

**FOREIGN EXCHANGE
MANAGEMENT ACT, 1999**

PREAMBLE, EXTENT, APPLICATION AND COMMENCEMENT OF FEMA, 1999 –

- **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.
- **Commencement:** The Act came into force from **1st June ,2000**
- **Extent and Application (Section 1):**
 - i. FEMA, 1999 extends to the whole of India.
 - ii. In addition, it shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.
 - iii. The scope of the Act has been extended to include branches, offices and agencies outside India.
 - iv. Contravention of the FEMA committed outside India by a person to whom this Act applies will also be covered by FEMA.

- **Sec 2 (w) Person resident outside India (PROI)**

Person who is not PRI.

Section 2(v) : “Person resident in India” (PRI)

Individual

Artificial Person

A person **residing** in India for > **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—

a) for or on taking up **employment outside India**, or

b) for carrying on outside India a **business or vocation outside India**, or

c) for any other purpose, in such circumstances as would indicate his **intention to stay outside India for an uncertain period**;

B) a person who has come to or stays in India, in either case, **otherwise than:**

a) for or on taking up **employment in 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 in India for an uncertain period**;

During the relevant previous year did he reside in India for more than 182 days

Yes

No

Did he go out or stay outside India during the current year?

Did he come to or stay in India during the current year?

Yes

No

Yes

No

3
Purposes
?

3
Purposes
?

Yes

No

Yes

No

PROI

PRII

PRII

PRII

PROI

PROI

EXAMPLES

1. Mr. X has gone out of India 1st time in 2018 – 19 for world tour. He was in India in 2018 – 19 only for 150 days. His residential status for following 3 years?

2017 – 18 : PRII

2018 – 19 : PRII

2019 – 20 : PROI (as he does not fulfil 182 days condition in PY 18 - 19)

2. Mr. Ravi comes to India for 1st time in FY 18-19 for business & stayed in India for 200 days. Residential status?

2018 – 19 : PROI

2019 – 20 : PRII

He leaves India in 19-20 as his business does not work.

2020 – 21 : PROI because he leaves India for uncertain period

What if instead of business he comes to India for vacation & stays in India for 200 days.

2018 – 19 : PROI

2019 – 20 : PROI

2020 – 21 : PROI

3. Air Hostess of West Indies stays in India in 2017 – 18 for 200 days.

2018 – 19 : PROI because she does not 'reside' but 'stays'. As she is in India by compulsion and not by choice.

4. Mr. Naman goes out of India for 1st time for doing MBA in 2018 – 09 (Course duration is uncertain)

2018 – 19 : PRII
(because he is not going out for any of the 3 purposes.
The course is uncertain but his intention is not to stay
for uncertain period).

2019 – 20 : PROI (Because he was not in India assuming he went for
studies in the beginning of the year)

Section 2(v) : “Person resident in India” (PRII)

means:

Individual

Artificial Person

1. Any **person** or body corporate registered or incorporated **in India**
2. Any agency, branch or office **outside India but owned or controlled by PRII** will be considered as person resident in India
3. Any agency, branch or office **in India but owned or controlled by a person resident outside India (PROI)** will be considered as a person resident in India.

Who is Person? [Section 2 (u)]

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person, not falling in (i) to (v) , and;
- (vii) any agency, office or branch owned or controlled by such person

Citizenship is not relevant for determining whether a person is resident or not.

Section 3: Dealing in Foreign Exchange

No person shall be allowed:

To deal / transfer any foreign exchange / foreign security otherwise than by an Authorized Person (AP)

Example: PROI comes to India and wants to sell US \$1000 to his friend who is PRI. He is offering better rate than banks.
It is not allowed

To make any payment / or to the credit of PROI.

Example: PROI telling PRI to buy some goods / services in India and asks PRI to make payment in INR on his behalf.
Not allowed as he stops foreign exchange inflow.

To receive any amount from a PROI in India otherwise than through AP.

Example : Foreign tourist coming to India giving US \$20 as to waiters. Not allowed unless the recipient is AP.

Hawala transaction (converting black money to white)

Example: Mr. Abhi has 100 crs black money. He gives it to Indian dealer. Indian dealer gives it to Dubai trader. Dubai Dealer will give US \$ to Abhi's brother & both dealers will settle it but dealers will convert rupee to \$ at the rate higher than mkt value

However, the above transactions are allowed if mentioned otherwise in the Act or general / special permission of RBI.

