

FEMA - 1999

Foreign Exchange Management Act, 1999.

FERA → 1947 - 1957

FERA → 1973 - 11/1/74

FERA

Introduce ^{when} foreign exchange
reserve → **low**

purpose - **Conservation** of
foreign exchange Reserve

- Rigid Law / **Draconian Act**
- of Contravention → **Criminal offence**
↓
Imprisonment
- Compounding not possible
↓
Contravention → Imprisonment

FEMA

Introduce ^{when} FER - was
Sufficient

purpose - **manage** FER

- Liberal Law
- Contravention → **Civil offence**
↓
Fine
- Compounding possible
↓
cont. = Imprisonment
or
Fine

Purpose
FEMA, 1999

Facilitating
External trade
↔ payment

promoting orderly
development of
foreign exchange
market in India.

FEMA, 1999

Background / History.

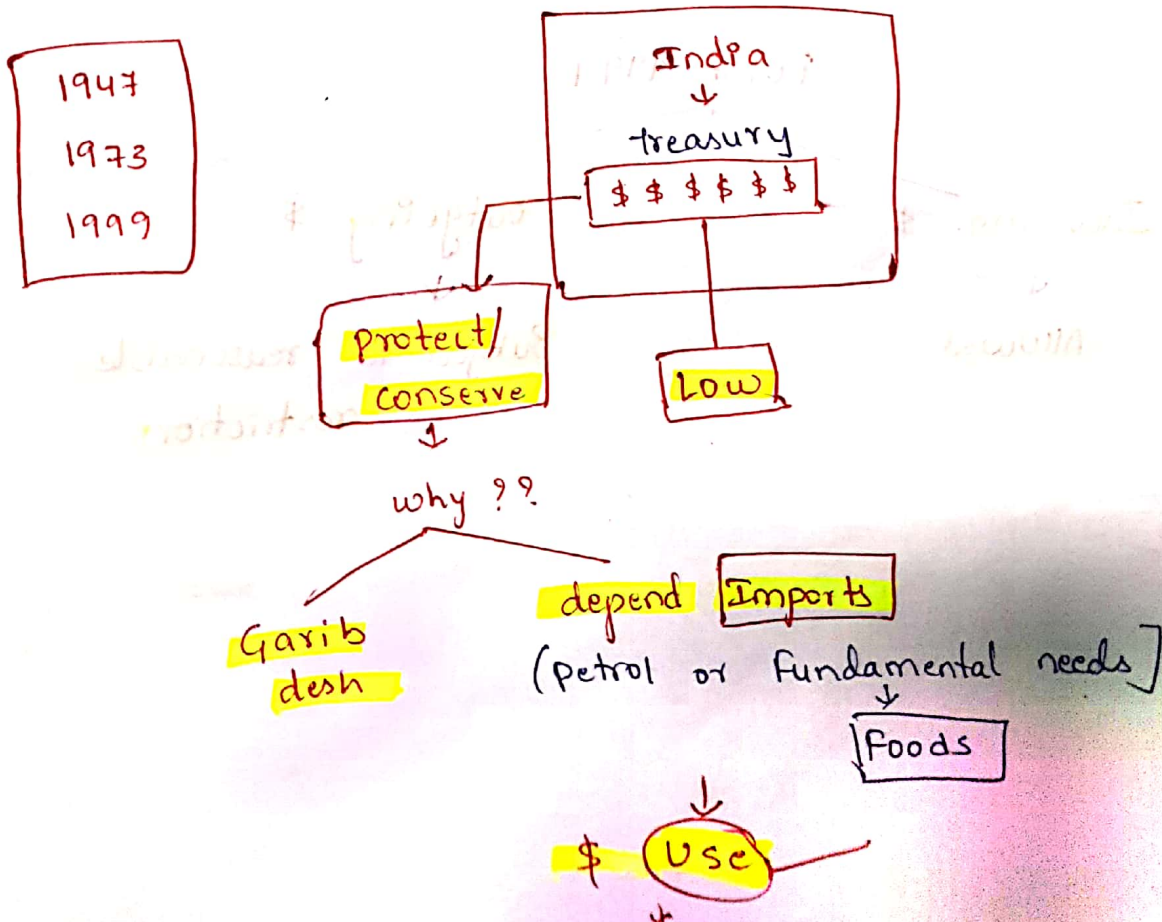
Before FEMA, 1999 there was FERA, 1947, there after FERA, 1973.

In 1991 when reformative policy introduce i.e liberalisation, privatisation & globalisation, foreign exchange Regulation Act FERA was creating a hurdle in liberalising & globalising the policies & consequently FEMA, 1999 was introduced

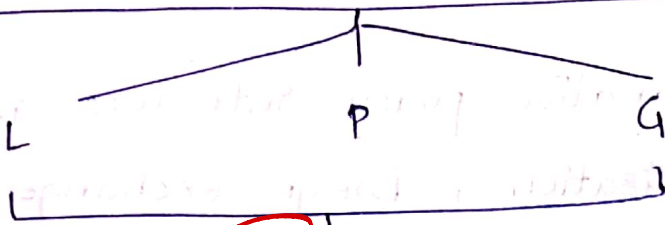
Preamble of FEMA, 1999 (Purpose)

An Act to facilitate external trade & payments (import - export) & orderly development of foreign exchange market in India.

