FEMA

* The Foreign Exchange Management Act, 1999 *

→ Structure of the Act :-

- Total 7 Chapters
- Total 49 sections

→ Administration & Adjudication of the Act :-

Central Govt. / Union Govt.
↓
MoF and MHA / MFA

Ministry of finance

Ministry of Home Affs

Administration
↓
RBI
↓
Authorised Person (AP)

Judicial
↓
Assistant Director / Deputy Director
↓
Director General
↓
FEMAT
↓
High Court
↓
Supreme Court

Note :- Though RBI exercises overall control over foreign exchange transactions, enforcement of FEMA has been entrusted to seperate 'Directorate of Enforcement' formed u/s 36 of the Act

Introduction :-

The FEMA, 1999

Objective :-

- facilitating external trade and payments
- for promoting orderly development and maintenance of foreign exchange market in India

Commencement :- The Act came into force of 1st June, 2000 vide notification dated 1st May, 2000

→ **Extent & Application :- Section 1**

- FEMA, 1999 extends to whole of India
- (+) FEMA, 1999 shall also apply to all
  - Branch
  - offices
  - Agencies

  Outside India & Owned & controlled by a Person resident in India (PRI)
- (+) FEMA, 1999 will also apply to any contravention committed outside India by a person to whom this Act applies.

In simple words, Act will be applicable to :-

- Applicable to PRI in India exchanging foreign currency.
- Applicable to PRI outside India
- Applicable to BOA of PRI outside India
- Applicable to PROI in India

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* Important Definitions :-

① Foreign Currency :- Sec 2(m)

Foreign currency means any currency other than Indian currency

② Foreign Exchange :- Sec 2(n)

2(n) Foreign Exchange } Means → 2(m) Foreign Currency

Includes

Deposit / credit / Balance Payable

Demand Draft / TC / LOC / BOE

Traveller's cheque

in foreign Currency

Drawn in Indian Currency — But payable in foreign currency

Drawn outside India — But payable in Indian Currency

Analysis :-

Draft / TC / LOC / BOE

	Case-I	Case-II	Case-III	Case-IV
Express or Drawn	₹	₹	$	$
Payable in	₹	$	₹	$
Status	FE ✗	FE ✓	FE ✓	FE ✗

(7) Foreign security :- Sec 2(o)

Means — Any Security denominated in foreign currency

Includes — Any securities expressed in foreign currency

Redemption or Return

RR

In foreign Currency → foreign security

In Indian currency → foreign security

Analysis :-

For shares, stocks, bonds, debentures or any other instruments.

	Case - I	Case - II	Case - III	Case - IV	V
Expressed / Denominated	$	$	$	$	
Redemption in	$	$	₹	₹	
Return in	$	₹	₹	$	
∴	FS ✓	FS ✓	FS ✓	FS ✓	

(h) Person resident of India :- Sec 2(v)
(PRI)

(I) Any person who resides in India for more than 182 days during the preceeding f.y, but does not include :-

(A) A person who goes outside India or stays outside India :-
as for or on taking up employment

outside India; or

b) for carrying business/vocation outside India; or

c) for any other purpose where circumstances indicate intention to stay outside India for uncertain period.

(B) A person who comes to India or stays in India Otherwise than :-

a) for or on taking up employment In India; or

b) for carrying business/vocation in India; or

c) for any other purpose where circumstances indicate intention to stay in India for uncertain period.

Analysis :-

Individual

- Resident in India ≤ 182 days in PFY
  - ∴ Such Individual = PROI
- Resident in India > 182 days in PFY
  - Person comes to India in C.F.Y
    - In case of
    - In case
  - Person goes out of India in C.F.Y
    - for specified Purpose
    - for non-

Specified purpose ↓ = ∴ Such Individual = PRI

of non-specified purpose ↓ ∴ Such individual = PROI

∴ PROI

Specified purpose ↓ ∴ PRI

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

(III) Any BOA in India owned or controlled by a PROI

(IV) Any BOA outside India owned or controlled by a PRI

(4) Authorised person :- Sec 2(c)

- Authorised Dealer → Dealing in foreign security
- Money Changer — Eg :- Banks, Travel Agents, five-star hotels.
- Off-shore banking unit

↓

Authorised by RBI under Section 10(1) to deal in

- Foreign Exchange
- (or)
- Foreign securities.