Sec 4 Holding of foreign exchange

- PRI can hold currency notes upto an amount **not exceeding US \$2000** or in any other foreign currency equivalent to such amt.
- However, coins → unlimited.

Section 5 & 6 Transactions

Capital Account transactions (Section 6)

- Alters Assets/liabilities (A/L) outside India of PRI
- Alters A/L in India of PROI

Non – recurring in nature

Capital nature

Sort of Balance sheet item

Current Account transactions (Section 5)

Transaction which is **not a capital transaction and includes:-**

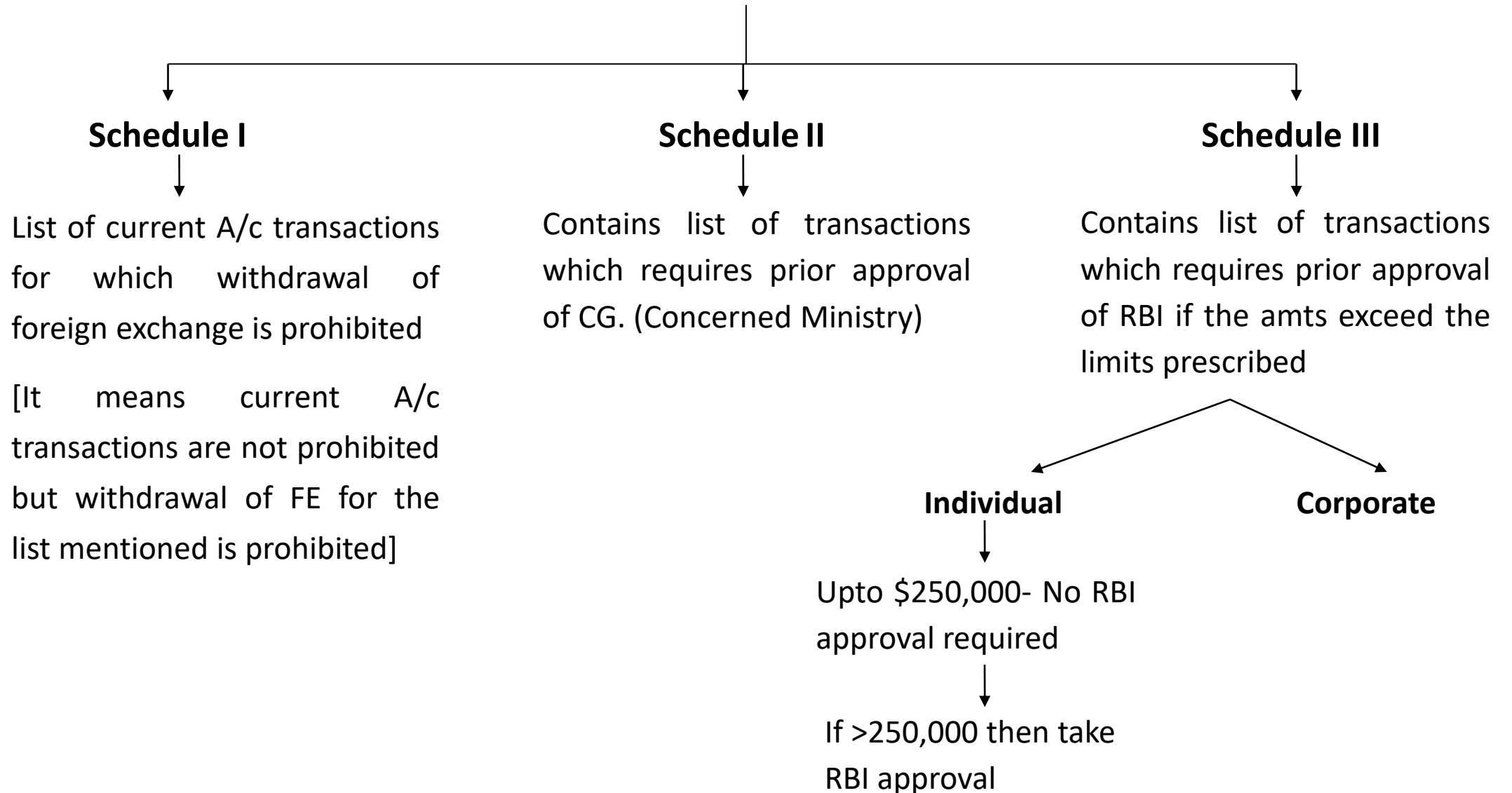
- 1) Payments in ordinary course of foreign trade such as short term banking, cr. Facilities in ordinary course
- 2) Payments of int on loans or income from investment
- 3) Remittances for living expenses of parents, spouse or children living abroad
- 4) Foreign travel, education, medical care expenses.