Pictorial Representation from FERA to FEMA.

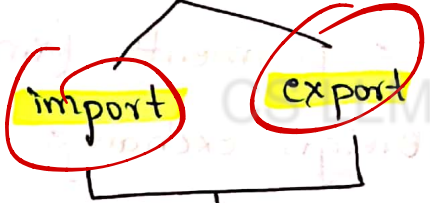


Draconian Act



FEMA

facilitate



External trade

manage

foreign exchange market in India

Foreign direct investment

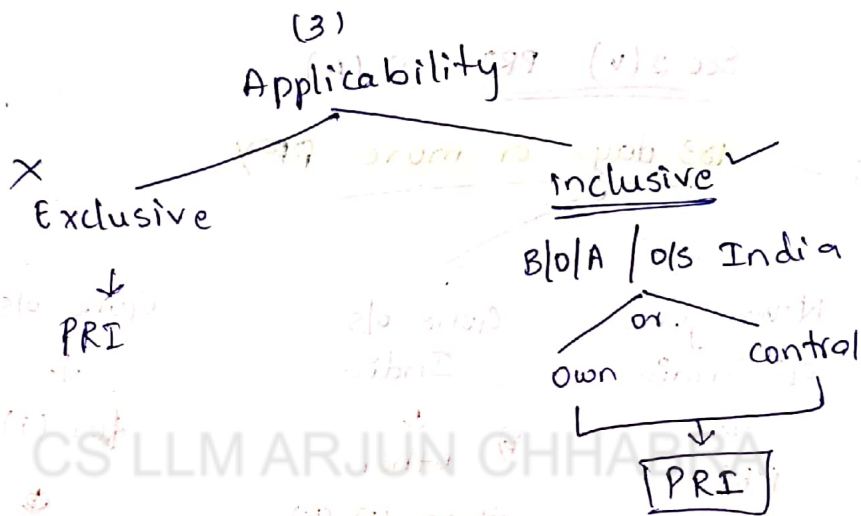
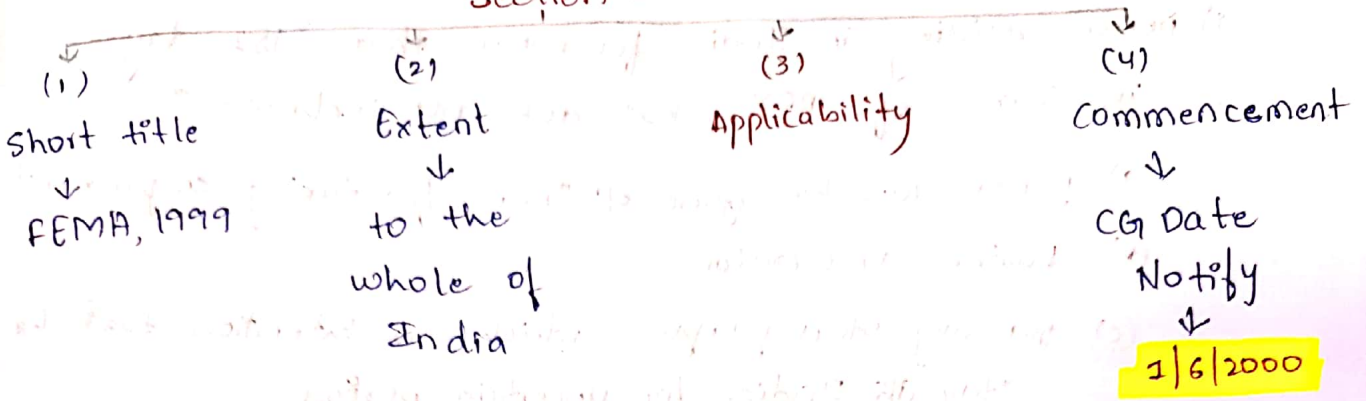
FEMA 1999

Incoming \$
↓
Allowed

outgoing \$
↓
Subject to reasonable restriction

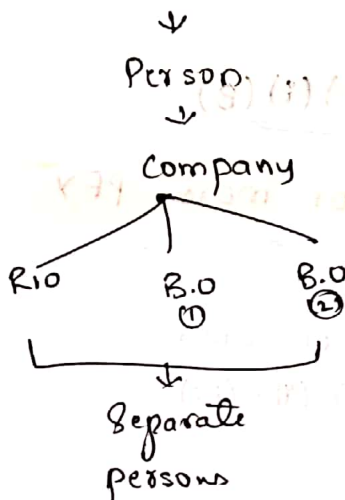
FEMA, 1999

Section 1.

