

Foreign Exchange Management Act, 1999

By:
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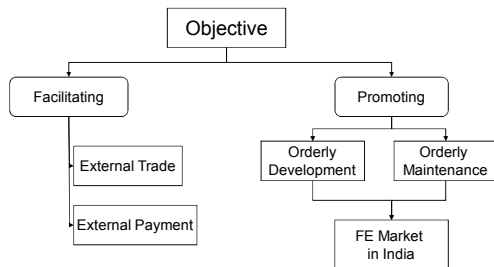
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Structure of FEMA: *FEMA is administered by means of Notifications/ Circulars/ Clarifications/ Rules issued by RBI/ Government*

- | | |
|--|--------------------|
| ■ Chapter 1: Preliminary | ■ Section 1 to 2 |
| ■ Chapter 2: Regulation and Management of Foreign Exchange | ■ Section 3 to 9 |
| ■ Chapter 3: Authorised Person | ■ Section 10 to 12 |
| ■ Chapter 4: Contravention & Penalties | ■ Section 13 to 15 |
| ■ Chapter 5: Adjudication & Appeal | ■ Section 16 to 35 |
| ■ Chapter 6: Directorate of Enforcement | ■ Section 36 to 38 |
| ■ Chapter 7: Miscellaneous | ■ Section 39 to 49 |

2

Objective of FEMA



3

Extent and Application of FEMA (Section 1)

- Whole of India;
- All branches, offices and agencies outside India owned or controlled by a person resident in India (PRI);
- Any contravention committed outside India by any person to whom this Act applies

4

Important Definitions

Currency [Section 2(h)]: It includes:

- Currency Notes;
- Postal Notes;
- Postal Orders;
- Money Orders;
- Cheques;
- Drafts;
- Travellers' Cheques;
- Letters of Credit;
- Bills of Exchange;
- Promissory Notes;
- Credit Cards;
- Other instruments notified by RBI (e.g. Debit Cards, ATM Cards)

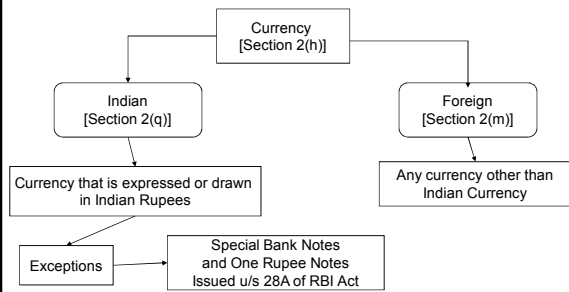
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Important Definitions

- Currency Notes [Section 2(i)]:
- It means and includes:
 1. Cash in the form of coins; and
 2. Bank notes

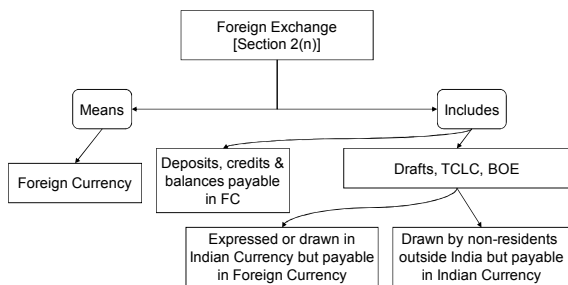
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Important Definitions



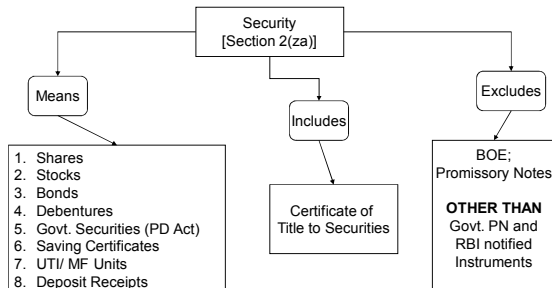
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Important Definitions



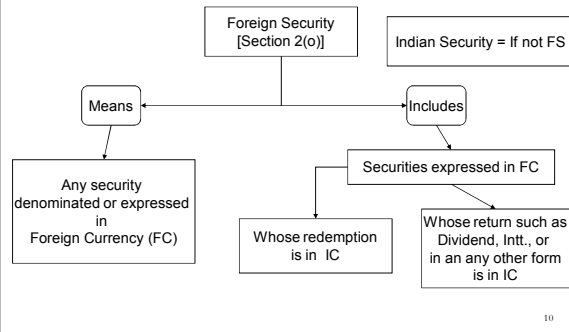
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Important Definitions



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Important Definitions



Important Definitions

- Authorised Person [Section 2(c)]:
- It means:
 1. Authorised Dealer;
 2. Money Changer;
 3. Off-Shore Banking Unit; or
 4. Any other person
- for the time being authorised u/s 10(1) to deal in Foreign Exchange or Foreign Securities

Important Definitions

- Person [Section 2(u)]: It includes:
- 1. Individual;
- 2. HUF;
- 3. Company;
- 4. Firm;
- 5. AOP/BOI, whether incorporated or not;
- 6. AJP not covered above; and
- 7. any agency, office or branch controlled by such person

Important Definitions

- Person Resident Outside India [Section 2(w)]:
- PROI means a person who is not resident in India

