



ECONOMIC LAW

CHAPTER – 1 THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

INTRODUCTION

The Act consists of 7 Chapters dealing with following areas:

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PREAMBLE, EXTENT, APPLICATION AND COMMENCEMENT OF FEMA, 1999

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.
Extent and Application [Sections 1]:	FEMA, 1999 extends to the whole of India.
Commencement	The Act, 1999 came into force with effect from 1 st June, 2000

DEFINITIONS [SECTION 2]

“Adjudicating Authority”	means an officer authorised under sub-section (1) of section 16;
“Appellate Tribunal”	means the Appellate Tribunal for Foreign Exchange established under section 18;
“Authorised person”	means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;
“Bench”	means a Bench of the Appellate Tribunal;
“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, and includes transactions referred to in sub-section (3) of Section 6;
“Chairperson”	means the Chairperson of the Appellate Tribunal;
“Chartered	shall have the meaning assigned to it in clause (b) of sub-section (1) of Section 2 of the

Accountant”	Chartered Accountants Act, 1949;
“Currency”	includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers 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
“Currency Notes”	means and includes cash in the form of coins and bank notes;
“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;
“Director of Enforcement”	means the Director of Enforcement appointed under section 36(1);
“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;
“Foreign Currency”	means any currency other than Indian currency;
“Foreign Exchange”	means foreign currency and includes: (i) deposits, credits and balances payable in any foreign currency, (ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;
“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;
“Import”,	with its grammatical variations and cognate expressions, means bringing into India any goods or services;
“Indian Currency”	means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934;
“Legal Practitioner”	shall have the meaning assigned to it in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961;
“Member”	means a Member of the Appellate Tribunal and includes the Chairperson thereof;
“Notify”	means to notify in the Official Gazette and the expression “notification” shall be construed accordingly;
“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;
“Person resident in	means:



India”	(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 person resident Outside India, (iv) an office, branch or agency outside India owned or controlled by a person resident in India;
(w) “Person Resident Outside India”	means a person who is not resident in India;
“Prescribed”	means prescribed by rules made under this Act;
“Repatriate to India”	means bringing into India the realised foreign exchange and (i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or (ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank. It includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression “repatriation” shall be construed accordingly;
“Reserve Bank”	means the Reserve Bank of India constituted under section 3(1) of the Reserve Bank of India Act, 1934;
“Security”	means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944 , savings certificates to which the Government Saving Certificates Act, 1959 applies, deposit receipts in respect of deposit of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act;
“Service”	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 the rendering of any service free of charge or under a contract of personal service;
“Special Director (Appeals)”	means an officer appointed under section 17;
“Specify”	means to specify by regulations made under this Act and the expression “specified” shall be construed accordingly;
“Transfer”	includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

Example 1- Saurav goes outside India for 1st time in 18-19 for vocation, comment whether he is PRI or PROI in following cases-

Ans-

1. 17-18 :- PRI (since he resided in India in Preceding Financial year 16-17 for more than 182 days.
2. 12-13:- PROI (although he resided in Preceding Financial year 17-18 for more than 182 days but still he is PROI because he goes outside India for any of those 3 purposes-
 - i. Business/ vocation
 - ii. Employment
 - iii. Intention to reside outside India for uncertain period.

Example 2- Will your answer change if he had gone for vacation.

Ans-

- i. 17-18 :- PRI
- ii. 18-19 :- PRI

Example 3- Mr. Robert comes to India for 1st time for vocation and resides for 200days in financial year 12-13.

Ans-

- i. 12-13:- PROI -since he did not resided in India in Preceding year.
- ii. 13-14:- PRI –since he resided in India in Preceding Financial year 12-13 for more than 182 days and purpose was vocation)

Example 4- Will your answer change if he came for vocation.

Ans-

- i. 18-19 :- PROI
- ii. 19-20 :- PROI

Example 5- Air hostess on frequent flights in India resided for 200 days in India in 17-18, is she a PRI for 18-19.

Ans-

PROI- because, the term residing in India used in Sec2 (e) connects some short of permanency and must be out of once prewill. Air hostess stay in India is not out of prewill and cannot be treated as residing in India.