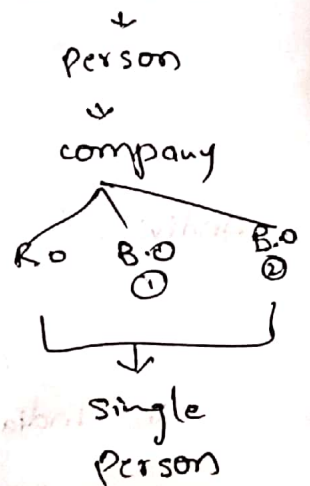


- PERSON - Sec 2(v)
- PRI - Sec 2(v)
- PROI - Sec 2(w)

FEMA 1999



Co. Act 2013



Residential status
 -> PRI
 transactions
 -> cap. a/c
 -> current a/c

Sec 2(v) Person Resident in India.

↓
means.

Individual

i) person residing in India for more than 182 days in course of PFY, but does not include -

- (a) person who has gone o/s India for taking employment
- (b) business or occasion
- (c) for any other purpose which shows intention that he stay o/s India for uncertain period

Sec 2(v) PRI (i) (A)

Individual → 183 days or more PFY.

Never gone o/s India

↓
PRI

Gone o/s India

other than (i) (ii) (iii)

↓
PRI

Gone o/s India

↓
for (i) (ii) (iii)

⊕
i) Employment

ii) B/o

iii) UN cert period

↓

PROI

Sec 2(v) (i) (B)

Individual = 183 or more PFY

Coming or stays in India for (i) (ii) (iii)

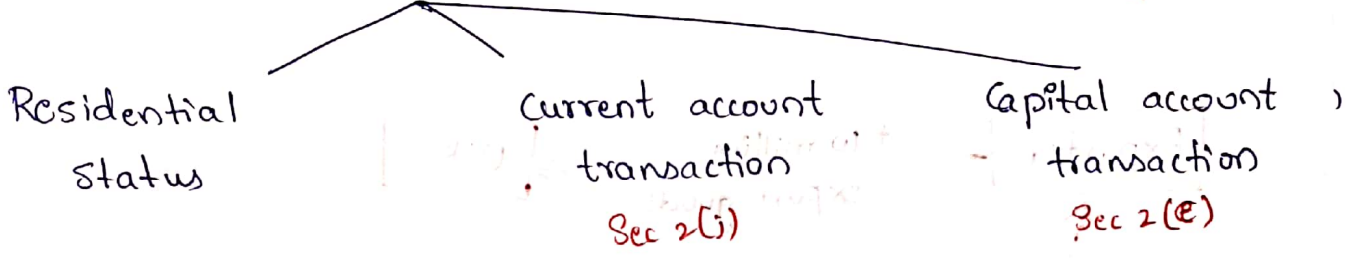
↓
PRI

Coming or stay in India other than (i) (ii) (iii)

(i) (ii) (iii)

↓

PROI

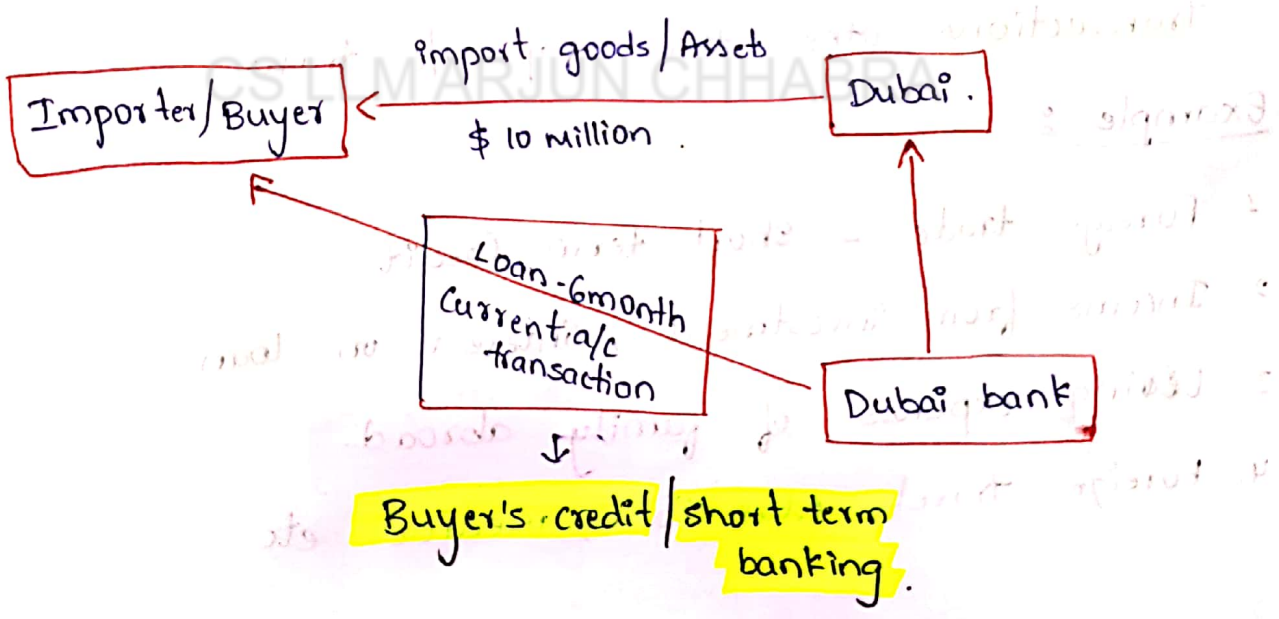


Capital Account Transaction Sec 2(e)