Transactions

- Huge Amt is involved
- Non-recurring
- Affects B/S

- Amount involved is nominal
- Recurring
- Affects P&L

Capital Account Transactions

↓

Section 6

↓

Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

↓

further the Capital account transactions are classified as follows:-

- S-I PRI → Foreign Assets / Liabilities
- S-II PROI → Indian Assets / liabilities
- Prohibited Capital Accounts transactions
- Freely permissible Capital Account Transactions

Current Account transactions

↓

Section 5

↓

Foreign Exchange Management (Current A/c Transactions) Rules, 2000

↓

Further Current A/c Transactions are Classified as follows

- Prohibited Transactions — Schedule - I, Rule 3
- Approval of CG — S-II, Rule 4
- Approval of RBI — S-III, Rule 5
- Freely permissible

Q:) What is Capital A/c Transactions ? 2(e)

Ans:-

↓

Transaction

↓

which alters

Assets (or) liabilities including contingent liabilities

↓

Outside India of PRI — In India of PROI.

→ Eg. for contingent liability:-

CA - Miss. V

Chacha (Canada)

↓

loan Application (1)

↓

BOA (Bank of America)

(2) Guarantee

(3) Gives Guarantee.

(4) ∴ Miss V has given Guarantee outside India → ∴ It will be Contingent liability

* Sec 6 ÷ Capital Account Transactions

① (Any person) → Sell or Draw → Foreign Exchange → from A P → For Capital A/c Transactions

② RBI — Consult — CG

RBI will consult CG and will specify ÷

- Any class / classes of Cap. A/c Transactions + involving debt instruments → Which are permissible
- (+) Limits upto which foreign Exchange shall be admissible for such transactions
- (+) Any condition relating to such transactions

Note ÷ RBI or CG cannot impose restriction on drawal of foreign Exchange for

- for payment due on account of amortization of loan ← Prepayment of loan. → ∴ It will save Govt's
- Depreciation of direct investment

foreign regents → Eg:- Purchasing any Property / office outside India

(2A) CG --- {Consult} --- RBI

↓

CG in consultation with RBI, May prescribe:-

- Any class / classes of Cap. A/c Transactions + Not involving debt instruments → which are permissible
- (+) limits upto which foreign exchange shall be admissible for such transactions
- (+) Any conditions relating to such transactions

(3) Deleted.

(4) Any PRI --- {May} ---> HOTI: Hold, own, Transfer or invest

↓

in

- Foreign Currency
- foreign Security
- Immovable property situated outside India

↓

If such currency, security, or

immovable property was

AHO

Acquired / Held / Owned

↓

when he was resident outside India or inherited from a person who was resident outside India

HOTI

(5) Any PROI --- May ---> Hold, Own, Transfer, or invest

in

Indian Currency / Indian Security / Immovable property situated in India

↓

If such currency, security or immovable property was

(AHO)

Acquired / Held / Owned

↓

when he was resident in India or inherited from a person who was resident in India.

(6) ~~RBI~~ --> Regulate --> Opening / closing of any BOA of any foreign entity in India.

PRI → outside India

1. Investment → foreign security
2. foreign currency loan in abroad → Eg:- SRK is PRI, and has obtained loan from Dubai's Bank for purchasing asset outside India
3. PRI ← loan — PROI

   loan

4. Insurance policy outside India
5. Transfer of immovable property outside India

   Eg:- SRK sold his house in Palm Island to Mr. X

6. Guarantee for PROI in abroad
7. Export / Import
8. Foreign Currency A/c → either → In India or → outside India
9. Remittance outside India out of Capital assets of PRI
10. Derivative contracts.