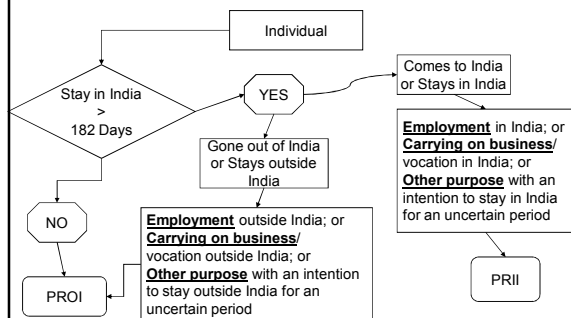
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Important Definitions

- Person Resident in India [Section 2(v)]:
- It means:
 1. an individual residing in India > 182 days in the *preceding F. Y. (subject to exceptions)*;
 2. any person/ body corporate registered or incorporated in India;
 3. an office, branch, or agency in India owned or controlled by **PROI**;
 4. an office, branch or agency outside India owned or controlled by **PRII**

14

Important Definitions....PRII (contd.)



15

Important Definitions

■ Notes as regards PRII/ PROI:

1. F.Y. = 1st April to 31st March;
2. FEMA uses the word "**Residing**" and not "**Stays**." While stay is a physical attribute, residing denotes an element of permanence. It also implies that compulsive stay in India will not be considered;
3. If a person goes outside India in such circumstances that his period of stay outside India is not certain, it cannot be said that he has an intention to stay outside India for an uncertain period [**R P Verma vs. UOI**]
4. Citizenship is irrelevant for determining residential status

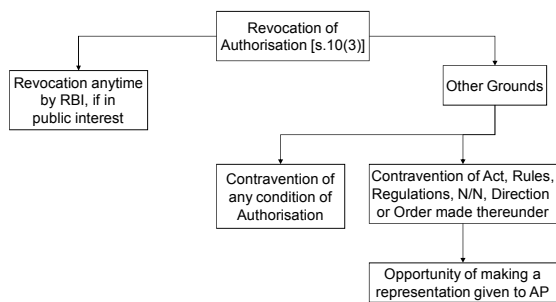
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Authorised Person [Section 10 to 12]

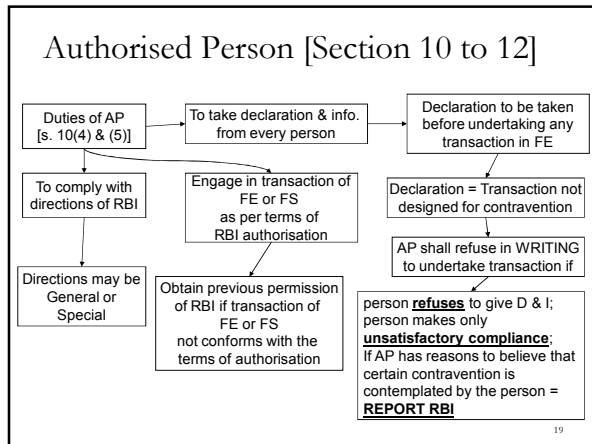
- AP defined u/s 2(c);
- Authorisation by RBI or Procedure for appointment as AP [Section 10(1) & (2)]:
 1. Apply to RBI;
 2. RBI may authorise to deal in FE or FS;
 3. Once authorised, the applicant will be called as AP;
 4. Such authorisation shall be in writing;
 5. Such authorisation may be subject to laid down conditions

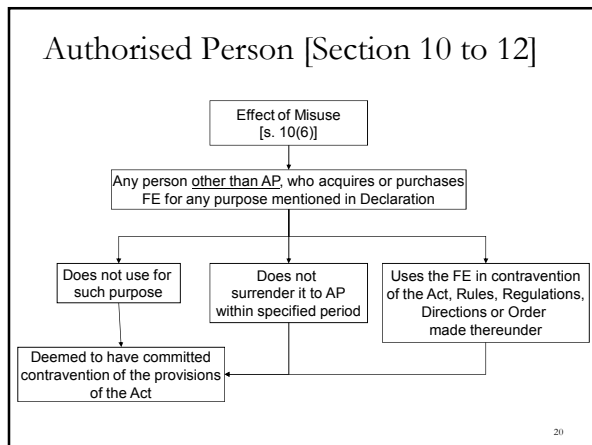
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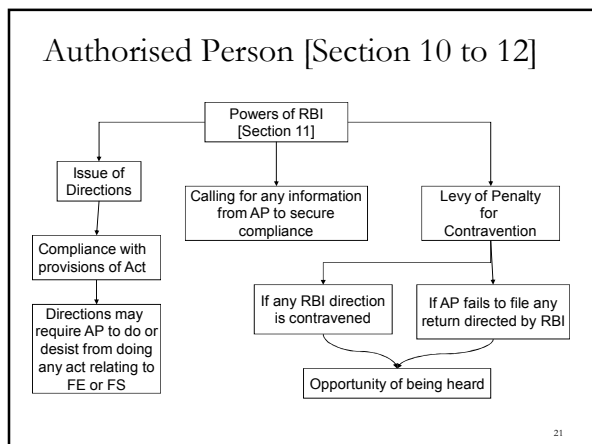
Authorised Person [Section 10 to 12]