Transaction which alters :

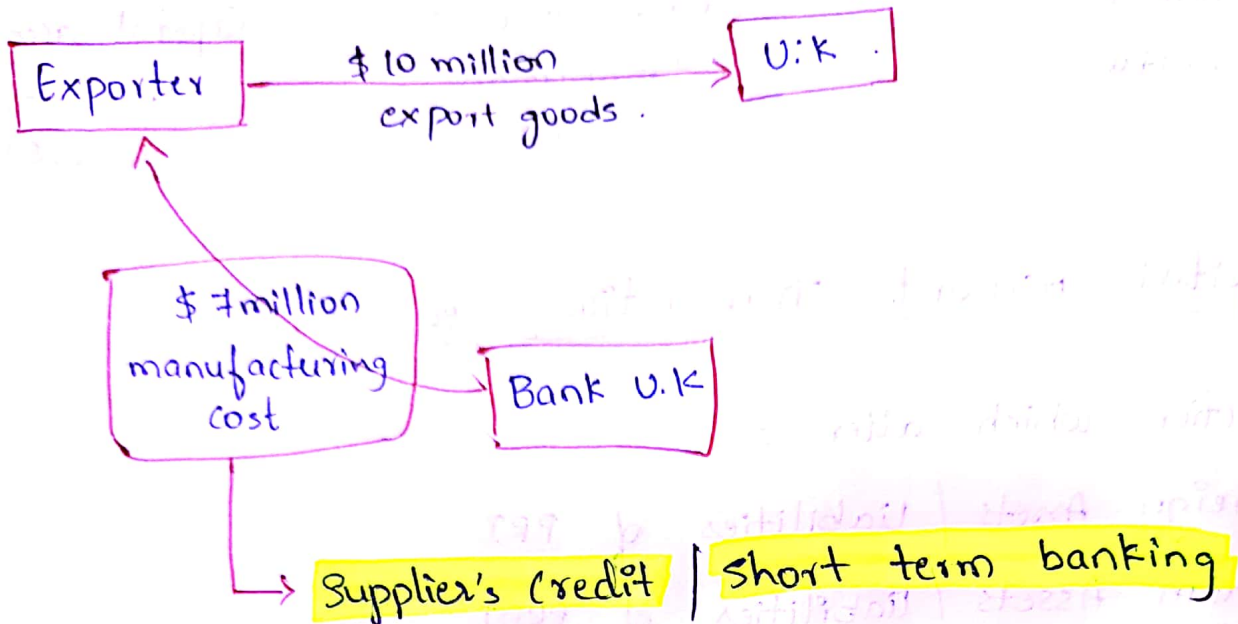
- i) Foreign Assets / Liabilities of PRI
- ii) Indian Assets / Liabilities of PROI

Buyers Credit → Current a/c transaction



Supplier's Credit → Current a/c transaction

Supplier's Credit :- Current a/c transaction



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Current a/c transaction

Transactions other than Cap. a/c trans.

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.

Transactions (drawal \$)

Current a/c transaction

Sec 5



FEM (current a/c trans.)

Rules, 2000

(Schedule 1, 2, 3)

Capital a/c transaction

Sec 6



FEM (cap. a/c trans.) Regula-

-tion, 2015

(Schedule 1, 2)

Summary chart for Current a/c transactions

Rule	Schedule	transaction
3	I	Prohibited transactions / drawls
4	II	permissible commercial transactions which requires CG Approval
5	III	permissible personal transactions which requires RBI Approval, if drawl exceeds prescribed limit.

Rule 3 read with schedule I

drawal of foreign exchange by any person for the following purpose is prohibited, namely

a) a transaction specified in schedule I. or

b) a travel to Nepal or Bhutan, or

c) a transaction with a person resident in Nepal or Bhutan

Section 5 Current Account Transaction

Rule 3 + Schedule I

Prohibited transactions/
drawals

Drawal of foreign exchange by any person for the following purpose is prohibited

- a) A travel to Nepal or Bhutan, or
- b) A transaction with a person resident in Nepal or Bhutan.
- c) Remittance out of lottery winning
- d) Remittance of income from racing/riding etc or any other hobby.
- e) Remittance for purchase of lottery tickets, band magazines, football polls, sweep stakes etc.
- f) Remittance of dividend by any company to which the requirement of dividend balancing is applicable. (old provision)

Rule 4 + Schedule II

permissible Commercial transactions which requires CGE approval.