Example 6- Sourav goes outside India for M.B.A for 1st time in 18-19, is he PRI for 18-19 if duration of MBA is uncertain.

Ans-

He is PRI, for 18-19, because his intention to not to stay outside India for uncertain period.

Example 7- M.A. Ltd. Having registered office in India has a branch in U.S.A.

Ans-

M.A. Ltd. Is PRI since it's registered in India?

U.S.A. branch: - PRI because it is owned/controlled by M.A. Ltd.(PRI).

Example 8- HUL having registered office in UK and its branch in India.

Ans-

HUL- PROI



Indian branch- PRI (since it's a branch in India owned/controlled by PROI).

Example 9

(1) Mr. A had resided in India during the financial year 2015-2016 for less than 183 days. He had come to India on April 1, 2016 for employment. What would be his residential status during the financial year 2016-2017?

Answer: Mr. A had come to India for taking up employment. However, during the financial year 2015-2016, he was in India for less than 183 days. Since, he has not fulfilled the condition of staying in India for more than 182 days, he cannot be considered as person resident in India during the financial year 2016-2017 notwithstanding the purpose or duration of his stay.

Example 10

(2) Mr. X had resided in India during the financial year 2015-2016 for less than 183 days. He had come to India on April 1, 2016 for business. He intends to leave the business on April 30, 2017 and leave India on June 30, 2017. What would be his residential status during the financial year 2016-2017 and during 2017-2018 up to the date of his departure?

Answer: Mr. X cannot be considered 'person resident in India' during the financial year 2016-2017 notwithstanding the purpose or duration of his stay. As regards, financial year 2017-2018, Mr. X would have been in India in the preceding financial year (2016-2017) for a period exceeding 182 days. Accordingly, he would be 'resident' in India during financial year 2017-2018. However, if he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, if he has not left India for any these purposes, he would be considered, 'person resident in India' during the financial year 2017-2018.

Example 11

Mr. Z had resided in India during the financial year 2015-2016. He left India on 1st August, 2016 for United States for pursuing higher studies for 3 years. What would be his residential status during financial year 2016-2017 and during 2017-2018?

Answer: Mr. Z had resided in India during financial year 2015-2016 for more than 182 days. After that he has gone to USA for higher studies. In other words, he has not gone out of, or stayed outside India for or on taking up employment, or for carrying a business or any other purpose, in not circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2016-2017.

For the financial year 2017-2018, he would not have been in India in the preceding financial year (2016-2017) for period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2017-2018.

Example 12

Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore. Headquarter at Mumbai controls the branch of robotic unit. What would be the residential status of robotic unit in Mumbai and that of the Singapore branch?

Answer: Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.



Section 2(v) defines ‘person resident in India’. Under clause (iii) thereof ‘person resident in India’ would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person ‘resident outside India’.

Hence, it would be ‘person resident in India’.

However, robotic unit in Mumbai, though not ‘owned’ controls Singapore branch, which is a person resident in India. Hence *prima facie*, it may be possible to hold a view that the Singapore branch is ‘person resident in India’.

Example 13

Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated of ‘base’, which is normally the city where the airways are headquartered. However, for security considerations, she was based on Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Answer: Miss Alia stayed in India at Mumbai ‘base’ for more than 182 days in the preceding financial year. The issue here is whether staying can be considered ‘residing’. FEMA emphasizes ‘residing’. ‘Stay’ is a physical attribute, while ‘residing’ denotes permanency. Thus, while Miss Alia may have stayed in India for more than 182 days, it is doubtful whether she can be said to have ‘resided’ in India for more than 182 days.

Further under section 2(v)(a), she would become resident only if she has come to or stayed in India for employment. It would be doubtful and debatable, whether by staying at Mumbai base during the break, Miss Alia can be said to have come to stay in India for or on taking up employment. Hence, Miss Alia would continue to be non-resident.