Recurring Nature

Revenue Nature

Sort of P&L item

Section 5 Current Account Transactions



Schedule I

Transactions for which withdrawal of foreign exchange is prohibited:

1) Remittance out **Lottery winnings**

Example: Mr. goes to AP to buy \$1000 but the source of money is lottery winning. Not allowed.

2) Remittance of income from **racing/riding** or any other hobby.

Example: Mr. X goes to AP to buy \$1000 but the source of money was income from racing. Not allowed. But if the source of money was business income, then allowed.

3) Remittance for **purchase of lottery ticket**, banned/prescribed magazines football pools, sweep stakes

4) Payment of **commission on exports**

Example: X Ltd.'s export agent is in USA as the co. exports to USA. Payment made such agent for commission should be in INR and not US \$.

5) Remittance of **dividend** by any company to which requirement of dividend balancing is applicable

6) Payment of **commission on exports** under RSCR. But upto 10% of Invoice value of Tea & Tobacco exports is permitted.

7) Payment related to **“call Back services”** of telephones.

8) Remittance of **interest income** on funds held in NRI special Rupee scheme A/c

Example : Chris Gayle earned lot of INR by playing in IPL. Out of that money he purchased land in India. He earns rent income in India. This income can not be taken in foreign currency.

Schedule II

Transactions which require prior approval of the Government of India (Concerned Ministry) for drawal of foreign exchange:

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
Cultural Tours	Ministry of Human Resources Development (Department of Education and Culture)
Remittance of prize money / sponsorship of sports activity abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds US \$ 100,000	Ministry of Human Resource Development (Department of Youth Affairs and Sports)
Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US\$ 10,000) by a State Government and its Public Sector Undertakings.	Ministry of Finance , Department of Economic Affairs
Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)
Remittance of hiring charges of transponders by TV Channels Internet service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
Remittance of freight of ship vessel chartered by a Public Sector Undertaking	Ministry of Surface Transport (Chartering Wing)
Payment of import through ocean transport by a Govt. Department or a PSU	Ministry of Surface Transport (Chartering Wing)
Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping

Schedule III

Transactions which require RBI's prior approval for drawal of foreign exchange

Individual (Liberalised Remittance Scheme)

Other than Individual

Individuals can avail the Foreign Exchange facility for the following purposes **within the limit of \$2,50,000 per Financial Year** from AP:

- 1) **Private visit** to any country except Nepal & Bhutan (no. of visits do not matter)
- 2) Business trips (no. of visits do not matter)
- 3) Gift/Donation to a PROI/Organisation outside India
- 4) Maintenance of close relative
- 5) Going outside India for employment
- 6) Emigration (leaving India)
Upto US \$2,50,000
or
amt prescribed by country emigration
WHICHEVER IS HIGHER

7) Medical treatment abroad

Upto US \$2,50,000

Or

Estimation from doctor in India

WHICHEVER IS HIGHER

For medical attendant: US \$2,50,000 per FY

8) Facilities available to students for pursuing their studies abroad

Upto US \$2,50,000

or

Estimation from foreign university

WHICHEVER IS HIGHER

- Any additional remittance in excess of said limit for the said purpose shall require prior approval of RBI.
- If the individual remits any amt under above liberalised remittance scheme (LR Scheme) in a FY, then the amt remitted shall be reduced form US \$2,50,000.
- A person who is resident but not permanent resident in India
 1. Is a foreign citizen (except Pakistan)or
 2. Is an Indian citizen who is on deputation to office/branch of Foreign country/subsidiary/JV in India of such foreign country.They can remit their net salary after deduction of PF and other deductions.