- a) cultural tour (festivals)
- b) Advertisement in foreign print media by state govt & its public sector Undertakings for any purpose exceeding ^{then} US \$ 10000. It means if the remittance is below less than or equal to \$10000 no approval of CG is required.
Note & However, if the purpose of advertisement is
 - i) promotion of tourism
 - ii) foreign investments &
 - iii) international bidding.no approval of CG is required irrespective of amount of remittance.

a) Remittance of interest income on funds held in non resident special rupee scheme etc (discontinued from 1/1/2002)

b) Payment of commission on exports under rupee state credit route (govt. scheme).

Note: However, on export of tea & tobacco, commission upto 10% of invoice value is allowed. (not prohibited)

c) Payment related to call back services of telephones.

d) Payment of commission on exports made towards equity investment in joint venture / wholly owned subsidiaries abroad of Indian companies

e) Remittance of freight of vessel. (ship) chartered by a PSU.

f) Payment of import by a govt. dept or PSU on C.I.F basis. (cost insurance freight).

g) Multi modal transport operations making remittance to their agents abroad.

h) Remittance of hiring charges of transponders by a) TV channels

b) Internet service providers.

i) Remittance of Container detention charges exceeding the rate prescribed by director general of shipping.

j) Remittance of prize money / sponsorship exceeding US \$100000 of sports activity abroad by a person other than international / national / state level sports bodies

k) Remittance for membership of P & I Club (protection & indemnity club) (ship insurance).

Section 5 Current Account Transaction

↓ Rule 5 + schedule III

PART - A

Facilities for Individuals (Liberalised remittance scheme)

Under LRS, all **resident individuals**, including **minors**, are allowed to freely remitt upto **\$250000 per FY.** for any of

- i) ^{Permissible} Current acc transaction, or
- ii) ^{Permissible} Capital acc transaction, or
- iii) a combination of both.
- a) Private visit to any country except Nepal & Bhutan irrespective of the no. of visits undertaken during the year.
- b) Gift, or donation
- c) Going abroad for employment
- d) **Emigration**
- e) maintenance of close relative abroad.

PART - B

Persons other than Individual

- a) **Donation** exceeding **lower of**
 - d) 1% of their foreign exchange earnings:
 - or during the Previous 3 FY's
 - e) or
 - b) USD 50L for -
 - creation of chairs (paying faculties salary) in reputed Education institute.
 - contribution to funds (not being an investment fund) promoted by educational institute.
 - contribution to a technical institution or body or association in the field of the activity of donor Co.
- b) **Commission** per transaction to agents abroad ^{both for Individual & Corporate} **sale of residential flats or commercial plots** in India exceeding **higher of**
 - a) USD 25000, or
 - b) 5% of inward remittance

f) travel for business or attending a conference or specialised training or for meeting expenses ~~for~~ medical expenses or checkup abroad or for accompanying as attendant to a patient going abroad for medical treatment / checkup.

g) Expenses in connection with medical treatment abroad.

h) studies abroad.

e) any other current transaction.

Note :- any additional remittance in excess of the said limit (USD 250,000) for the above purposes shall require prior approval of RBI.

ii. For the purposes as mentioned in item no. 4, 6, 7, the individual may avail an amt in excess of USD 250,000 if it is so required by a country of emigration, medical institute offering treatment or the university.

c) Remittance exceeding

a) USD 1cr per project for any consultancy services in respect of infrastructure projects.

b) USD 10L per project, for other consultancy services procured from outside India.

d) Remittances exceeding higher of

a) 5% of investment brought in India

b) USD 1L by an entity in India by way of reimbursement of pre incorporation exp.

Note :- The above remittances exceeding the limits ^{mentioned} above shall require prior approval of the RBI.

Proof required from :

1. Country of emigration
 2. Medical institute offering treatment.
 3. University
- iii. Clubbing of limit of US \$250,000 among family members is allowed.
However, clubbing is **not permitted** by other family members for **capital account transactions** such as opening a bank a/c / investment / purchase of property, if they are not the owner / co-partners of the over-seas bank a/c / investment / property
- iv. For a person who is resident but not permanently resident in India (**whose duration does not exceed 3 yrs**) :-
- a) is a citizen of a foreign state **other than Pakistan** ; or
 - b) is a citizen of India who is transferred from his foreign branch to Indian branch:
may make remittance upto his **net salary** irrespective of the amt. of net salary.

Different types of foreign Current Account

1. Resident Foreign Currency a/c (RFC a/c) :-

It can be maintained by a NRI who has returned home for permanent settlement, after staying abroad for a min period of 1yr.

Amt credited on RFC a/c - entire amt of foreign exchange brought to India at the time of return to India.

Income from overseas assets or sales proceeds from overseas assets.

Advantage

If a person decides to go abroad again you can transfer your fund to NRE/FCNR a/c.

2. FCNR a/c :-

Foreign Currency Non Resident :-

This kind of deposit is made for non resident Indians who wish to protect their currency against foreign exchange fluctuations.

Advantage

The entire amt along with interest can be repatriated outside India whenever required.

EEFC Exchange Earners Foreign Currency a/c :-

It is a facility provided to foreign exchange earners, including exporters, to credit 100% of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into rupees. & vice versa, thereby minimizing the transaction cost.