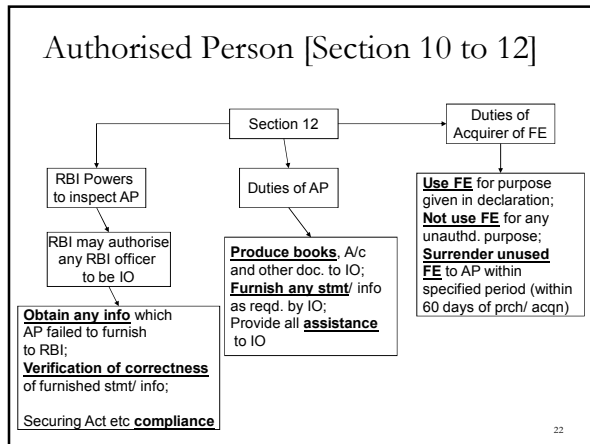


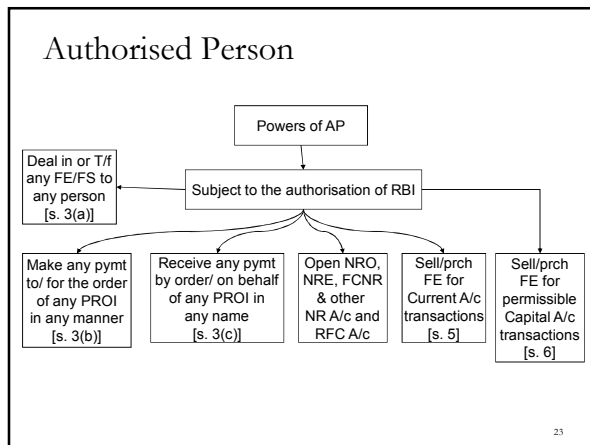
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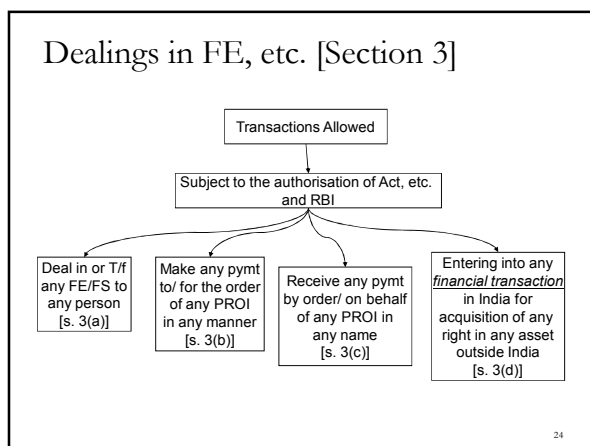












Dealings in FE, etc. [Section 3]

- **Special Points:**
- For the purpose of section 3(c), if any person receives any payment by order or on behalf of any PROI through any other person (including an AP) without a corresponding inward remittance from any place outside India, then such person shall be deemed to have received such payment otherwise than through an AP;
- For the purpose of section 3(d), 'Financial Transaction' means:
 1. making any payment to or for the credit of any person; or
 2. receiving any payment for, by order or on behalf of any person; or
 3. drawing, issuing or negotiating any B/E or PN; or
 4. transferring any security; or
 5. acknowledging any debt

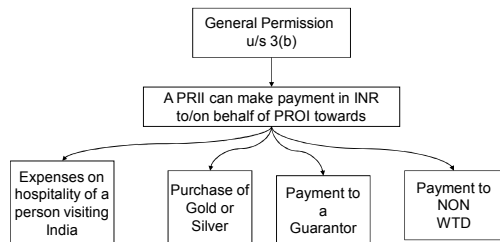
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General Permission u/s 3 (under various RBI Notifications)

- **General Permission u/s 3(a):**
- 1. Any person may buy from any Post Office any FE in the form of postal orders or money orders;
- 2. He shall comply with the Rules made by Post Office in this behalf
- **NOTE:** It may be noted that a Post Office is not an AP and hence prohibition u/s 3(a) is attracted; but due to the abovementioned general permission, FE transaction with Post Office is permitted only in PO/MO form

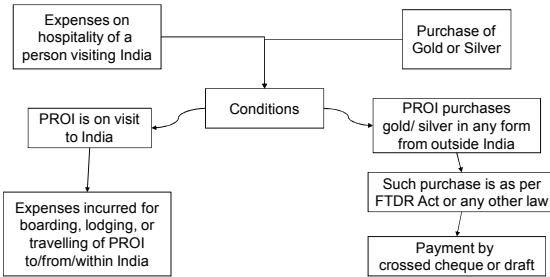
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General Permission u/s 3 (under various RBI Notifications)



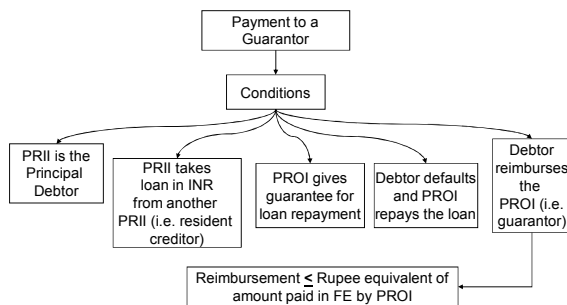
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General Permission u/s 3(b)....contd.