Schedule III

Transactions which require RBI's prior approval for drawal of foreign exchange

Individual (Liberalised Remittance Scheme)

Other than Individual

Persons other than individuals can avail the Foreign Exchange facility for the following purpose upto prescribed limits:

1) Donations/Gift

1% of (Foreign Exchange earnings during the **previous 3 Financial Years**)

or

US \$ 50,00,000

WHICHEVER IS LESS

for

(i) Creation of Chairs in reputed Educational Institutes

(Example: Reliance Ltd is giving donation to Oxford University because Mr. Mukesh Ambani is to be appointed as chairman of Oxford University)

and

(ii) Funds (not being an investment fund) promoted by educational Institutes

and

(iii) Technical Institution/body/association in the field of activity of the donor Company.

2) **Commission to agents abroad** for sale of residential flats or commercial plots in India:-

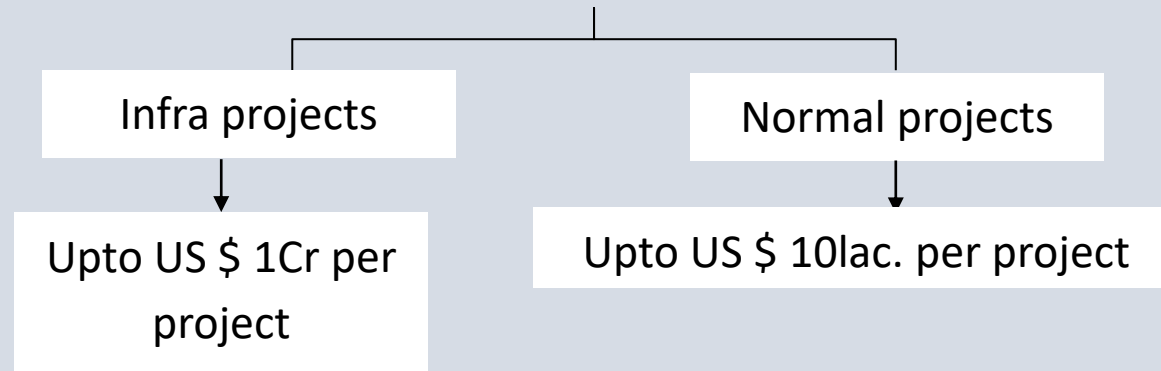
5% of inward remittance

or

US \$25,000

WHICHEVER IS MORE

3) Remittance towards **consultancy services procured outside India**:-



4) Remittances towards **re-imbusement of pre-incorporation expenses**:

Remittance by an entity in India allowed upto:

5% of investment brought into India

or

US \$1,00,000

WHICHEVER IS HIGHER

Example: Apple Inc is opening subsidiary co in India. Mukesh Ambani (RIL) is going to set up the company so they are sharing pre-incorporation expenses. So Mukesh Ambani can remit his share.

❑ Any additional remittance in excess of said limit for the said purpose shall require prior approval of RBI.

If the transaction is not listed in any of the above 3 schedules, it can be freely undertaken.

Exemptions:

- 1) No approval is required where any remittance is made for transactions listed in Schedule II and Schedule III from Resident foreign currency (REC) A/c

Example: NRIs have their REC A/c in India. They can use their money the way they want.

- 2) If any remittance has to be made for the transaction listed in Schedule II & III from Exchange Earners Foreign Currency (EEFC) A/c. NRIs maintain such A/c.

But if the remittance is from EEFC A/c for following transactions then approval is still required.

(i) Remittance for membership of P& I club

(ii) **Commission, per transaction to agent abroad** for sale of residential flats/ commercial plots **exceeding**

↑ US \$25,000

or

↑ 5% of inward remittance

(iii) Remittance by an entity in India by way of **reimbursement of pre-incorporation** expenses **exceeding**

↑ 5% of investment brought into India

or

↑ US \$1,00,000

- 3) Exemption for **payment by International Credit card while on visa abroad:**

Any person can incur any expenditure for transactions listed in Schedule III on his travel abroad through his International credit card.

