

# THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

## Features of FEMA, 1999

**Salient Features of FEMA, 1999:** It provides for-

- ◆ Regulation of transactions between residents and non-residents
- ◆ Investments in India by non-residents and overseas investments by Indian residents
- ◆ Freely permissible transactions on current account subject to reasonable restrictions that may be imposed
- ◆ RBI of India (RBI) and CG control over capital account transactions
- ◆ Requirement for realisation of export proceeds and repatriation to India
- ◆ Dealing in foreign exchange through 'APs' like Authorised Dealer/ Money Changer/ Off-shore banking unit
- ◆ Adjudication and Compounding of Offences
- ◆ Investigation of offences by Directorate of Enforcement
- ◆ Appeal provisions including Special Director (Appeals) and Appellate Tribunal.

## Preamble, Extent, Application and Commencement

- (A) **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.
- (B) **Extent and Application [Section 1]:** FEMA, 1999 extends to the whole of India. In addition, it shall also apply to all branches, offices and agencies outside India owned or controlled by a PRI and also to any contravention thereunder committed outside India by any person to whom this Act applies.
- (C) **Commencement:** FEMA, 1999 came into force with effect from 1<sup>st</sup> June, 2000

## Important Definitions

“*Capital Account Transaction*” means a transaction, which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liability in India of persons resident outside India [Section 2(e)]

“*Current Account Transaction*” means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,

- (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
- (ii) payments due as interest on loans and as net income from investments.
- (iii) remittances for living expenses of parents, spouse and children residing abroad, and
- (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children; [Section 2(j)]

“*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, 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;
  - (ii) any person or body corporate registered or incorporated in India,
  - (iii) an office, branch or agency in India owned or controlled by a PROI,
  - (iv) an office, branch or agency outside India owned or controlled by a PRI; [Section 2(v)]
- “*Person Resident Outside India*” means a person who is not resident in India; [Section 2(w)]

“*Person*” includes:

- (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 within any of the preceding sub-clauses, and;
- (vii) any agency, office or branch owned or controlled by such person; [Section 2(u)]

### Other Definitions

“*Currency*” includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers’ cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank. [Section 2(h)]

“*Authorised person*” means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities; [Section 2(c)]

“*Currency Notes*” means and includes cash in the form of coins and bank notes; [Section 2(i)]

“*Export*”, with its grammatical variations and cognate expressions means;

- (i) the taking out of India to a place outside India any goods.
- (ii) provision of services from India to any person outside India; [Section 2(l)]

“*Foreign Currency*” means any currency other than Indian currency; [Section 2(m)]

“*Foreign Exchange*” means foreign currency and includes:

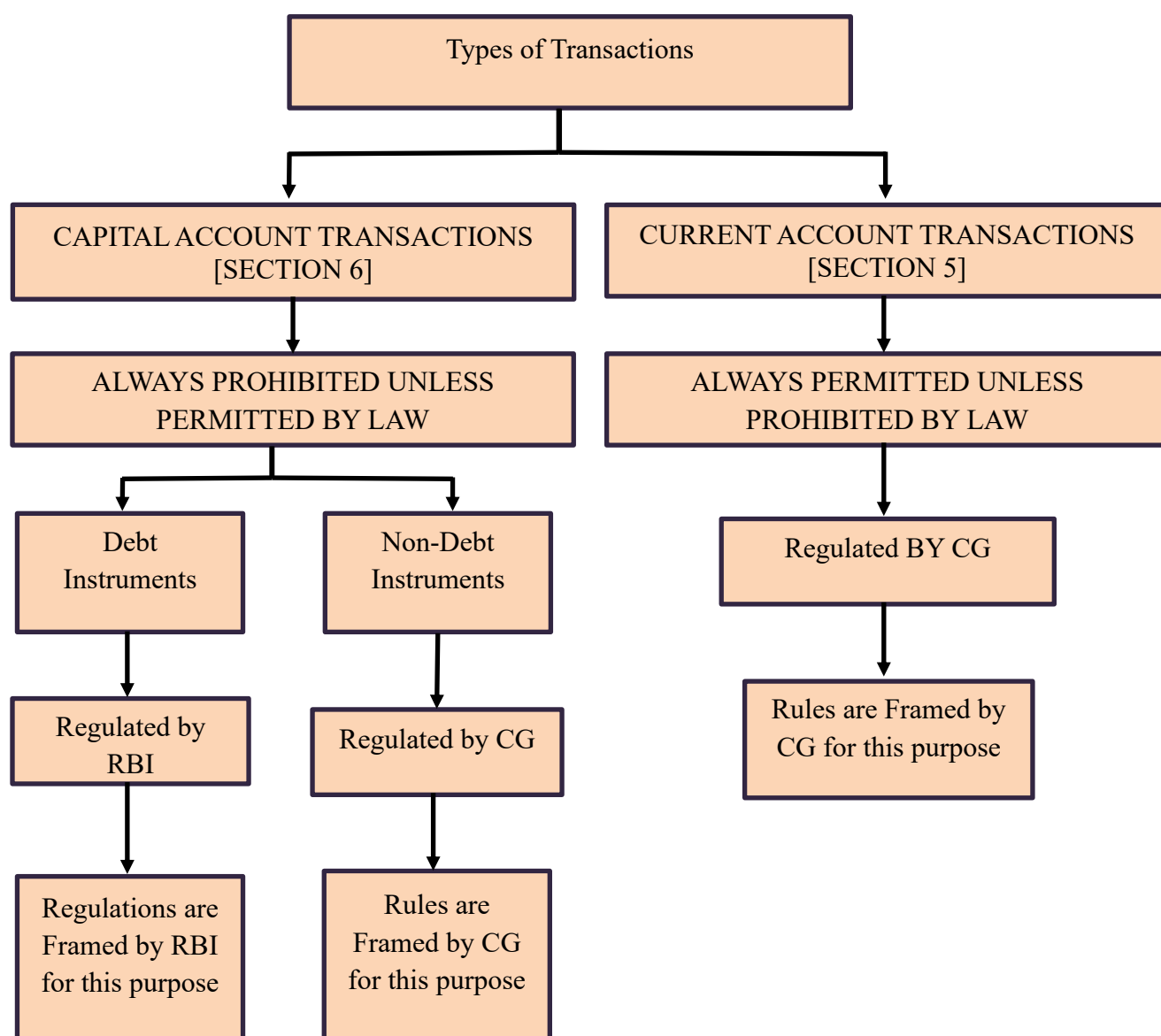
- (i) deposits, credits and balances payable in any foreign currency,

- (ii) drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
- (iii) drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency; [Section 2(n)]

*“Foreign Security”* means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency; [Section 2(o)]

*“Import”*, with its grammatical variations and cognate expressions, means bringing into India any goods or services; [Section 2(p)]

*“Transfer”* includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. [Section 2(ze)]



### Current Account Transaction [Section 5]

- Section 5 permits any person to sell or draw Foreign Exchange to or from AP to undertake any current account transaction.
- The CG has the power to impose reasonable restrictions, in consultation with the RBI and in public interest on current account transactions.
- The CG has in exercise of this power issued the Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- Current Account Transactions can be divided into following categories:-
  - Prohibited Current Account Transactions – Schedule I
  - Transactions require prior approval of CG – Schedule II
  - Transactions require prior approval of RBI – Schedule III
  - Any other transactions not covered above can be freely undertaken

### Prohibited Current Account Transactions [Schedule I]

Transactions for which drawal of foreign exchange is prohibited:

- Remittance out of lottery winnings
- Remittance of income from racing/riding, etc., or any other hobby.
- Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
- Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
- Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
- Payment related to “Call Back Services” of telephones.
- Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

### Transactions require prior approval of CG [Schedule II]

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)
Advertisement in foreign print media by State government and its Public Sector Undertakings exceeding US\$ 10,000 Exception – No restriction if for promotion of tourism, foreign investments and international bidding	Ministry of Finance, Department of Economic Affairs

Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport (Chartering Wing)
Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (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 Certificate 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 Shipping	Ministry of Surface Transport (Director General of Shipping)
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)
Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

### Schedule III – Transactions require prior approval of RBI

1. **Facilities for individuals**—Individuals can avail foreign exchange facility for the following purposes within the limit of USD 250,000 only. Beyond limit requires RBI approval:
  - i. Private visits to any country (except Nepal and Bhutan)
  - ii. Gift or donation
  - iii. Going abroad for employment
  - iv. Emigration
  - v. Maintenance of close relatives abroad
  - vi. Travel for business or attending a conference or specialised 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
  - ix. Any other current account transaction

