign investments ✗; int. bidding ✗; > US$ 10K by SG & PSU.	Finance	Economic affairs
membership of P & I club	Finance	Insurance Division
Freight of vessel charted by PSU	Surface Transport	Chartering wing
import by govt dept./PSU on C.I.F ~~F.O.B & F.A.S.~~	"	"
Container detention charges > rate by DG	"	DG of Shipping
multi modal transport operators remittance to agents abroad		Registration certificate from DG of shipping
hiring charges of transponders by → TV channels → Internet service providers	Info & broadcasting (+) Comm^n & IT	

(iii) Sch III [prior approval → RBI]

Individuals
limit → USD 2.5L/P/FY No approval
- visits to any country ~~Nepal & Bhutan~~
- Gift/donation
- employment
- Emigration
- close relatives – maintenance
- Travel – business/conference/training
- medical treatment (+) attendant
- studies
- other current a/c

Additional remittance i.e. > 2.5L – prior approval of RBI
can avail > limit under LRS if req^d by country

Genuine case:
Ⓐ PRII but not permanent PRII [≤ 3yrs of Emp]
(+) citizen of foreign state ~~Pakistan~~
or
citizen of India – deputation in branch/subs/JV of FC in India
remittance up to net salary ~~tax PF~~

Other than ind.
- Donation > 1% of forex earnings during 3PFYs or 5 million USD for — chair in educational inst^n / contri to fund promoted by educational inst^n ~~Investment fund~~ / contri to technical inst^n in field of donor co. (w.e.l)
- Comm^n/transaction to agent abroad — sale of flat/plot in India > USD 25K or 5% of inward remittance (w.e.h)
- Consultancy service o/s India
  - Infra project > USD 10 million/project
  - other > USD 1 million/project
- Reimbursement of pre-incorp exp. > 5% of investment into India or USD 1 lakh (w.e.h)

Exemptions from approval
- Resident Foreign currency a/c [RFC] – No approval for Sch II/Sch III
- Exchange earner's Foreign currency a/c [EEFC] – No approval except:
  membership of P&I club (Sch II)
  comm^n to agent abroad (flat/plot) (Sch III)
  reimburse of pre-incorp exp. (Sch III)
  } approval लेना पड़ेगा
- International credit card on visit abroad [Sch III]

LRS
limit: USD 2.5L/FY — current/capital permissible ✓
Minor: declaration countersigned by minor's natural guardian
किसको: Individuals ✓; corporate, partnership firms, HUF, Trust ✗
Consolidation: family members ✓
clubbing – not permitted for capital a/c if not co-owners of bank a/c/Inv/property

2(e) Capital a/c transaction which alters
- asset/liab (contingent भी) of PRII o/s India
- asset/liab of PROI

Eg: Investments, loans, immovable property के cross border transactions

Sec 6 Capital a/c transactions
can be carried out only to the extent permitted. [RBI regulates]
- Person may sell/draw forex from AP for capital a/c transaction
- RBI [consults CG] specify – permissible capital a/c trans., limit, conditions
  [Foreign Inv. in Debt Ins] ↓ [Non-Debt] Power t/f to CG
- PRII may hold/own t/f/invest in – foreign currency, security, imm. prop. o/s India if acquired when – he was PROI ✓ – inherited from PROI ✓
- PROI may own/t/f/invest in – Indian currency, security, imm. prop. in India if acquired when – he was PRII ✓ – inherited from PRII ✓
- RBI regl^n may prohibit/restrict/regulate PROI's branch/office/POB in India

clarification
this covers:
① FC a/c opened — when he was PROI
② Income earned from emp/business/investments/gift/inheritance — when he was PROI
③ Forex (+) income held o/s India — inheritance from PROI
Note: PRII may freely utilize:
- eligible assets (+) income abroad or sale proceeds
- to make fresh investments abroad w/o RBI approval
- पूरा cost eligible asset में से meet होना चाहिए

FEM [Permissible capital a/c trans] Regl^n, 2000
- Permissible – PRII: Sch I; PROI: Sch II
- restrictions cannot be imposed – amortization of loan – depri of direct investments in ordinary course of business
- Prohibited by RBI
  - No person shall sell/draw forex from AP for cap a/c. Ind Sch I के लिए 2.5L USD/FY draw कर सकता है. if > 2.5L USD → limit specified in regl^n shall apply. Dont remit to non-coop country by FATF
  - PROI prohibited from making investments
    ① Chit Fund [NRI – subscribe – banking channel – nonrepatriation basis – permit by Registrar in consultation with SG]
    ② Nidhi Co.
    ③ agriculture/plantation
    ④ real estate/construction of farm house – except – Development of townships ✓ / construction of residential/commercial premise/road/bridge ✓ / REITs under SEBI ✓
    ⑤ trading in Transferable Development Rights — सरकार land के बदले देती है पर ₹ नहीं देती
  - Cap a/c trans not permissible – order of GOI/ministry of External affairs: PRII ⟷ Person of Korea ✗. Existing Inv. transactions close within 180 days unless specific CG approval

Sch I: Permissible transactions by PRII
- Investment in foreign securities
- FC loans in India/abroad
- t/f of imm prop o/s India
- guarantee in favour of PROI
- Exim & holding of currency
- loan (+) OD from/to PROI
- FC a/c in India/abroad
- Insurance policy from co. o/s India
- Remittance o/s India of capital assets
- derivative contracts

Sch II: Permissible transactions by PROI
- Investment in India → in security of BC/entity → contri to capital of firm/prop/AOP.
- ~~
- acquisition/t/f of imm prop in India
- guarantee in favour of PRII
- Exim of currency into/from India
- ~~
- FC a/c in India
- ~~
- Remittance o/s India of capital assets in India
- derivative contracts
- deposits b/w PRII & PROI