General Points for Schedule III

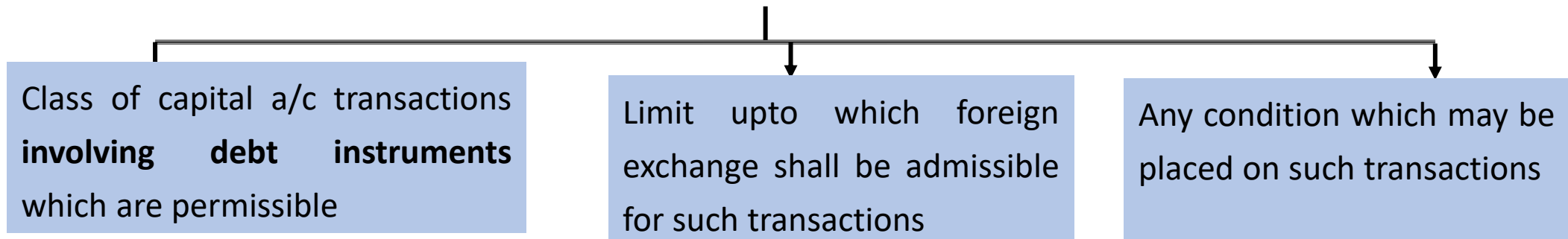
- The above LR scheme is for all resident individual including minor upto \$2,50,000 per FY (April to March).
- If the remitter is a minor then LRS declaration must be counter signed by minor's natural guardian.
- Consolidation of remittances is allowed i.e clubbing in allowed in case of family members.

Section 6 Capital Account Transactions

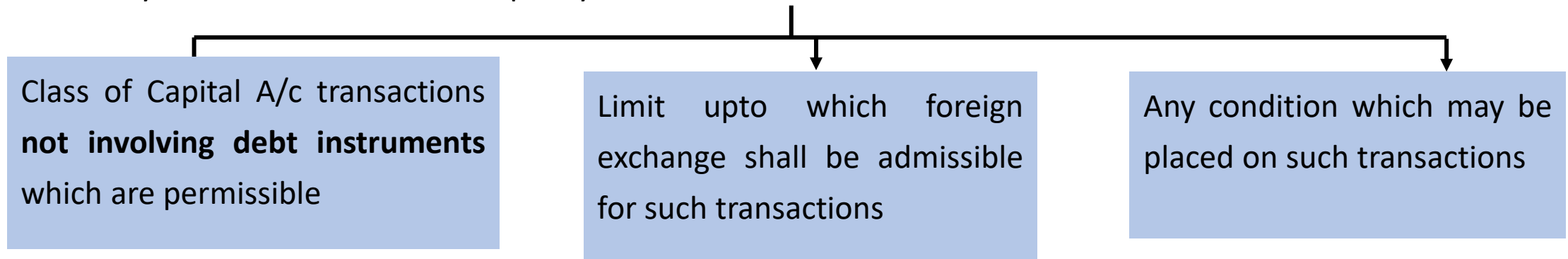
- It means a transaction which:-
 - 1) Alter the assets or liabilities **outside India of PRII**

Or

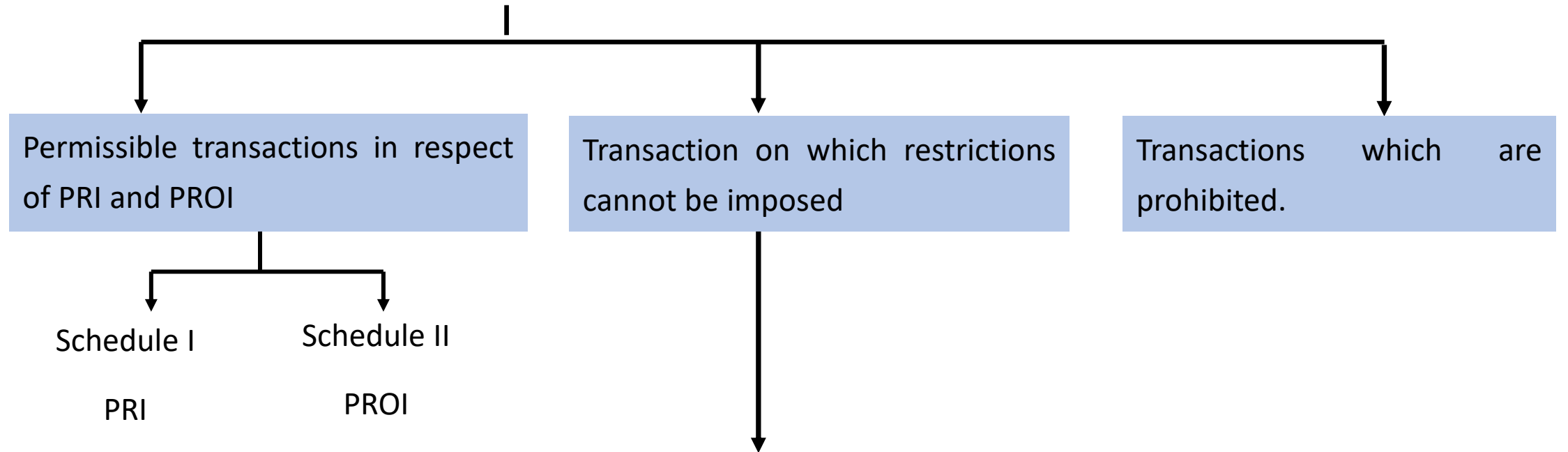
 - 2) Alters assets or liabilities **in India of PROI**
- **RBI** may in consultation with CG specify:-