Exemptions

For remittance from RFC a/c

↓

If any remittance has to be made for transaction listed in **schedule 2 & 3** above from **RFC a/c**, then **no approval** is required.

For remittance from EEFC a/c

↓

For transactions listed in **schedule 2 & 3**, then **no approval** is required

↓

exception

CG Approval

↓

Remittance for membership of P&I club.
(Approval required)

RBI Approval

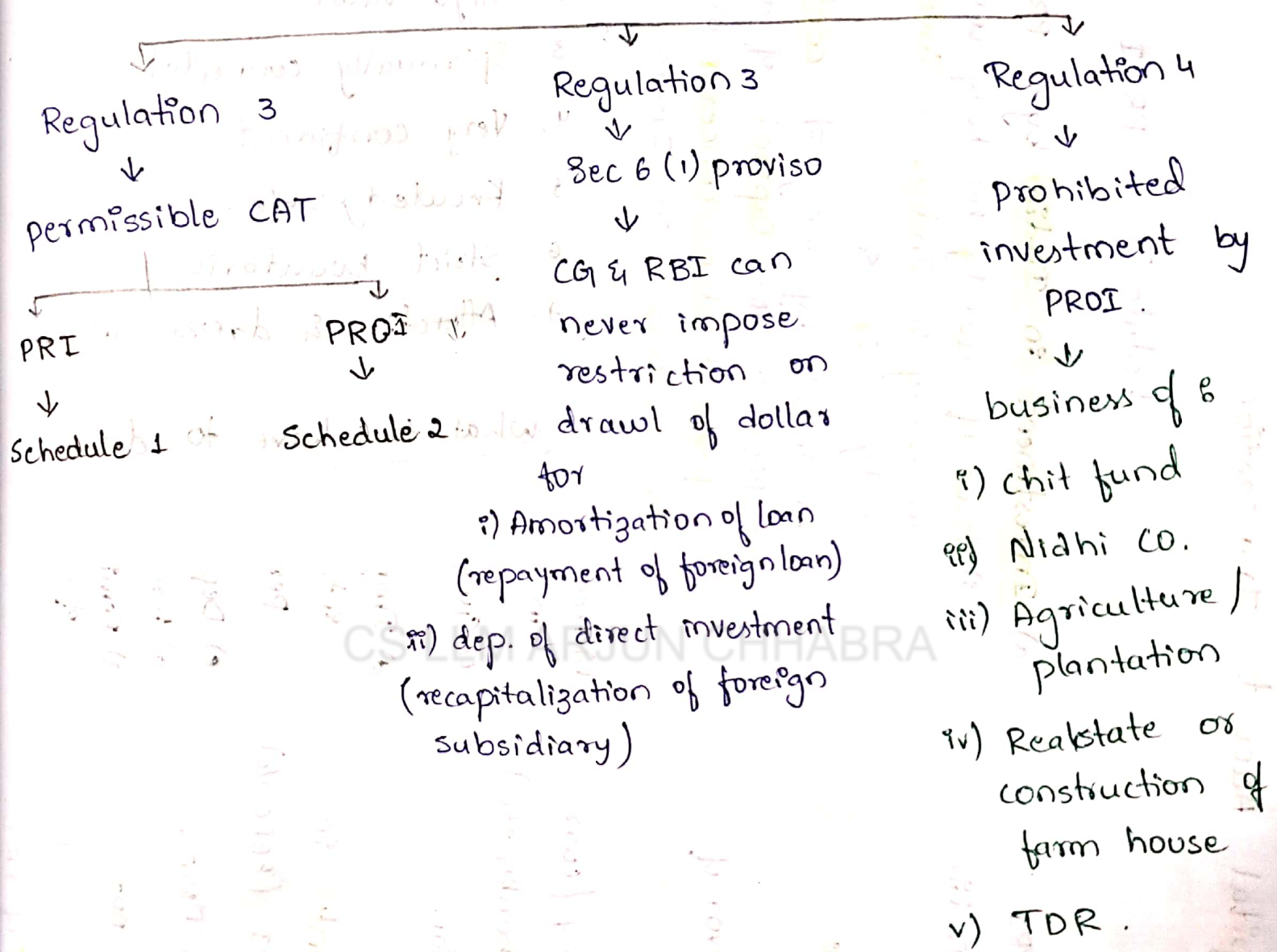
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- Commission to agent abroad for sale of flat in India if prescribed limit exceeds
- Remittance for ~~free~~ pre-incorporation expenses exceeding the prescribed limit.

If a person is on a visit abroad, he can incur expenditure stated in **schedule 3** if he incurs it through **International Credit Card**

Section 6 Capital Account Transactions

read with regulation 3 & regulation 4 of FEM (Capital acc trans.) Regulations, 2015.



Regulation 3 - Permissible Capital Account Transaction.

