

The Foreign Exchange Management Act, 1999

Definitions:-

- 1] Authorized Person (sec 2(cc)):- an authorized dealer, money changer, off-shore banking unit or any other person for the time being authorized ~~for~~ under section 10(c) to deal in foreign exchange or foreign securities.
- 2] Capital Account transactions: [sec. 2 (ce)] :- means a transaction, which alters the assets or liabilities, including contingent liabilities, outside India of ~~the~~ PRI or asset or liabilities in India of PROS, and includes transactions referred in section 6(3)
- 3] Person [sec 2(cu)] includes :
 - (i) an individual
 - (ii) a Hindu Undivided Family
 - (iii) a company
 - (iv) a firm
 - (v) an association of persons or body of individuals, whether incorporated or not
 - (vi) every artificial juridical person, not falling within any of the preceding sub-clauses
 - (vii) any agency, office or branch owned or controlled by such person.
- 4] Person Resident in India means
 - (i) a person residing in India for more than 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
 - (b) for carrying out business / vocation outside India
 - (c) for any other purpose; in such circumstances as would indicate his intention to stay outside India for 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
- (b) for carrying on business/vocation in India
- (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an Uncertain Period.

(ii) Any person or body corporate registered or incorporated in India

(iii) An office, branch or agency in India owned or controlled by a PRT

(iv) An office, branch or agency in India owned or controlled by a PROS [Sec 2(w)]

5] Person Resident Outside India means a person who is not resident in India [Sec 2(w)]

Now read the small page attested above.

Holding of foreign exchange [Section -6]

Except as provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated in India

Summary chart for current all transactions

Rule	Schedule	Transaction
3	I	<u>Prohibited</u> transactions / Drawals
4	II	<u>Permissible</u> commercial transactions which requires <u>CR</u> Approval
5	III	<u>Permissible</u> personal transactions which requires <u>RBI</u> approval, if drawal is exceed a prescribed limit

Current Account Transactions [Section 5]

Section 2(j) defines current acc transactions as transaction other than a capital acc transaction and includes the following types of transactions:-

- (i) payments in the course of ordinary course of foreign trade, other services such as short term banking and credit facilities in the ordinary course of business etc.
- (ii) Payments in the form of interest on loans (or) income from investments.
- (iii) Remittances for living expenses of parents, spouse or children living abroad
- (iv) Expenses in connection with foreign travel, education etc.

Rule 3 read with schedule I

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

- (a) transactions specified in Schedule I
- (b) a drawal to Nepal or Bhutan
- (c) a transaction with a person resident in Nepal or Bhutan

Schedule I

Transactions for which drawal of foreign exchange is prohibited

- i) Remittance out of lottery winning
- ii) Remittance of income from racing/siding etc. or any other hobby
- iii) Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.
- iv) Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies
- v) Remittance of dividend by any company to which the requirement of dividend balancing is applicable
- ~~vi) Remittance of dividend by any company to which the~~
- vi) Payment of commission on exports under Rupee State Credit Route except commission up to 10% of invoice value of exports of tea or tobacco.
- vii) Payment related to "Call back Services" of telephones
- viii) Remittance of interest income on funds held in Non-resident Special Rupee Scheme etc.

Schedule II

Transactions, which require prior approval of the Government of India for drawal of foreign exchange:

Purpose of Remittance	Ministry/ Department of Govt. of India which approval is required
Cultural Tours	Ministry of Human Resources Development (Department of Education and Culture)
Advertisement in foreign print media for the purpose <u>other than promotion of international tourism</u> , <u>foreign investments and international bidding (exceeding US\$ 10000)</u> by a state Govt. and its public sector undertaking	Ministry of finance, Department of Economic Affairs
Remittance of freight of vessel (container) chartered by a PSU	Ministry of Surface Transport (chartering wing)
Payment of import through ocean transport by a Govt. Department or a PSU on <u>c.i.f. basis</u> (i.e. other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport (chartering wing)
Multi-Modal transport operators making remittance to their agents abroad	Registration of a certificate of from the director general of shipping

Remittance of hiring charges of transponders by (a) TV channels (b) Internet service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology
Remittance of container detention charges exceeding the rate prescribed by Director General of Sea Shipping	Ministry of Surface Transport (Director General of Shipping)
Remittance of prize money / sponsorship of sports activity abroad by a person other than International / State Level Sports bodies, if the amount involved exceeds US \$ 100,000	Ministry of Human Resources Development (Department of Youth Affairs and Sports)
Remittance for membership of P&I club	Ministry of Finance (Insurance Division)

Schedule III

2. Facilities for individuals :- individual can avail of foreign exchange facilities for the following purpose within the limit of USD 250,000 only:

- (i) Private visits to any country (except Nepal and Bhutan)
- (ii) Gift or Donation
- (iii) Going abroad for employment

~~for~~ Emigration

- (iv) Maintenance of close relatives abroad

(vi) Travel for business or attending a conference or specialized training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment / check-up

(vii) Expenses in connection with medical treatment abroad

(viii) Studies abroad

(xi) Any other current account transaction

Any additional remittance in excess of the said purpose shall require prior approval of the Reserve Bank of India

Tick marked transactions are which in the individual may avail of exchange facility for an amount in excess of the limit prescribed

2. Facilities for persons other than individuals: the following remittances shall require prior approval of RBI.

(i) Donations exceeding 2% of their foreign exchange earnings during the previous three financial years or USD 5,000,000 whichever ever is less for-

(a) creation of chairs in reputed educational institutes

(b) Contribution to funds (not being an investment fund) promoted by educational institutes.