However, for the purposes mentioned at item numbers (iv)-Emigration, (vii)-Medical Treatment abroad and (viii)-Studies abroad, the individual may avail of exchange facility for an amount in excess of limit of USD 2500000 prescribed under the LRS if it is so required by a country of emigration, medical institute offering treatment or the university, respectively:

For person who is resident but not permanently resident in India and-

- (a) is a citizen of a foreign State other than Pakistan; or
- (b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company,

may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

*Explanation:* For the purpose of this item, a PRI on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident

## 2. Remittances by persons other than individuals shall require prior approval of RBI:

<p>Donations for-</p> <ul style="list-style-type: none"> <li>(a) creation of Chairs in reputed educational institutes,</li> <li>(b) contribution to funds (not being an investment fund) promoted by educational institutes; and</li> <li>(c) contribution to a technical institution or body or association in the field of activity of the donor Company.</li> </ul>	<p>exceeding</p> <ul style="list-style-type: none"> <li>• 1 % of their foreign exchange earnings during the previous 3 FYs or</li> <li>• USD 5,000,000, whichever is LESS</li> </ul>
<p>Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India</p>	<p>exceeding</p> <ul style="list-style-type: none"> <li>• USD 25,000 or</li> <li>• 5% of the inward remittance whichever is MORE</li> </ul>
<p>Remittances</p> <ul style="list-style-type: none"> <li>• for any consultancy services in respect of infrastructure projects</li> <li>• for other consultancy services procured from outside India.</li> </ul>	<ul style="list-style-type: none"> <li>• exceeding USD 1,00,00,000 per project</li> <li>• exceeding USD 10,00,000 per project</li> </ul>
<p>Remittances by an entity in India by way of reimbursement of pre-incorporation expenses.</p>	<p>exceeding</p> <ul style="list-style-type: none"> <li>• 5 % of investment brought into India or</li> <li>• USD 1,00,000 whichever is MORE</li> </ul>

### Exemption from approval

Remittance from Resident Foreign Currency (RFC) A/C	No approval from CG or RBI is required for any remittance out of RFC Account
Remittance from Exchange Earners' Foreign Currency (EEFC) A/C	No approval from CG or RBI is required for any remittance out of EEFC A/C except for following transactions: - <ul style="list-style-type: none"> <li>● Remittance for membership of P &amp; I Club.</li> <li>● Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5 % of the inward remittance whichever is more</li> <li>● Remittances exceeding 5 % of investment brought into India or USD 100,000 whichever is More, by an entity in India by way of reimbursement of pre-incorporation expenses.</li> </ul>
International Credit Card	If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through international credit card.

### Capital Account Transactions

- Capital Account Transactions can be divided into following categories:-
  - Capital Account transactions on which restrictions cannot be imposed
  - Permissible Capital Account Transactions by PRI – Schedule I
  - Permissible Capital Account Transactions by PROI - Schedule II
  - Capital Account transactions which are prohibited
- A PRI may
  - hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India
  - if such currency, security or property was acquired, held or owned by such person when he was resident outside India or
  - inherited from a person who was resident outside India.

The RBI vide A.P. (DIR Series) Circular No. 90 dated 9<sup>th</sup> January, 2014 has issued a clarification on section 6(4) of the Act. This covers the following transactions:

- Foreign currency accounts opened and maintained by such a person when he was resident outside India;
- Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;



- (iii) Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a PRI acquired by way of inheritance from a PROI.
  - (iv) A PRI may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of RBI, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions is not in contravention to extant FEMA provisions.
3. A PROI may
- hold, own, transfer or invest in Indian currency, security or any immovable property situated in India
  - if such currency, security or property was acquired, held or owned by a such person when he was resident in India or
  - inherited from a person who was resident in India.

### Capital Account Transactions with no restrictions

- (1) For **amortization of loan** - restrictions cannot be imposed when drawal is of the purpose of repayments of loan installments.
- (2) For **depreciation of direct investments** in ordinary course of business.