PROI → In India → Refer JKSC TR

Prohibited Capital A/c Transactions

only for individual

On the basis of Amount

Liberalized Remittance Scheme upto $2,50,000 per f.Y

for all capital A/c transaction specified under Schedule I and Schedule II

On the basis of Transactions (only for PROI)

1. Investment in chit fund (However, SG can allow; but foreign remittance is prohibited)
2. Investment in Nidhi Co.
3. Investment in agricultural and plantation activities
4. Investment in real estate business, or construction or farmhouses except townships, construction of residential / commercial premises, roads or bridges or REITs
5. Investment in TDRs

* Current A/c Transactions :- Section 5

→ Definition of Current A/c Transactions :- Section 2(j)

Current A/c Transaction } means a transaction } other than Capital A/c Transaction

↓

Includes

↓

- Payments in the ordinary course of foreign trade
- Payments in the form of interest on loans or income from investments
- Remittances for living expenses of parents, spouse or childeren living abroad
- Expenses in connection with foreign travel, education etc.

* Liberalized Remittance scheme

Resident Individuals. — — — Remittance of funds for — — — — Abroad

upto \$2,50,000 per f.y.

Current A/c Transactions + Capital A/c Transactions

Important points :-

① LRS is available for resident individuals. It means it is not applicable for HUF, Partnership firm, LLP, companies, Trust, society etc.

② SRK + Gauri Khan — \$5,00,000 (property) → California (USA)

(co-ownership)

↓

valid

↓

Because clubbing is permitted among family members.

③ Raju → Gift \$2,50,000 → Shyam → \$5,00,000 → Property Abroad.

↓

Invalid

* Procedure for remittance outside India –

Any person → Application → Authorised Person

Application ↓

Form A2 + PAN Card

↓

Should be countersigned by the person making application

↓

In case where person making application is minor, form A2 will be signed by natural guardian

Eg. for PRI :–

1. Person stays in India for > 182 days in P.F.Y } ∴ In current F.Y he will be PRI.

2. Person stays in India for ≤ 182 days in P.F.Y } ∴ In current F.Y he will be PROI.

3. Person stays in India for > 182 days in P.F.Y (22-23) } On 1st Aug 2023 person goes outside India for 3 S.P.

∴ 1st April 2023 ——— 1st Aug, 2023 ——— 31st March 2024

↓

PROI.

(4) (Raju)
Person resides in India for > 182 days (22-23)

1st April 2023 ——— 31st March 2024

↓

1st July, 2023

↓

Goes outside India for vacation & comes back on 14th feb, 2024

Q:) Is Raju PRI for 23-24?

Ans:- Yes, because he was staying in India for > 182 days in P.F.Y

Q:) Is Raju PRI for 24-25?

Ans:- NO, because he has not stayed in India for > 182 days in 23-24

(5) Raju > 182 days in P.F.Y → In C.Y

SP → ~~PROI~~

SP → PRI

NSP → PRI [Returns within 10 days]

SP → PROI

NSP → PROI

(6) Raju → stays for < 182 days in P.F.Y (22-23)

↓

In C.F.Y, Raju comes to India (23-24) for

(NSP) Vacation

↓

∴ Raju = PROI

3 SP

↓

∴ Raju = ~~PRI~~ PROI

Q5 What will be residential status of Raju in 24-25?