Schedule I - PRI

- a) Investment in foreign securities by PRI
- b) Foreign currency loans raised in India & abroad by a PRI.
- c) Transfer of immovable property outside India by a PRI.
- d) Guarantees issued by a PRI in favor of a PROI (contingent liability)
- e) Export & Import & holding of currency / currency notes (authorised persons like banks, etc)
- f) loan & overdrafts (borrowings) in Indian currency by a PRI from a PROI
- g) Maintenance of foreign currency accounts in India & outside India. by a PRI. (EEFC a/c)
- h) loans & overdrafts given by a PRI to PROI.
- i) Taking out of insurance policy by a PRI from an insurance company outside India.
- j) Remittance of India of capital assets of PRI.

Schedule II - PROI

- a) Investment in India by a PROI i.e. to say
 - i) issue of security by body corporate or an entity in India & investment therein by PROI &
 - ii) Investment by way of contribution by a PROI to the capital of a firm or a proprietorship concern or an association of person in India.
- b) Acquisition & transfer of immovable property in India by a PROI.
- c) Guarantee by a PROI in favour of a PRI. (contingent liability)
- d) Import & export of currency / currency notes into / from India by a PROI (Authorised persons like banks etc)
- e) Deposits b/w a PRI & PROI
- f) Foreign currency a/c's in India of a PROI (FCNR a/c)
- g) Remittance of India of capital assets in India of a PROI.

Note for permissible capital account transaction of PRI :

1. The facility of drawl for a **resident Indian** of **USD 250000** under liberalised Remittance scheme is **available for Capital ac transaction also.**

where the drawl by the resident Individual

2. **No part of the foreign exchange** of USD 250000 drawn by the resident individual **shall be used for** remittance directly or indirectly to countries notified as **non cooperative countries & territories** by **Financial Action task Force** from time to time & communicated by the RBI of India to all concerned

3. **Prohibition to undertake CAT with North Korea.**

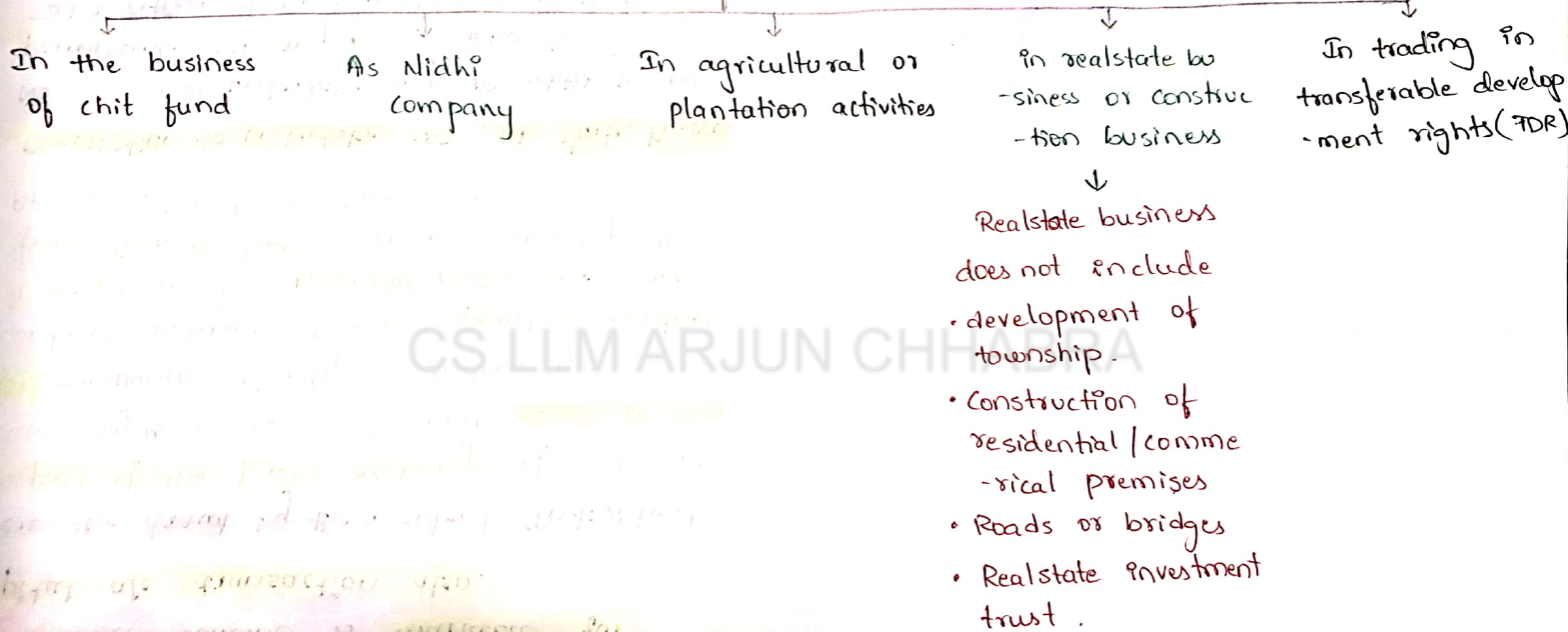
NO PRI shall undertake any CAT which is not permissible with any person who is :

- a) a citizen of or a resident of North Korea, or
- b) an entity incorporated or otherwise in NK.

until & unless there is specific approval from the CG to carry on any transaction.