### List of permissible Capital Account Transactions made by PRI [Schedule I]

- (a) **Investment** by a PRI in **foreign securities**.
- (b) **Foreign currency loans** raised in India and abroad by a PRI.
- (c) **Transfer of immovable property** outside India 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 (borrowings) by a PRI from a PROI.
- (g) **Maintenance of foreign currency accounts** in India and outside India by a PRI.
- (h) Taking out of **insurance policy by a PRI** from an insurance company outside India.
- (i) **Loans and overdrafts by a PRI** to a PROI.
- (j) **Remittance outside India of capital assets of a PRI**.
- (k) Undertake derivative contracts

*Note :- Resident individual may, draw foreign exchange from AP not exceeding USD 2,50,000 per financial year for transactions specified in Schedule I. However, It shall not be remitted to non-cooperative countries.*



### List of permissible Capital Account Transactions made by PROI [Schedule I]

- (a) Investment in India by a PROI, that is to say,
  - (i) issue of security by a body corporate or an entity in India and investment therein by a PROI; and
  - (ii) investment by way of contribution by a PROI to the capital 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 PROI.
- (c) Guarantee by a PROI in favour of, or on behalf of, a PRI.
- (d) **Import and export of currency/currency notes** into/from India by a PROI.
- (e) Deposits between a PRI and a PROI.
- (f) Foreign currency accounts in India of a PROI.
- (g) Remittance outside India of capital assets in India of a PROI.
- (h) Undertake derivative contracts

### Prohibited Capital Account Transactions

- (a) PROI is prohibited from making investments in India in any form in
  - (i) Chit fund business (Refer Note 1)
  - (ii) As Nidhi company;
  - (iii) In agricultural or plantation activities;
  - (iv) Real estate business or construction of farms (Refer Note 2)
  - (v) Trading in Transferable Developments Rights (Refer Note 3)

#### Note

1. Chit Fund business - Registrar of Chits or officer authorised by SG, in consultation with SG, **permit any chit fund to accept subscription from NRIs through banking channel and on non- repatriation basis** without limit subject to the conditions stipulated by the RBI of India from time to time
  2. Term “real estate business” shall **not include development of townships, construction of residential/commercial premises, roads or bridges** and Real Estate Investment Trusts (REITs)
  3. 'Transferable Development Rights' means certificates issued in respect of category of land acquired for public purpose either by CG or SG in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole
- (b) **No PRI shall undertake any capital account transaction** which is not permissible 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, **unless approved by CG**
  - (c) **Existing investment transactions**, with any person of Democratic People's Republic of Korea shall be **liquidated, closed, settled within 180 days** of order **unless approved by CG** [Order dated 21 April 2017]

### Liberalised Remittance Scheme (LRS):

Under the LRS, all resident individuals, including minors, are allowed to freely remit up to USD 2,50,000 per financial year for any permissible current or capital account transaction or a combination of both.

**In case of remitter being a minor**, the LRS declaration form must be countersigned by the minor's natural guardian.

The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.

**Consolidation of remittance of family members** - Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.

**Exception:** Clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/ investment/ property.

### Dealing in foreign exchange, etc. [Section 3]

Save as otherwise provided, No person shall-

Provision	Example
a) deal in or transfer any foreign exchange or foreign security to any person not being an Authorised Person (AP)	A PROI comes to India and would like to sell US\$ 1,000 to his friend who is resident in India. The friend offers him a rate better than the banks. This cannot be done as it would amount to dealing in foreign exchange.
b) make any payment to or for the credit of any PROI in any manner;	A PROI has an insurance policy in India. He requests his brother in India to pay the insurance premium. This will amount to payment for the credit of non-resident. This is not permitted.
c) receive otherwise than through an AP, any payment by order or on behalf of any PROI in any manner.	A foreign tourist comes to India and he takes food at a restaurant. He would like to pay US\$ 20 in cash to the restaurant. The restaurant cannot accept cash as it will be a receipt otherwise than through AP. The restaurant will have to take a money changers license to accept foreign currency.
d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.	Transactions covered by this sub-section are known as Hawala transactions. An Indian resident gives Rs. 70,000 in cash to an Indian dealer. For this transaction, the brother in Dubai will get US\$ 1,000 from a Dubai dealer. The two dealers may settle the transactions later. However, transaction is not permitted.

❖ **Holding of foreign exchange [Section 4]**

Except as provided in this Act, **no PRI shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.**

Example :- If an Indian resident receives bank balance of US\$ 10,000 from his uncle in London, the Indian resident cannot hold on to the foreign funds. He is supposed to bring back the funds as provided in section 8.

**Enforcement of FEMA:** Though RBI exercises overall control over foreign exchange transactions, **enforcement of FEMA has been entrusted to a separate 'Directorate of Enforcement'** formed for this purpose. [Section 36].