

Foreign Exchange Management Act, 1999

→ 1/6/2000

→ Applicable to whole of India
incl J&K.

*FEMA will also apply to all branches, offices & agencies outside India owned/controlled by a person resident in India & also to any contravention committed outside India by any person to whom this Act applies.

Sec 2(v) Person resident in India (PRI)

● In case of Individual

A person -

1) Resident in India

2) for > 182 days

3) during the immediate preceding FY

but DOES NOT INCLUDE:-

(Foll. are excluded even if they are resident in India for 182 days)

(A) A person who has gone out of India or who stays outside India in either case in current FY

(i) For taking up employment outside India or

(ii) For carrying on business/vocation outside India or

(iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India is for an uncertain period.

(B) A person who has come to or stays in India for any purpose in current FY.

otherwise than:-

- (i) For taking up employment in India
- or
- (ii) For carrying on business/vocation in India
- (iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

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 yrs?

2017-18 : PRI
2018-19 : PRI
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/vocation & stayed in India for 200 days. Residential status?

2018-19 : PROI
2019-20 : PRI

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

India for
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.
Residential status:

2018-19 : PROI because she does
not 'reside' but 'stays'.
as she in India by
compulsion not by choice.

4] Mr. Naman goes out of India for 1st time
for doing MBA in 2018-09
(course duration is uncertain)
Residential Status:-

2018-19 : PRI (because 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)

- In case of Artificial Person :-
 - Any person/BC registered/incorporated in India.
 - Any Branch/office/Agency in India owned/controlled by a person resident outside India.
 - Any B/O/A outside India owned/controlled by a person resident in India.

- Who is Person? [Section 2(u)]

Person includes

(i) Individual

(ii) HUF

(iii) Co.

(iv) Firm

(v) AOP/BOI

(vi) Every artificial Judicial Person not falling in (i) to (v)

(vii) Any Branch/office/Agency (B/O/A) owned/controlled by such person

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

- Sec 2(u) Person resident outside India (PROI)

Person who is not PRI.

Sec 3 Dealing in Foreign Exchange

No person shall be allowed:-

① To deal/trf any foreign exchange/
foreign security otherwise than by an
Authorised Person (AP)

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

② 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 it stops foreign
exchange inflow.

③ To receive any amt from a PROI
in India otherwise than through
AP.

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

④ Hawala transaction (converting black
money to white)
Example:

Mr. Abhi
has 100 crs black
money.
↓

Indian Dealer gives
it to Dubai Dealer
↓
Dubai Dealer will
give US \$ to Abhi's

He gives it to Indian dealers & both dealers will settle it
but dealers will convert ₹ to \$ at the rate higher than mkt rate

It is not allowed, however, the above transactions are allowed if mentioned otherwise in the Act

By OR general/special permission of RBI.

Sec 4 Holding of foreign exchange:

PRI can hold currency notes up to an amount not exceeding US \$2000 or in any other foreign currency equivalent to such amt.

However, coins → unlimited.

Sec 5 & 6 Transactions

↓
Capital A/C (Sec 6) transactions
- Alters Assets/liab (A/L) outside India of PRI
- Alters A/L in India of PRI

↓
Current A/C (Sec 5) transactions
- Transaction which is not a capital transaction and includes:-
1) Payments in ordinary course of foreign trade such as short term

- (Non-recurring)
- in nature
 - Capital nature
 - Sort of Balance Sheet item

- banking, cr. facilities in ordinary course
- 2) Payments of int on loans or inc from investment
 - 3) Remittances for living exps of parents, spouse or children living abroad
 - 4) Foreign travel, education, medical care exps.

- (Recurring nature)
- Revenue nature
 - Sort of P&L item

Sec 5 CURRENT ACCOUNT TRANSACTIONS

Schedule I

list of current A/C transactions for which withdrawal of foreign exchange is prohibited

[It means current A/C transactions are not prohibited but withdrawal of FE for the list mentioned is prohibited]

Schedule II

contains list of transactions which require prior approval of CG. (concerned Ministry)

Refer TB

Individual

upto \$250,000

approval

Schedule III

contains list of transactions which require prior approval of RBI if the amts exceed the limits prescribed

Corporate (Refer the limits)

No RBI approval
required
If > 250,000
then take
RBI approval

Schedule I

L2C3RID

Transactions for which withdrawal of
foreign exchange is prohibited:

1) Remittance out of Lottery winnings
Example: Mr. X 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, football pools, sweepstake
magazines etc
kind of betting kind of
casino

Example: Lottery won in India by Mr. X.
Mr. X cannot → buy foreign exchange
(point 1)
→ buy lottery ticket/
banned magazines
etc in foreign
country
(point 3)

4) Payment of commission on exports.
Example: India's export agent is in USA

Example: as the Co. exports to USA.
Payment made to such agent for commission should be in INR and not US\$.