Prohibited Investments by PROI:

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



Special Note for Capital Account transaction of PRI

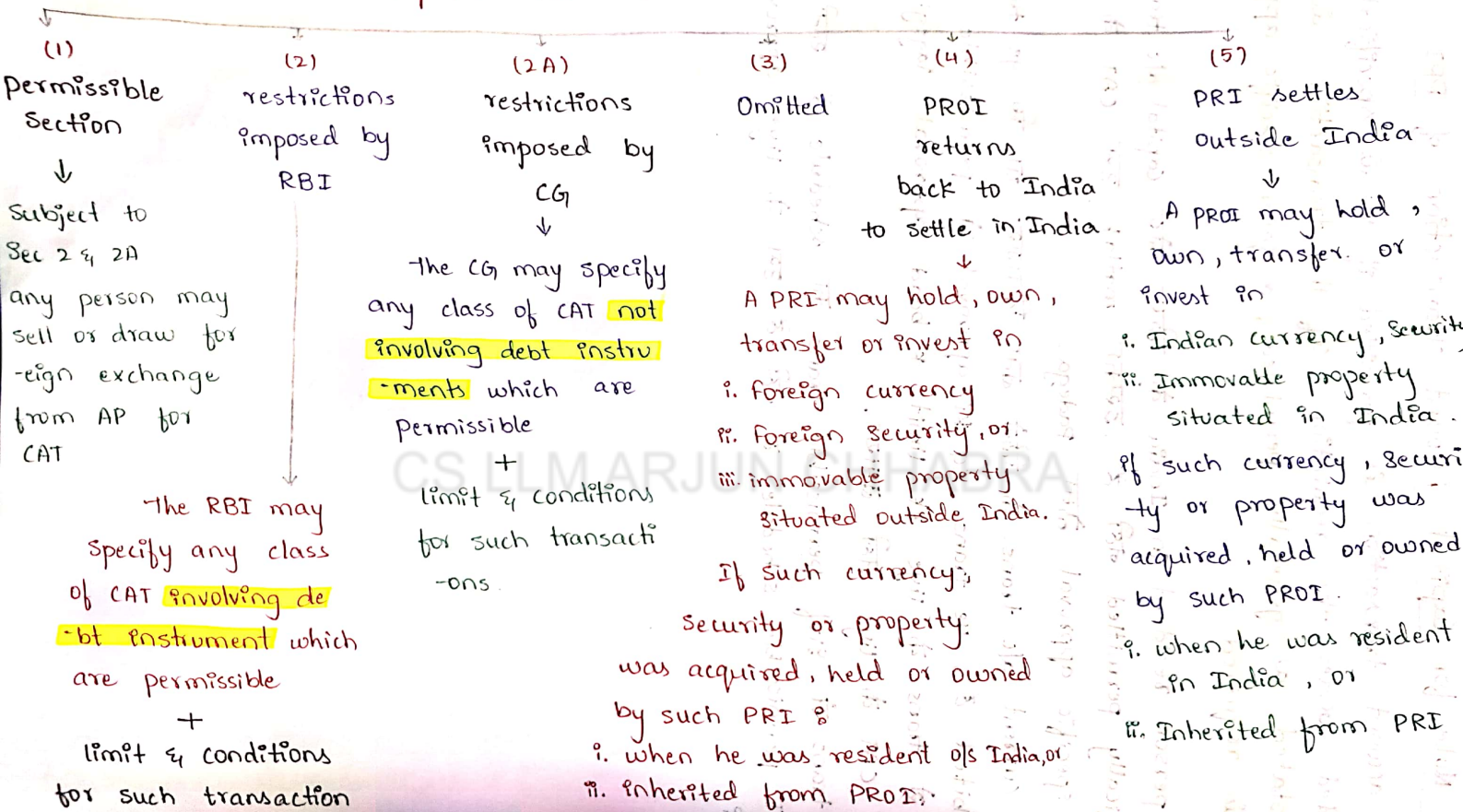
Capital account transaction is permitted if it is specifically permitted under the regulations. If the transaction is not stated as generally permitted, a prior specific approval is required.

अगर person resident in India के लिए कोई Capital a/c trans. specifically permitted नहीं है. इसका matlab उस CAT के लिए specific approval लेना पड़ेगा.

Jaise current a/c trans. के लिये बता दिया गया था कि ये trans. prohibited है, ये trans. CQ की approval से permissible है और ये trans के लिए एक limit के बाद approval लागेगी वरना CAT के लिए नहीं बताया.

CAT trans में सिर्फ permissible trans का schedule है यानी की जो CAT permissible schedule में नहीं है उस के लिए approval लागेगी.

Section 6 Capital Account Transaction



(1) proviso:- provided that the RBI or the CG shall not impose any restrictions on the draw of foreign exchange

- i) for amortization of loan (repayment of loan installments), and
- ii) for dep. of direct investments in ordinary course of business.
(recapitalization of foreign subsidiary)

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