(c) Contribution to a technical institution or body or association in the field of activity of the donor company.

(ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance w.e. is more

(iii) Remittances exceeding USD 10,000,000 per project for any consulting services in respect of infrastructure projects and USD 1,000,000 per project, for other consulting services procured from O/S India

(IV) Remittances exceeding 5% of investment brought into India or USD 100,000 w.e. is higher, by an entity in India by way of reimbursement of pre-incorporation exp.

3. Procedure: The procedure for drawing or remittance of any foreign exchange under this schedule shall be the same as applicable for remitting any amount under the said Liberalised Remittance Scheme.

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

Exemption for remittance from RFC Accounts - No approval is required where any remittance has to be made for the transaction listed in Schedule II and Schedule III above from an Resident Foreign Currency (RFC) account.

Exemption for remittance from EEFC accounts: If any remittance has to be made for the transactions listed in Schedule II and Schedule III above from required. However, if payment has to be made for the following transactions, approval is required even if payment is from EEFC account,

- Remittance for membership of P&I Club.
- Commission, per transaction, to agents abroad for sale of residential or commercial plots in India exceeding USD 25,000 or 5% of inward remittance w.e. is more.
- Remittances exceeding 5% of investment brought into India or USD 100,000 w.e. is higher, by an entity in India by way of reimbursement of pre-incorporation exp.

Exemption for payment by International Credit Card while on a visit abroad.

Capital Account Transactions [Section 67]

A transaction which alters the asset or liabilities including contingent liabilities outside India of PRI or assets or liabilities in India of PROI would be capital account transactions.

Permissible Transactions

Schedule I

The list of permissible classes of transactions made by ~~PRIs~~ PRI is -

- (a) Investment by PRI in foreign securities
- (b) Foreign currency loans raised in India and abroad by a PRI.
- (c) Transaction of immovable property by a PRI.
- (d) Guarantees issued by a PRI in favour of a PROI
- (e) Export, import and holding of currency / currency notes
- (f) Loans and overdrafts by a PRI from a PROI
- (g) Maintenance of foreign currency accounts in ~~and~~ India and outside India by a PRI
- (h) Taking out the insurance policy by a PRI from an insurance company in India
- (i) Loans and overdrafts by a PRI to a PROI
- (j) Remittance outside India of capital assets of a person resident in India
- (k) Undertake derivative contracts

Schedule II

The list of permissible classes of transactions made by PROI:-

- (a) Investment in India by a person resident of India, that is to say
 - (i) issue of securities by a body corporate or an entity in India and investment therein by a person resident of India
 - (ii) investment by way of contribution by a ~~per~~ PROI to the capital ~~fund~~ of a firm or a proprietorship concern or an association of a person in India

- (b) Acquisition and transfer of immovable property in India by a PRT
- (c) Guarantee by a PRT in favour of, or on behalf of a, PRT
- (d) Import and export of currency/currency notes into / from India by a PRT
- (e) Deposits between a person resident in India and a person resident outside India
- (f) Foreign currency accounts in India of a PRT
- (g) Remittance outside India of capital assets in India of a person resident outside India
- (h) Undertake derivative contracts

Transactions with no restriction

They are:

- (1) For amortisation of loan
- (2) For depreciation of direct investments in ordinary course of business.

Also, restrictions cannot be imposed when drawn is of the purpose of repayments of loan installments.

Prohibited Transactions

1. 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
 - in the business of chit funds
 - As Nichi company
 - In agricultural or plantation activities
 - in realstate or construction of farm house
 Realstate does not includes
 - (1) Development of township
 - (2) construction of residential / commercial premises

③ Road or bridges ④ Real-estate Investment trust

→ In trading in Transferable Development Rights (TDR)

2. No PRI shall undertake any capital A/E transaction with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or ~~or~~ otherwise, in Democratic People's Republic of Korea.
3. The existing investment transactions, with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise in Democratic People's Republic of Korea, or any existing representative office or other assets possessed in Democratic People's Republic Korea, by a PRI shall be closed / liquidated / disposed / settled, with in a period of 180 days from the date of issue of this notification, unless there is specific approval from the Central Government to continue beyond that period.