5) Remittance of dividend by any Co. to which requirement of dividend balancing is applicable.
Now this point does not exist but since they have not removed it from this Act, write it in exam.

6) Payment of commission on exports under RSCR. But upto 10% of Invoice value of Tea & Tobacco exports is permitted.
(Rupee State Cr. Route)

7) Payment related to "Call Back Services" of telephones.

Example: Manasi went to USA and activated international roaming. She purchased the package. Vodafone will have tie-ups with US telecom companies. Manasi cannot pay \$ to US telecom companies only Vodafone can pay them.

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 purchase Investments/land in India. He earns int/rent income in India. This income cannot be taken in Foreign currency.

Schedule II : Refer TB Pg. 545

Schedule III :

Transactions which require RBI's prior approval for drawal of Foreign Exchange (FE)

Individuals (LR Scheme)

Individuals can avail of FE facility for the foll. purposes within the limit of \$250,000 per FY from AP:

- 1) Pvt visits to any country except Nepal & Bhutan } no. of trips do not matter
- 2) Business trips }
- 3) Gift / Donation to a PROI / organization outside India
- 4) Maintenance of close relative
- 5) Going outside India for employment
- 6) Emigration (leaving India)
upto US \$250,000
amt prescribed by country of emigration
- 7) Medical treatment abroad
• upto US \$250,000 ↑

Other than Individuals

Persons other than individuals can avail of FE facility for the foll purposes upto prescribed limits:

1) Donations/Gift

1% of (FE earnings during the 3 previous FYs)



US \$ 50,00,000.

for

- (i) Creation of chairs in reputed educated Inst
(Eq: Rel 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 inv. fund)

②
Estimation from doc/
in India

- For medical attendant:
US \$250,000 per FY

8) Facilities available
to students for pursuing
their studies abroad:-
upto US \$ 250,000 ↑

②
Estimation from
Foreign University

★ 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 from
US \$ 250,000.

★ A person who is resident
but not permanently ^{(less than}
resident in India & - ^{3 yrs)}

1) Is a foreign citizen
(except Pakistan)

②
2) Is an Indian citizen
who is on deputation
to office/branch of FC/

promoted by
educational
Institutes

and
(iii) Technical Inst/
body/association
in the field of
activity of the
donor Co.

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

↑ 5% of inward
remittance

②
US \$ 25,000

3) Remittances
forwards
consultancy
services:-

Consultancy
services for

↓
Infra
projects
↓
upto

↓
Normal
projects
↓
upto

to office, or subsidiary / JV in India of such FC,

→ They can remitt their net salary (after deduction of taxes, contribution to PF and other deductions).

US \$ 1 cr US \$ 10 lac
per project per project

4) Remittances towards re-imbursement of pre-incorporation exps:

Remittances by an entity in India for reimbursement is allowed upto:

↑ 5% of inv. brought into India

⊙
US \$ 100,000

Eg: Apple Inc is opening subsidiary Co in India. Mukesh Ambani (RIL) is going to set up the Co. so they are sharing pre-inc exps. 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 Sch II and Sch III from Resident Foreign Currency (RFC) A/C
Eg: NRIs have their RFC A/C in India. They can use their money the way they want.

2) If any remittance has to be made for the transactions listed in Sch II & III from Exchange Earners' Foreign Currency (EEFC) A/C

NRIs maintain such A/Cs. But if the remittance is from EEFC A/C for foll. transactions, then approval is still required.

- (i) Remittance for membership of P&I club
- (ii) Commission, per transaction, to agents abroad for sale of residential flats/commercial plots exceeding

↑ US \$ 25,000

5% of inward remittance

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

↑ US \$ 100,000

5% of Inv brought into India.

3) Exemption for payment by International
... on vide abroad -

Credit Card under the Visa Scheme.
Any person can incur any expenditure for transactions listed in Sch III on his travel abroad through his International credit card.

- The above LR scheme is for all resident individuals including minor upto \$250,000 per FY (April to March).
 - * If the remitter is a minor then LRS declaration must be countersigned by minor's natural guardian.
- Consolidation of remittances is allowed i.e. clubbing is allowed in case of family members

sec 6 CAPITAL ACCOUNT TRANSACTIONS

- It means a transaction which:-
 - 1) Alters the assets or liabilities (incl. contingent liab) outside India of PRI.
 - 2) Alters [⊗] assets or liabilities in India of PROI
- RBI may in consultation with CG specify:-
 - ↓
Class of capital A/C transactions involving debt instruments which are permissible
 - ↓
Limit upto which foreign exchange shall be admissible for such transactions
 - ↓
Any condition which may be placed on such transactions.