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

Dealing in foreign exchange, etc. [Section 3]	Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person; (b) make any payment to or for the credit of any person resident outside India in any manner; (c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner. (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.
Holding of foreign exchange [Section 4]	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 outside India.
Current account transactions [Section 5]	As per rules, drawal of foreign exchange for certain current account transactions is prohibited, a few need permission of appropriate Govt. of India authority and some other transactions would require RBI permission if they exceed a certain ceiling. The three categories are:

SCHEDULE I	<i>Transactions for which drawal of foreign exchange is prohibited:</i> (i) Remittance out of lottery winnings. (ii) Remittance of income from racing/riding, etc., or any other hobby. (iii) Remittance for purchase of lottery tickets, banned/prescribed magazines, football
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	<p>pools, sweepstakes etc.</p> <p>(iv) Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.</p> <p>(v) Remittance of dividend by any company to which the requirement of dividend balancing is applicable.</p> <p>(vi) Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.</p> <p>(vii) Payment related to “Call Back Services” of telephones.</p> <p>(viii) Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.</p>																				
<p>SCHEDULE II</p>	<p><i>2</i>Transactions, which require prior approval of the Government of India for drawal of foreign exchange:</p> <table border="1" data-bbox="488 674 1530 1834"> <thead> <tr> <th data-bbox="488 674 1018 745">Purpose of Remittance</th> <th data-bbox="1018 674 1530 745">Ministry/Department of Govt. of India whose approval is required</th> </tr> </thead> <tbody> <tr> <td data-bbox="488 745 1018 847">Cultural Tours</td> <td data-bbox="1018 745 1530 847">Ministry of Human Resources Development (Department of Education and Culture)</td> </tr> <tr> <td data-bbox="488 847 1018 1052">Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US\$ 10,000) by a State Government and its Public Sector Undertakings.</td> <td data-bbox="1018 847 1530 1052">Ministry of Finance, Department of Economic Affairs</td> </tr> <tr> <td data-bbox="488 1052 1018 1116">Remittance of freight of vessel chartered by a PSU</td> <td data-bbox="1018 1052 1530 1116">Ministry of Surface Transport (Chartering Wing)</td> </tr> <tr> <td data-bbox="488 1116 1018 1256">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)</td> <td data-bbox="1018 1116 1530 1256">Ministry of Surface Transport (Chartering Wing)</td> </tr> <tr> <td data-bbox="488 1256 1018 1358">Multi-modal transport operators making remittance to their agents abroad</td> <td data-bbox="1018 1256 1530 1358">Registration Certificate from the Director General of Shipping</td> </tr> <tr> <td data-bbox="488 1358 1018 1526">Remittance of hiring charges of transponders by (a) TV Channels (b) Internet service providers</td> <td data-bbox="1018 1358 1530 1526">Ministry of Information and Broadcasting Ministry of Communication and Information Technology.</td> </tr> <tr> <td data-bbox="488 1526 1018 1627">Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping</td> <td data-bbox="1018 1526 1530 1627">Ministry of Surface Transport (Director General of Shipping)</td> </tr> <tr> <td data-bbox="488 1627 1018 1795">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</td> <td data-bbox="1018 1627 1530 1795">Ministry of Human Resource Development (Department of Youth Affairs and Sports)</td> </tr> <tr> <td data-bbox="488 1795 1018 1834">Remittance for membership of P & I Club</td> <td data-bbox="1018 1795 1530 1834">Ministry of Finance (Insurance Division)</td> </tr> </tbody> </table> <p><i>3</i>Transactions which require RBI's prior approval for drawal of foreign exchange: With respect to the requirement of Prior approval of Reserve Bank— Every drawal of foreign exchange for transactions included in Schedule III shall be governed as provided</p>	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 for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US\$ 10,000) by a State Government and its Public Sector Undertakings.	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)
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	<p>therein: Provided that this rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.”;</p>
<p>SCHEDULE III</p> <p>I) Facilities for individuals</p>	<p>Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.</p> <ul style="list-style-type: none"> (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 <p>However, for the purposes mentioned at item numbers (iv), (vii) and (viii), the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme as provided in regulation 4 to FEMA Notification 1/2000-RB, dated the 3rd May, 2000 (here in after referred to as the said Liberalised Remittance Scheme) if it is so required by a country of emigration, medical institute offering treatment or the university, respectively:</p> <p>Further, if an individual remits any amount under the said Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 (US Dollars Two Hundred and Fifty Thousand Only) by the amount so remitted:</p> <p>Further, that for a person who is resident but not permanently resident in India and-</p> <ul style="list-style-type: none"> (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).
<p>II) Facilities for persons other than individual</p>	<p>The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India.</p> <ul style="list-style-type: none"> (i) Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for a. creation of Chairs in reputed educational institutes, b. contribution to funds (not being an investment fund) promoted by educational institutes; and 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 whichever is more. (iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy

	<p>services procured from outside India.</p> <p><i>Explanation</i>—For the purposes of this sub-paragraph, the expression “‘infrastructure’ shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000</p> <p>(iv) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.</p>
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<p>Capital account transactions [Section 6]</p>	<p>(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction</p> <p>(2) The Reserve Bank may, in consultation with the Central Government, specify:</p> <ul style="list-style-type: none"> (a) any class or classes of capital account transactions, which are permissible; (b) the limit up to which foreign exchange shall be admissible for such transactions; <p>Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.</p> <p>(3) Without prejudicial to the generality of the provision of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following:</p> <ul style="list-style-type: none"> (a) transfer or issue of any foreign security by a person resident in India; (b) transfer or issue of any security by a person resident outside India; (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India; (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called; (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India; (f) deposits between persons resident in India and persons resident outside India; (g) export, import or holding of currency or currency notes; (h) transfer of immovable property outside India, other than a lease not exceeding five years, by person a resident in India; (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India; (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred: <ul style="list-style-type: none"> (i) by a person resident in India and owed to a person resident outside India; or (ii) by a person resident outside India. <p>(4) A person resident in India 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.</p> <p>(5) A person resident outside India 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.</p>
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(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

Capital account transaction is basically split into the following categories:

- (I) transaction, which are permissible in respect of persons resident in India and outside India.
- (II) transaction on which restrictions cannot be imposed; and
- (III) transactions, which are prohibited.

I. Permissible Transactions

Under Sub-section (2) of Section 6, the RBI has issued the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. The Regulations specify the list of transaction, which are permissible in respect of persons resident in India in Schedule-I and the classes of capital account transactions of persons resident outside India in Schedule-II.

Further, subject to the provisions of the Act or the rules or regulations or direction or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction specified in the Schedules; provided that the transaction is within the limit, if any, specified in the regulations relevant to the transaction.

SCHEDULE I

The list of permissible classes of transactions made by **persons resident in India** is:

- (a) Investment by a person resident in India in foreign securities.
- (b) Foreign currency loans raised in India and abroad by a person resident in India.
- (c) Transfer of immovable property outside India by a person resident in India.
- (d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- (e) Export, import and holding of currency/currency notes.
- (f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
- (g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- (h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- (i) Loans and overdrafts by a person resident in India to a person resident outside India.
- (j) Remittance outside India of capital assets of a person resident in India.
- (k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

SCHEDULE II

The list of permissible classes of transactions made by **persons resident outside India** is:

	<p>(a) Investment in India by a person resident outside India, that is to say, (i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and (ii) investment by way of contribution by a person resident outside India 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 person resident outside India. (c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India. (d) Import and export of currency/currency notes into/from India by a person resident outside India. (e) Deposits between a person resident in India and a person resident outside India. (f) Foreign currency accounts in India of a person resident outside India. (g) Remittance outside India of capital assets in India of a person resident outside India.</p> <p><u>II. Transactions with no restriction</u></p> <p>They are:</p> <p>(1) For amortisation of loan and (2) For depreciation of direct investments in ordinary course of business. Also, restrictions cannot be imposed when drawal is of the purpose of repayments of loan installments.</p> <p><u>III. Prohibited Transactions</u></p> <p>The person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage:</p> <p>(i) In the business of chit fund; (ii) As Nidhi company; (iii) In agricultural or plantation activities; (iv) In real estate business, or construction of farm houses (v) In trading in Transferable Development Rights (TDRs).</p>
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<p>ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA</p>	<p>Acquisition and Transfer of Property in India by an Indian Citizen resident outside India.</p> <p>A person resident outside India who is a citizen of India may—</p> <p>(a) acquire immovable property in India other than an agricultural property, plantation, or a farm house:</p> <p>Provided that in case of acquisition of immovable property, payment of purchase price, if any, shall be made out of (i) funds received in India through normal banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank. Provided further that no payment of purchase price for acquisition of immovable property shall be made either by traveller's cheque or by foreign currency notes or by other mode other than those specifically permitted by this clause.</p> <p>(b) transfer any immovable property in India to a person resident in India, and (c) transfer any immovable property other than agricultural or plantation property or farm</p>
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	house to a person resident outside India who is a citizen of India or to a person of Indian origin resident outside India.
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<p>Acquisition and Transfer of Property in India by a person of Indian origin.</p>	<p>A person of Indian origin resident outside India may—</p> <p>(a) acquire immovable property in India other than an agricultural property, plantation, or a farm house :</p> <p>(b) acquire any immovable property in India other than agricultural land/farm house/plantation property by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India;</p> <p>(c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or from a person resident in India;</p> <p>(d) transfer any immovable property in India other than agricultural land/farm house/plantation property, by way of sale to a person resident in India;</p> <p>(e) transfer agricultural land/farm house/plantation property in India, by way of gift or sale to a person resident in India who is a citizen of India;</p> <p>(f) transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India who is a citizen of India or to a person of Indian origin resident outside India.</p>
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<p>Repatriation of sale proceeds.</p>	<p>A person referred to in sub-section (5) of section 6 of the Act, or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section. In the event of sale of immovable property other than agricultural land/farm house/plantation property in India by a person resident outside India who is a citizen of India or a person of Indian origin, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely :</p> <p>(i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations;</p> <p>(ii) the amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non-Resident Account, or (b) the foreign currency equivalent, as on the date of payment, of the amount paid where such payment was made from the funds held in Non-Resident External account for acquisition of the property; and</p> <p>(iii) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.</p>
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<p>ACQUISITION AND TRANSFER OF</p>	<p><u>Acquisition and Transfer of Immovable Property outside India:-</u></p>
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<p>IMMOVABLE PROPERTY OUTSIDE INDIA</p>	<p>(1) A person resident in India may acquire immovable property outside India, -</p> <p>(a) by way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4 (acquired by a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.)</p> <p>(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015;</p> <p>(c) jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;</p> <p>(2) A person resident in India may acquire immovable property outside India, by way of inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.</p> <p>(3) A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.</p>
<p>Export of goods and services (Section 7)</p>	<p>(1) Every exporter of goods shall- (a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of</p>
	<p>the goods in a market outside India; (b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realization of the export proceeds by such exporter.</p> <p>(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.</p> <p>(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.</p> <p><u>Short title and commencement:</u> These Regulations may be called the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.</p> <p>'export' includes the taking or sending out of goods by land, sea or air, on consignment or by way of sale, lease, hire-purchase, or under any other arrangement by whatever name called, and in the case of software, also includes transmission through any electronic media;</p> <p><u>Declaration of exports:</u></p> <p>(1) In case of exports taking place through Customs manual ports, every exporter of goods or software in physical form or through any other form, either directly or indirectly, to anyplace outside India, other than Nepal and Bhutan, shall furnish to the specified authority, a declaration in one of the forms set out in the Schedule and supported by such evidence as may be specified, containing true and correct material</p>