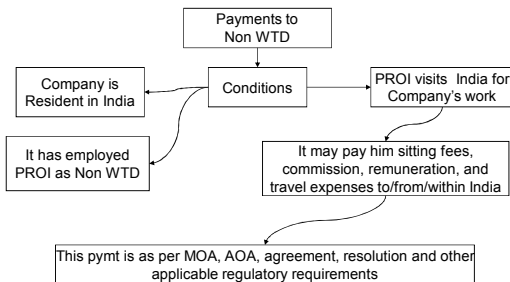
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General Permission u/s 3(b)....contd.



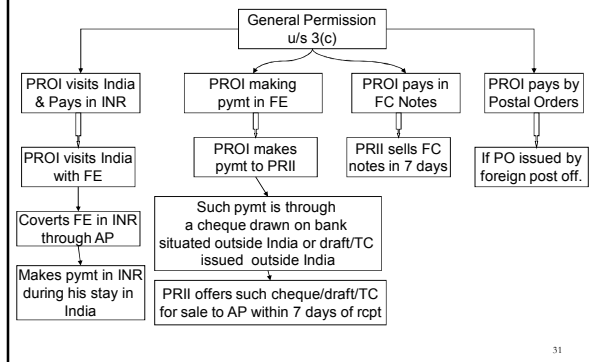
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General Permission u/s 3(b)....contd.



30

General Permission u/s 3



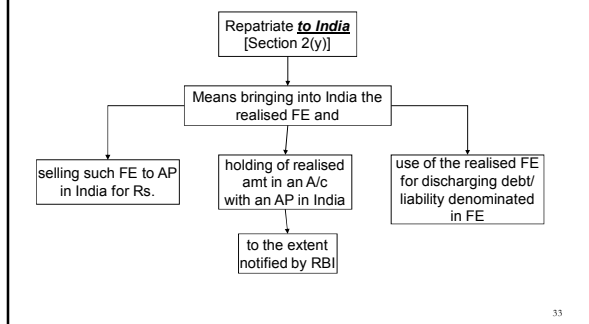
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General Permission u/s 3

- **General Permission u/s 3 (b), (c) and (d):** The prohibitions contained in section 3 (b), (c) & (d) shall not apply to any transaction entered into in INR with:
 1. a person who is citizen of India, Nepal or Bhutan resident in Nepal or Bhutan;
 2. a branch situated in Nepal or Bhutan of any business carried on by a company or a corporation incorporated in India, Nepal or Bhutan; and
 3. a branch situated in Nepal or Bhutan of any business carried on as a partnership firm by a citizen of India, Nepal or Bhutan

32

Repatriation [Section 2(y) and 8]



33

Repatriation [Section 2(y) and 8]....contd.
Read with FEM (Realisation, Repatriation & Surrender of FE)
Regulations, 2000

- **Realisation and Repatriation of FE [s. 8]:** Where any amount of FE is due or has accrued to a PRII, he shall take all reasonable steps:
 1. to realise & repatriate to India such FE;
 2. within the period specified by RBI; and
 3. in the manner specified by RBI.
- **Duties of PRII:** He shall not do or refrain from doing anything which results in:
 1. reduction or cessation of whole or part of the export proceeds receivable by him; or
 2. delaying the receipt of export proceeds; or
 3. receipt of export proceeds otherwise than in the specified manner

34

Repatriation [Section 2(y) and 8]....contd.
Read with FEM (Realisation, Repatriation & Surrender of FE)
Regulations, 2000

■ **Time limit for sale or surrender of FE:**

	Situation	Time Limit
SALE	FE due/accrued ■ as remuneration for services rendered whether in/outside India, or ■ in settlement of any lawful obligation, or ■ an income on assets held outside India, or ■ as inheritance, settlement or gift	Within 7 days from the date of receipt
	FE realised in all cases other than above	Within 90 days from the date of receipt

35

Repatriation [Section 2(y) and 8]....contd.
Read with FEM (Realisation, Repatriation & Surrender of FE)
Regulations, 2000

■ **Time limit for sale or surrender of FE:**

	Situation	Time Limit
Surrender	Unspent balance of FE acquired/ purchased for the purpose of foreign travel: ■ in the form of Foreign Currency Notes and Coins; ■ in the form of TC	From the date of return of traveller to India: ■ within 90 days ■ within 180 days
	Unused portion of FE acquired/ purchased for the purpose declared u/s 10(5)	Within 60 days from the date of acqn/ prch

36

Holding of Foreign Exchange, etc. [Section 4]
Read with FEM (Acquisition & T/f of Immovable Property
outside India) Regulations, 2000

- A **PRII** shall not acquire, hold, possess, own or transfer any FE, FS or any immovable property situated outside India;
- The provisions of this **section may be relaxed*** by the Act or RBI special/ general permission
- *FEMA Regulations

37

FEM (Acquisition & T/f of Immovable Property outside
India) Regulations, 2000

- As per these Regulations, the following **transactions are permissible** without RBI specific approval:
 1. Property held outside India by a **Foreign Citizen**, resident in India;
 2. Property acquired by a person on or before **8-July-1947** and held with the permission of RBI;
 3. Property acquired by a PRII by way of **gift/ inheritance** from the persons referred above;
 4. Property purchased by a PRII out of funds held in **RFC A/c**;
 5. Immovable property outside India held for **lease ≤ 5 yrs.**, unless specifically prohibited