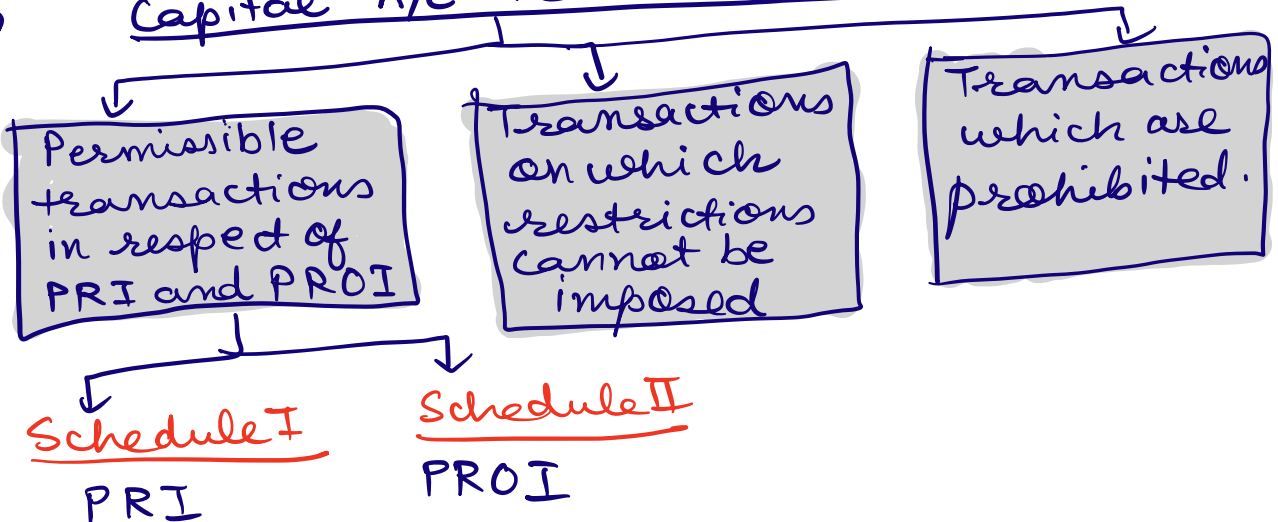
- CG may in consultation with RBI specify:-

Class of Capital A/C transactions **not involving** debt instruments which are permissible

Limit upto which foreign exchange shall be admissible for such transactions

Any condition which may be placed on such transactions.

● Capital A/C transactions



Permissible Transactions in respect of PRI & PROI

Schedule I

list of permissible classes of transactions made by PRI:

- 1) Inv by PRI in foreign securities
- 2) Foreign Currency loans

Schedule II

list of permissible classes of transactions made by PROI:

- 1) Inv by PROI in India by way of:
 - Inv when
 - Investing

raised in India and abroad by PRI
Eg: PRI has taken loan from PROI
or PRI has given loan to PROI.

3) Try of immovable prop outside India by PRI

4) Guarantees given by PRI in favour of PROI

5) Export, import & holding of currency/ currency notes.

6) Loans/ODs (Borrowing) by PRI from PROI

7) Maintenance of foreign currency A/c in India and outside India by PRI

8) Taking an Insurance policy by PRI from Ins. Co. outside India

9) Loans/ODs by PRI to PROI

10) Remittance outside India of capital assets of PRI

11) Undertake derivative

a BC/entity in India issues securities in India

by contributing capital to the Firm/ Proprietorship AOP in India

2) Try & Acquisition of immovable prop 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 A/c in India by PROI

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

8) Undertake derivative

Contracts = contracts

Transactions on which restrictions cannot be imposed.

- 1) For amortisation of loan
Example: PRI has taken loan from PROI. How the loan should be repaid, in how many installments, 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, restrictions cannot be imposed when drawal is for the purpose of repayments of loan installments.