Ans-: PRI only if period of stay in India is > 182 days

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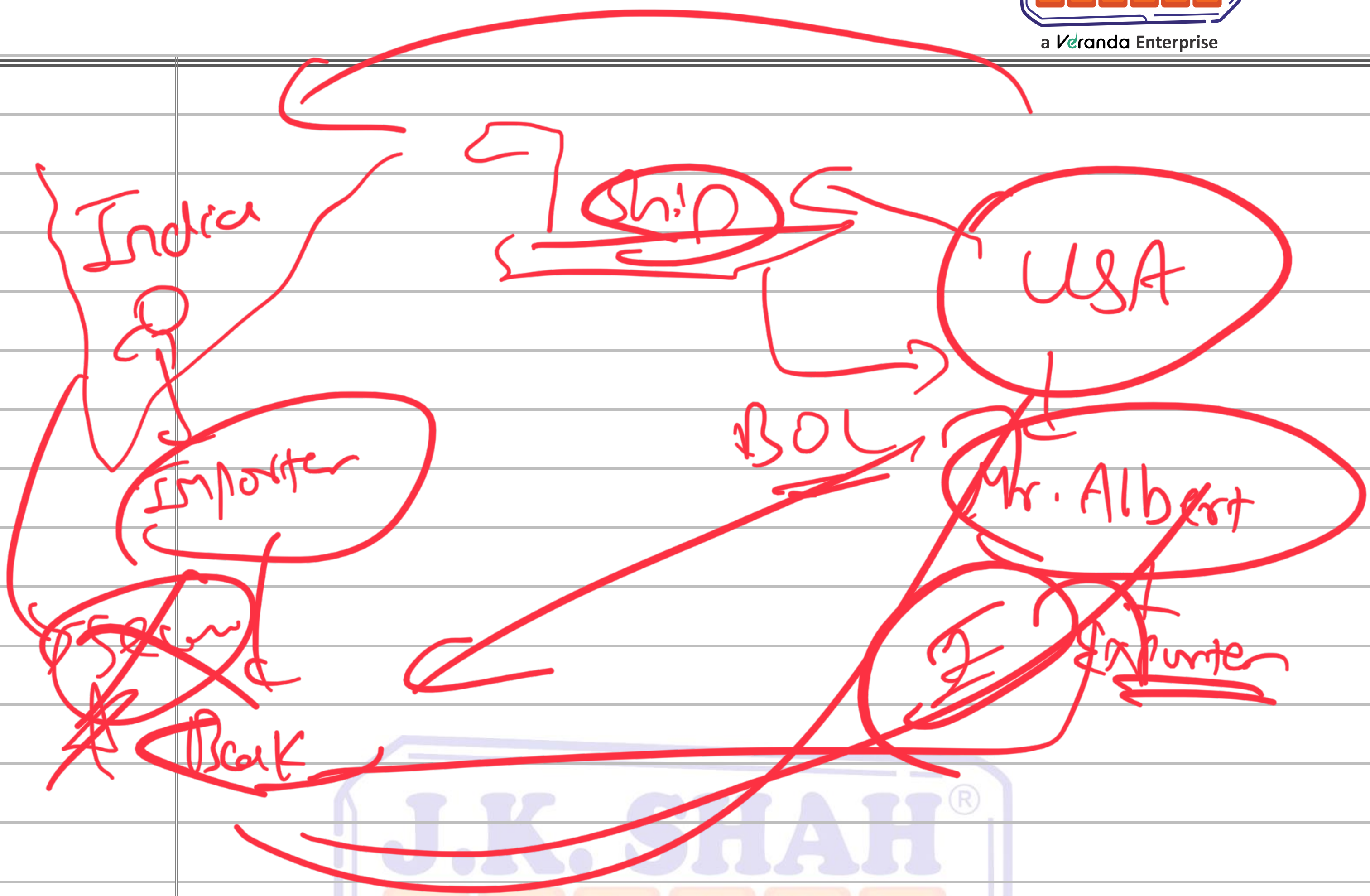
India
Ship
USA
BOL
Importer
Mr. Albert
E
Exporter
Bank

Govt ex-chequer

History

The FERA, 1947. X

The FERA, 1973 → Restrictive

→ FEX

Rigid

The FEMA, 1999 → liberal

1st June 2000

FERM

FEM ✓