38

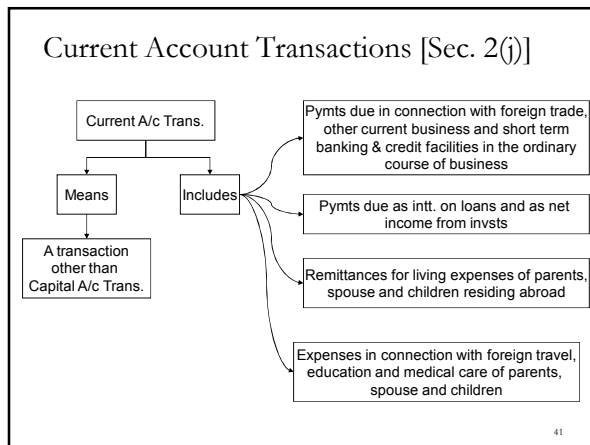
Exemption from Realisation & Repatriation [S. 9] –
i.e. Section 4 & 8 are N.A.

Nature of Exemption	Limits
■ Possession of FE/ Foreign Coins ■ Holding amount in FC A/c in specified manner ■ FE acquired from employment, services, honorarium, business, trade, vocation, gifts, inheritance or other legal means	Limits specified by RBI
■ FE acquired before 8-July-1947 including any income arising thereon (also includes such acquisition by gift or inheritance)	RBI special/ general permission
■ Other Receipts	As specified by RBI

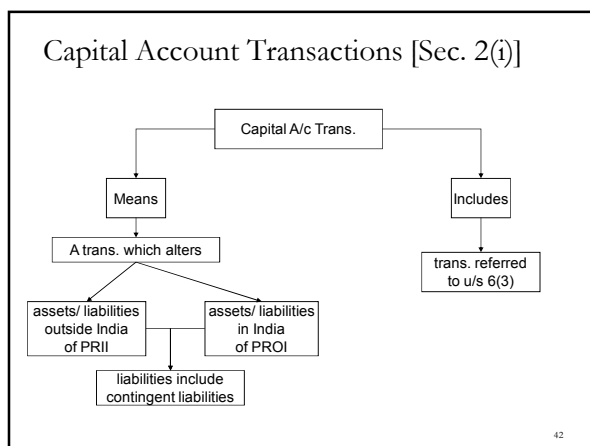
39

Possession and Retention of FC: As per FEMA Regulation, 2000	
Category	Conditions
Authorised Person	He can possess FC Notes and Foreign coins without any limit, in the ordinary course of business (i.e. acting within scope of his authority)
Other Person(s)	1. PRII can possess foreign coins without any limit; 2. PRII can possess/retain FCN, bank notes, TC upto US\$ 2,000 subject to following: ■ PRII went outside India and acquired FE by way of pymt for services/honorarium/gift/ from AP for travel abroad; ■ PROI while on visit to India, paid FE to PRI by way of pymt for services/honorarium/gift/ discharge of any lawful obligation

40



41



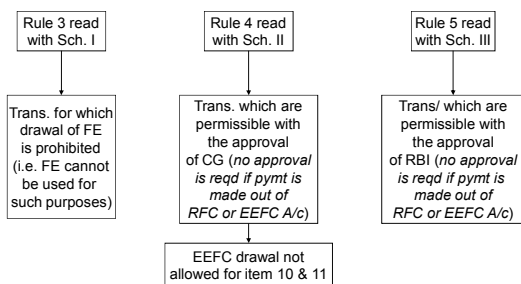
42

General Rule for Current A/c and Capital A/c Transactions

1. Current Account Transactions are permitted, unless they are specifically prohibited;
2. Capital Account Transactions are prohibited, unless they are specifically permitted.

43

Permissibility of Current Account Transactions [Sec. 5] Read with FEM (Current Account Transactions) Rules, 2000



44

Rule 3 read with Schedule I: Prohibited Transactions

1. Pymt for travel to Nepal and/or Bhutan;
2. Remittance out of income from :- lottery winnings, or racing/riding etc., or any other hobby;
3. Remittance for purchase of :- lottery tickets, or banned/ prescribed magazines, football pools, sweepstakes etc.;
4. Pymt of comm. on exports under Rupees State Credit Route except comm. upto 10% of invoice value of exports of tea & tobacco;
5. Pymt of comm. on exports made towards equity investment in JV/WOS abroad of Indian Companies;
6. Remittance of dividend by any company to which the requirement of dividend balancing is applicable;
7. Pymt released to 'Call Back Services' of telephone;
8. Remittance of intt. income on funds held in Non Resident Special Rupee (Account) Scheme

45

Rule 4 read with Schedule II:

Transactions with CG Approval

1. Remittance of freight of vessel chartered by a PSU;
2. Multi-modal transport operators making remittance to their agents abroad;
3. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping;
4. Advertisement in foreign print media by SG or its PSU > US\$ 10,000 (no restriction applies for promotion of tourism, or foreign investments or international bidding);
5. Pymt of imports by a Govt. Deptt. or a PSU on CIF basis;
6. Cultural Tours;
7. Remittance of prize money/ sponsorship of sports activity abroad > US\$ 1,00,000 (no restriction if pymt made by International /National/ State level Sports Bodies);
8. Remittance of hiring charges of transponders by TV Channels & ISP;
9. Remittances under technical collaboration agreements if pymt of royalty > 5% on local sales; 8% on exports & US\$ 2 million in lumpsum (omitted w.r.e.f. 16-12-2009 Circular 52, 13.5.2010);
10. Pymt for health insurance from a company abroad;
11. Remittance for membership of P & I clubs

46

Rule 5 read with Schedule III:

Transactions with RBI Approval (if beyond limits)

Category of Transactions	Limits
■ Business travel, attending conference/ specialised training, maintenance expenses of a patient and/or accompanying attendant going abroad for medical treatment/ check-up abroad	US\$ 25,000
■ Medical treatment abroad	Estimate from a doctor in India or hospital or doctor abroad
■ Private visits abroad (except Nepal & Bhutan)	US\$ 10,000 per calendar year
■ Gift/ Donation per remitter/ donor p.a.	US\$ 5,000
■ Persons going abroad for employment	US\$ 1,00,000
■ Studies Abroad	US\$ 1,00,000 p.a. or Estimate from Institute abroad, †

47

Rule 5 read with Schedule III....contd.

Category of Transactions	Limits
■ Emigration	US\$ 1,00,000 or Amt prescribed by country of emigration
■ Reimbursement of pre-incorporation expenses	5 per cent of the investment brought into India or USD 100,000, †
■ Consultancy service procured from outside India	US\$ 10 million per project
■ Remittances for purchase of trade mark or franchise in India	Approval reqd in all cases
■ Commission per transaction to agents abroad for sale of residential flats/ commercial plots in India	5% of inward remittance or US\$ 25,000, †

48

Rule 5 read with Schedule III....contd.

Category of Transactions	Limits
■ Maintenance expenses of close relatives abroad, if the person is resident but not permanently resident in India but he is not a citizen of Pakistan	Net Salary (after deduction of taxes, contribution to PF & other deductions)
■ Maintenance expenses of close relatives abroad in any other case	US\$ 1,00,000 p.a. per recipient
■ Remittance for advt on foreign television by a person whose export earnings < Rs 10 lacs in each of the preceding 2 yrs	All cases
■ Short term credit to overseas offices of Indian Cos.	All cases
EEFC Drawal not permissible for Gifts, Donations, Commission to Agents, Trademark & Franchise, Pre-incorporation expenses	

49

Capital Account Transaction [Section 6(3)]

- **RBI may prohibit, restrict or regulate the following transactions by Regulations:**
 1. T/f or issue of any foreign security by PRII;
 2. T/f or issue of any security by PROI;
 3. T/f or issue of any security or foreign security by any branch, office, or agency in India of PROI;
 4. Any borrowing or lending in FE;
 5. Any borrowing or lending in INR b/w PRII & PROI;
 6. Deposits b/w PRII and PROI;
 7. Export, import or holding of currency or currency notes;
 8. T/f of immovable property outside India, other than a lease $\leq$ 5 yrs by PRII;
 9. Acquisition or T/f of immovable property in India, other than a lease $\leq$ 5 yrs by PROI;
 10. Giving of Guarantee or Surety in respect of any debt, obligation or other liability incurred by (a) PRII and owed to PROI or (b) PROI

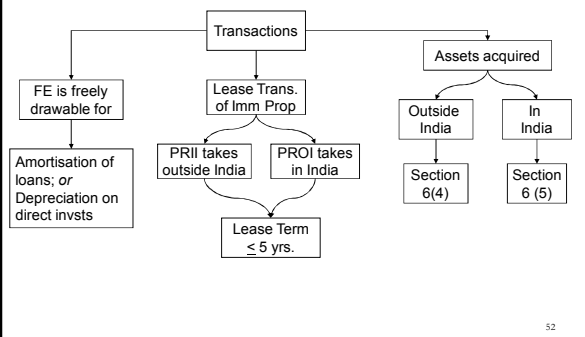
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Capital Account Transactions

- **Holding etc. of Currency, Security & Property [Section 6 (4) & (5)]:**
 1. PRII may hold, own, T/f or invest in FC/ FS/ any immovable property situated outside India, if the same was acquired, held or owned by him when he was resident outside India or inherited from a person who was resident outside India;
 2. PROI may hold, own, T/f or invest in FC/ FS/ any immovable property situated outside India, if the same was acquired, held or owned by him when he was resident in India or inherited from a person who was resident in India

51

Capital Account Transactions that cannot be prohibited [Section 6]



FEM (Permissible Capital Account Transactions) Regulations, 2000

Transaction by PRII	Transaction by PROI
■ Invests in foreign securities	■ Invests in securities of Indian Cos. & capital of Indian firm
■ FC Loans raised in India or abroad	■ T/f of Imm prop in India
■ T/f of Imm prop outside India	■ Guarantees given to PRII
■ Export/ Import/ Holding currency/ currency notes	■ Deposits b/w PRII & PROI
■ Borrowings and Lending b/w PRII & PROI	■ FC A/c in India of PROI
■ Guarantees given to PROI	■ Remittance outside India of capital assets in India of PROI
■ Maintenance of currency a/c	
■ Taking insurance policy from PROI	
■ Sale/ prch of FE derivatives in India & abroad and commodity derivatives abroad	