Transactions which are prohibited

On certain transactions, RBI imposes prohibition:

- 1] A person cannot undertake/sell/draw FE to or from an AP for any cap A/C transaction.

provided that, the person can do it upto \$250,000 [The limit given in current A/C transaction Sch III is applicable here as well. The LR scheme extends to cap A/C transactions as well]
The limit of \$250,000 is for capital + current

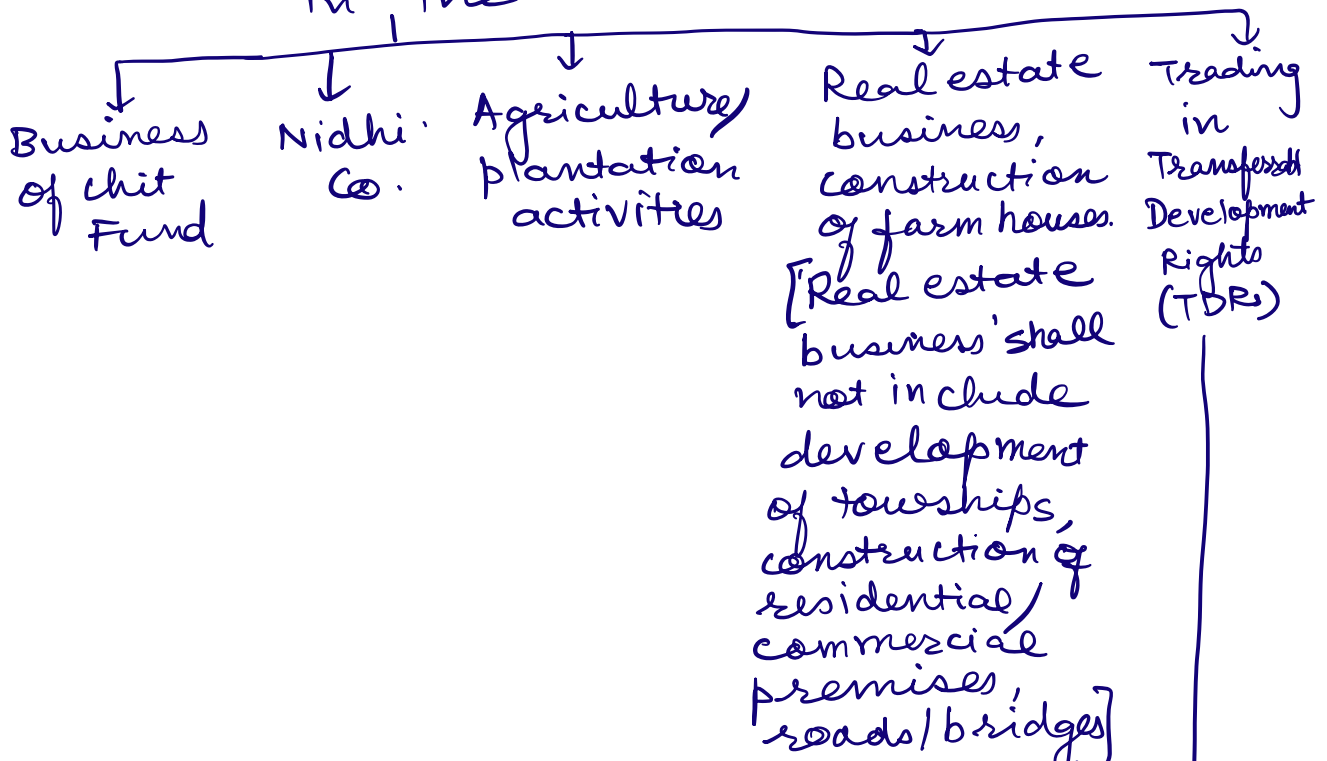
Hence, the sum of ₹ 250,000
Any amt beyond \$250,000 requires
RBI approval.

⊛ No part of foreign exchange of
US \$250,000 drawn above can be
used to remitt directly/indirectly
to countries notified as non co-op
countries & territories by Fin. Action
Task Force (FATF).

Eg: Iran, Pakistan, Myanmar,
Syria, etc

[Black listed countries]

2] PROI is prohibited from making
investments in India
in a Co./partnership firm/proprietary
concern/any entity
in the



~
↓
what are TDRs?

TDRs mean certificates issued in respect of category of land acquired for public purpose either by CG/SG in consideration of surrender of land by owner without monetary compensation, which are transferrable in part/whole.

3) NO PRI can undertake any cap. A/C transaction with any person who is, a citizen/resident/entity incorporated in Democratic People's Republic of Korea [North Korea] unless approved by CG.

4) The existing investment transactions with any person mentioned in 3) 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.

★ If any capital A/C transaction is not stated in above 3 lists, then such transaction can be done only after specific approval of RBI is taken. [It is exactly opposite to current A/C transaction].

● Following is allowed without any restrictions:-

- 1) A PRI may hold/own/trf/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 assets abroad as well as income on such assets/sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad PROVIDED the cost of such inv and/or subsequent payments 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/trf/invest in Indian currency/Indian security/immovable property situated in India if the same was acquired/held/owned by such person when he was a PRI/inherited from PRI.