- **CG** may in consultation with RBI specify:-



Section 6 Capital Account Transactions



1) For **amortisation of loan**

Example: PRI has taken loan from PROI. How the loan should be repaid, in how many instalments, how to write off cannot be instructed by anyone.

2) For **depreciation of direct investment** in ordinary course of business

Example: If the value of investment has fallen, no one can instruct how it is to be written off.

Also, restriction cannot be imposed when drawal is for the purpose of repayment of loan instalments.

Permissible Transactions in respect of PRI & PROI

Schedule I

List of permissible classes of transaction made by PRI:

- 1). **Investment by PRI in foreign securities**
- 2) Foreign currency loans raised in India and abroad by PRI.
Example: PRI has taken loan from PROI or PRI has given loan to PROI.
- 3) Transfer of **immovable property outside India** by PRI
- 4) **Guarantees** given by PRI in favour of PROI
- 5) **Export, import & holding of currency/currency notes.**
- 6) Loans/Overdrafts (**Borrowing by PRI from PROI**)
- 7) Maintenance of foreign currency Account in India and **outside India by PRI**

Schedule II

List of permissible classes of transaction made by PROI:

- 1) **Investment by PROI in India** by way of:
 - Investing when a BC/Entity in India issues securities in India
 - Investing by contributing capital to the firm/ proprietorship AOP in India
- 2) Transfer & acquisition of immovable **property in India** by PROI
- 3) **Guarantees** given by PROI in favour of PRI
- 4) Import, export of currency/ currency notes **into/from India by PROI.**
- 5) **Deposits** between PRI & PROI
- 6) Maintenance of foreign currency Account **in India by PROI**

Permissible Transactions in respect of PRI & PROI

Schedule I

List of permissible classes of transaction made by PRI:

8) Remittance **outside India of capital assets of PRI**

9) Undertake **derivative contracts**

10) Taking an **Insurance policy** by PRI from Insurance Company **outside India**

11) Loans/ODs by **PRI to PROI**

Schedule II

List of permissible classes of transaction made by PROI:

7) Remittance outside India of **capital assets in India of PROI.**

8) Undertake **derivative contracts**

Transactions which are prohibited

On certain transactions, RBI imposes prohibition:

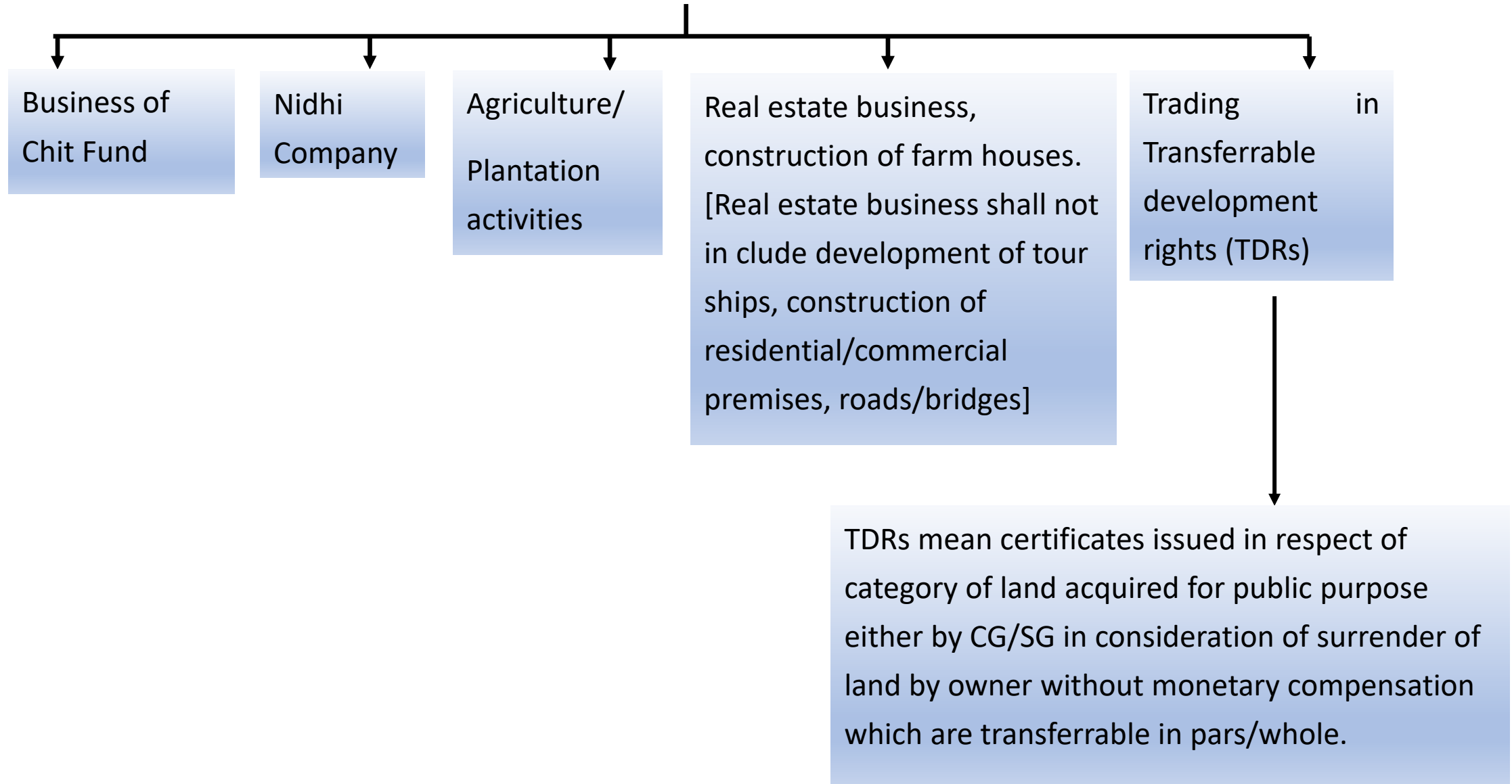
1) A person cannot undertake/sell/drawal Foreign Exchange to or from on Authorised Person for any Capital Account transaction.

- Provided that the persons can do it upto \$2,50,000 (The limit given in current A/c transaction Schedule III is applicable has as well. The LR scheme extend to Capital Account transaction as well).
- Hence, the limit of \$2,50,000 is for Current + Capital Account Transaction. Any amount beyond \$2,50,000 requires RBI approval.
- No part of foreign exchange of US \$2,50,000 drawn above can be used to remit directly/indirectly to countries notified as non co-operative countries & territories by Financial Action Task Force (FATF). Eg: Iran, Pakistan, Myanmar, Syria, etc. [Black listed countries]

2) No PRI can undertake any Capital Account transaction with any person who is a citizen /resident/ entity in incorporated in Democratic People's Republic of Korea [North Korea] **unless approved by CG.**

The existing investment transaction with any person mentioned above which is not permissible now shall be closed / liquidated /settled **within 180 days from the date of this notification (21/4/17)** unless specific approval to continue beyond that period is taken from CG

3) PROI is **prohibited from making investments in India** in a company/ partnership firm/proprietary concern/any entity in the



Following is allowed without any restrictions:

- 1) A PRI may hold / own / transfer / invest in foreign currency / foreign security / immovable property situated outside India if the same was acquired / held / owned by such person **when he was a PROI / inherited from PROI.**

A PRI may freely utilize their eligible asset abroad as well as income on such assets / sale proceeds thereof received after their return of India for making any payments or to make any fresh investment abroad PROVIDED the cost of such in / and / or subsequent payment received are met exclusively out of funds forming part of eligible assets held by them & the transaction is not in contravention of FEMA provisions.

- 2) A PROI may hold / own / transfer / invest in India currency / Indian security / immovable property situated in India if the same was acquired / held / owned by person when he was a PRI / inherited from PRI.