FEM (Permissible Capital Account Transactions) Regulations, 2000

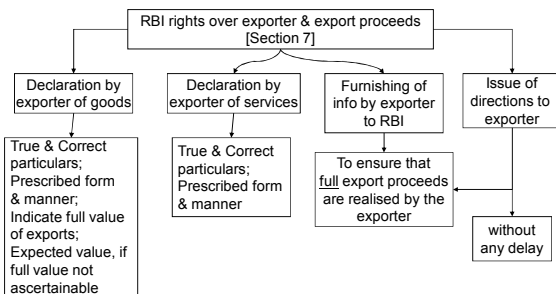
- A PROI is **prohibited to make investment** in India in any enterprise, which is engaged or proposes to engage:
 1. in the business of chit fund; or
 2. as Nidhi Company; or
 3. in agricultural/plantation activities; or
 4. in real estate business (*except development of townships, construction of residential/commercial premises, roads/ bridges*); or
 5. in construction of farm houses;
 6. in trading of TDRs (*certificates issued as a consideration to the owner of the land, by CG/SG for acquiring land for public purposes. TDRs are transferable in part or whole*)

Export of Goods & Services [Section 2(l) & Section 7]

- **Export [Section 2(l)]:** It means
 1. the taking out of India to place outside India any goods; and
 2. provision of services from India to any person outside India

55

Export of Goods & Services [Section 2(l) & Section 7]



56

FEM (Export of Goods and Services) Regulations, 2000

Declaration Not Required	Declaration Forms
■ Trade samples & publicity materials; ■ Accompanied/unaccompanied personal effects of Travellers; ■ Export of goods/software upto US\$ 25,000; ■ Export of goods upto US\$ 1,000 to Myanmar under Barter Trade Agreement; ■ Free import & re-export; ■ Goods sent outside India for testing subject to re-import; ■ Goods imported by EPZ/FTZ and found defective/surplus and thus re-exported; ■ Export by gift upto Rs. 1 Lakh in value	GR – Export otherwise than post; Copies = 2; SDF – Used where EDI system is introduced for processing notified shipping bills; Copies = 2; PP – Export by post; Copies = 2; SOFTEx – Export of software otherwise than in physical form; Copies = 3 NOTE: No forms have been prescribed for export of services

57

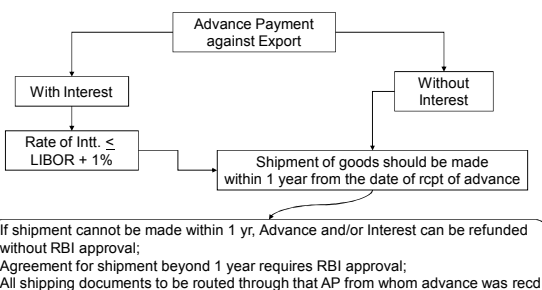
FEM (Export of Goods and Services) Regulations, 2000

Other Regulations:

1. Export of goods on credit terms beyond six months requires RBI's prior approval;
2. RBI's prior permission is required for taking or sending out by land, sea or air, any goods from India, to any place outside India, on **lease or hire** or under any arrangement or in any other manner other than sale or disposal of such goods;
3. Project exports require prior RBI approval;
4. Export under Counter Trade Agreement (i.e. adjusting value of exports with imports) require prior RBI approval

58

FEM (Export of Goods and Services) Regulations, 2000



59

Time Period for Realisation of Full Value of Exports

Cases	Time Limit
General Regulation: The export proceeds are required to be realised within 6 months (now 12 months, w.e.f. June 3rd, 2008) from the date of shipment	
Goods/ Software exported by SEZ units	6 months period does not apply
Export to a warehouse established outside India	Within 15 months
Goods/ Software exported by Status Holder as defined in EXIM Policy	Within 12 months
RBI can extend the above period on sufficient & reasonable cause being shown by the exporter	

60

Consequences of Contravention of Act, etc.

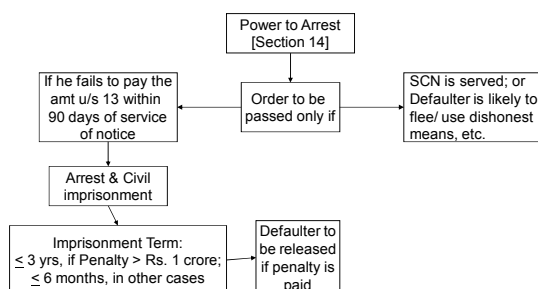
[Section 13 & 14]

- **Section 13:** If a person contravenes
 1. any Provisions of the Act/ Rules/ Regulations/ Directions/ Notifications issued thereunder;
 2. he is liable to penalty upon adjudication u/s 14
- The amount of penalty is upto 3 times the sum involved in contravention, or upto Rs. 2 lacs if the aforesaid amount is not quantifiable;
- In case of continuing contravention the penalty is upto Rs. 5,000 per day;
- **Additional Consequences:**
 1. Any currency/ security/ any other money/ property involved in contravention may be confiscated;
 2. Directions may be issued to bring FE of the accused person back in India

61

Consequences of Contravention of Act, etc.

[Section 13 & 14]

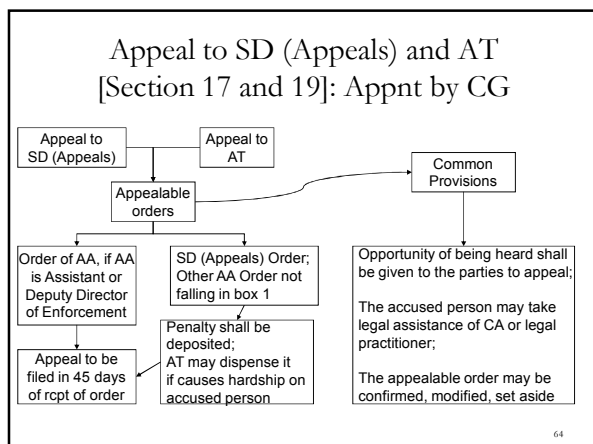


62

Procedure for Adjudication [Section 16]

- Adjudicating Authority (AA) shall be appointed by CG N/N in Official Gazette;
- AA shall give a reasonable opportunity of being heard to the accused person before holding inquiry;
- AA shall endeavour to dispose of the complaint in 1 yr;
- AA shall take cognizance of offences only on written complaint by any officer authorised by CG;
- A 10 days SCN to be issued to the accused person;
- If inquiry is held, he may either appear in person or through a legal representative;
- AA shall also give opportunity to produce relevant doc.;
- AA may also proceed exparte;
- Penalty may be levied if contravention is established

63



- Appeal to High Court [Section 35]**
1. Appeal may be filed against order of AT;
 2. Appeal can be filed only on question of law (it signifies that AT is the final fact finding authority);
 3. The appeal must be filed within 60 days of communication of the order;
 4. Condonation of delay upto 60 days on sufficient cause being shown;
 5. Appeal can be filed by CG or the accused
- **Jurisdiction of Civil Court Barred [Section 34]:**
In respect of any proceedings under the Act, no Court shall have the jurisdiction to entertain any suit or proceeding or grant any injunction
- 65

- Compounding of Contravention [Section 15]**
- Contravention punishable u/s 13 can only be compounded;
 - The compounding authority shall compound the offence within 180 days from the date of application;
 - RBI shall be the compounding authority in respect of any contravention punishable u/s 13, except section 3(a);
 - ED shall be compounding authority for contravention u/s 3(a);
 - Compounding is not permissible if the amount involved in contravention is not quantifiable/ appeal is filed by the applicant; similar contravention is repeated within 3 yrs;
 - The compounding fees shall be paid within 15 days from the date of order of compounding;
 - In case of default in paying compounding fee, the adjudication proceedings will start and it shall be deemed that no application for compounding was ever made;
 - **Effect of Compounding:** Further proceedings shall not be initiated/ Existing proceedings shall not be continued
- 66

Directorate of Enforcement [Section 36 to Section 38]

- **Establishment of ED:**
 1. CG shall establish ED with a Director and other officers to be called as Officers of Enforcement (OE);
 2. Powers shall be exercised subject to the conditions and limitations imposed by CG;
- **Power of search, seizure, etc.:**
 1. ED and OE (not below the rank of Assistant ED) shall take up the investigation of contravention u/s 13;
 2. Other CG/ SG/ RBI officers (not below the rank of an Under Secretary to the Govt.) may also be authorised by CG;
 3. These officers shall exercise the like powers of Income Tax Authorities under IT Act, 1961;
- **Empowering Other Officers:**
 1. The CG may by order authorise officers of Customs/ Excise/ Police/ CG/ SG
 2. These officers shall exercise the like powers of Income Tax Authorities under IT Act, 1961

67

Other Definitions and Concepts

- **Service [Section 2(zb)]:** It means service of any description which is made available to potential users AND includes:
- the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information; **BUT DOES NOT INCLUDE:**
 1. the rendering of any service free of charge;
 2. the rendering of any service under a contract of personal service (i.e. employment)

68

Other Definitions and Concepts

- **Transfer [Section 2(ze)]:** It includes:
 1. sale,
 2. purchase,
 3. exchange,
 4. mortgage,
 5. pledge,
 6. gift,
 7. loan, or
 8. any other form of transfer of right, title, possession or lien

69

Other Definitions and Concepts

- **Non-resident Indian (NRI):** It means a person resident outside India who is a citizen of India. Generally, the expression is given an extended meaning to also include PIO;
- **Person of India Origin (PIO):** It means a citizen of any country other than Bangladesh or Pakistan, if:
 1. he at any time held Indian passport; or
 2. he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act of 1955; or
 3. the person is the spouse of an Indian citizen or a person referred to above

70

FERA vs. FEMA

Basis	FERA	FEMA
Sections	1 to 81	1 to 49
Definitions	Current/ Capital Account Trans./ Person/ Service not defined	All these are defined
Auth. Dealer	Narrow definition	Wider, includes Money changers/ OBUs
Mens Rea	Presumed	Not Presumed
Nature of Offence	Criminal	Civil
Appellate Forum	FERA Appellate Board & HC	SD (Appeals), AT, HC
Right of Accused	Cannot take practitioner/ CA assistance	Can take such assistance

71