	<p>particulars including the amount representing –</p> <p>(i) the full export value of the goods or software; or</p> <p>(ii) if the full export value is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods or the software in overseas market, and affirms in the said declaration that the full export value of goods (whether ascertainable at the time of export or not) or the software has been or will within the specified period be, paid in the specified manner.</p> <p>(2) Declarations shall be executed in sets of such number as specified.</p> <p>(3) For the removal of doubt, it is clarified that, in respect of export of services to which none of the Forms specified in these Regulations apply, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due or accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the Act, and these Regulations, as also other rules and regulations made under the Act.</p> <p>(4) Realization of export proceeds in respect of export of goods / software from third party should be duly declared by the exporter in the appropriate declaration form.</p> <p><u>Exemptions:</u></p> <p>Notwithstanding anything contained in Regulation 3, export of goods / software may be made without furnishing the declaration in the following cases, namely:</p> <p>(a) trade samples of goods and publicity material supplied free of payment;</p> <p>(b) personal effects of travellers, whether accompanied or unaccompanied;</p> <p>(c) ship's stores, trans-shipment cargo and goods supplied under the orders of Central Government or of such officers as may be appointed by the Central Government in this behalf or of the military, naval or air force authorities in India for military, naval or air force requirements;</p> <p>(d) by way of gift of goods accompanied by a declaration by the exporter that they are not more than five lakh rupees in value</p> <p>(e) aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export;</p> <p>(f) goods imported free of cost on re-export basis;</p> <p>(g) replacement goods exported free of charge in accordance with the provisions of Foreign Trade Policy in force, for the time being.</p> <p>(h) goods sent outside India for testing subject to re-import into India;</p> <p>(i) defective goods sent outside India for repair and re-import provided the goods are accompanied by a certificate from an authorised dealer in India that the export is for repair and re-import and that the export does not involve any transaction in foreign exchange.</p> <p>(j) exports permitted by the Reserve Bank, on application made to it, subject to the terms and conditions, if any, as stipulated in the permission.</p>
<p>Authority to whom declaration is to be furnished and the manner of dealing with the</p>	<p>A. Declaration in Form EDF</p> <p>(i) The declaration in form EDF shall be submitted in duplicate to the Commissioner of Customs.</p> <p>(ii) After duly verifying and authenticating the declaration form, the Commissioner of Customs shall forward the original declaration form/data to the nearest office of the</p>



declaration:	<p>Reserve Bank and hand over the duplicate form to the exporter for being submitted to the authorised dealer.</p> <p>B. Declaration in Form SOFTEX</p> <p>(i) The declaration in Form SOFTEX in respect of export of computer software and audio/video/ television software shall be submitted in triplicate to the designated official of Ministry of Information Technology, Government of India at the Software Technology Parks of India (STPIs) or at the Free Trade Zones (FTZs) or Special Economic Zones (SEZs) in India.</p> <p>(ii) After certifying all three copies of the SOFTEX form, the said designated official shall forward the original directly to the nearest office of the Reserve Bank and return the duplicate to the exporter. The triplicate shall be retained by the designated official for record.</p> <p>C. Duplicate Declaration Forms to be retained with Authorised Dealers</p> <p>On the realisation of the export proceeds, the duplicate copies of export declaration forms viz. EDF and SOFTEX and Exchange Control copies of the shipping bills shall be retained by the Authorised Dealers.</p>
Certain Exports requiring prior approval	<p>Exports under trade agreement/rupee credit etc.</p> <p>(i) Export of goods under special arrangement between the Central Government and Government of a foreign state, or under rupee credits extended by the Central Government to Govt. of a foreign state shall be governed by the terms and conditions set out in the relative public notices issued by the Trade Control Authority in India and the instructions issued from time to time by the Reserve Bank.</p> <p>(ii) An export under the line of credit extended to a bank or a financial institution operating in a foreign state by the Exim Bank for financing exports from India, shall be governed by the terms and conditions advised by the Reserve Bank to the authorised dealers from time to time.</p>
Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000	<p><u>Manner of Repatriation:</u></p> <p>(1) On realisation of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and—</p> <p>(a) sell it to an authorised person in India in exchange for rupees; or</p> <p>(b) retain or hold it in account with an authorised dealer in India to the extent specified by the Reserve Bank; or</p> <p>(c) use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by the Reserve Bank.</p> <p>(2) A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.</p> <p>Period for surrender of realised foreign exchange: A person not being an individual resident in India shall sell the realised foreign exchange to an authorised person under clause (a) of sub-regulation (1) of regulation 4 [Regulation 4 deals with manner of repatriation as discussed in above point], within the period specified below:-</p>

	<p>1. foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift, within seven days from the date of its receipt;</p> <p>Exemption from realisation and repatriation in certain cases [Section 9]</p> <p>The provisions of sections 4 and 8 shall not apply to the following, namely:</p> <p>(a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;</p> <p>(b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;</p> <p>(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing there on which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;</p> <p>(d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from;</p> <p>(e) foreign exchange acquired from employment, business, trade, vocation, service, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and</p> <p>(f) such other receipts in foreign exchange as the Reserve Bank may specify.</p>
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<p>7Limits for possession and retention of foreign currency or foreign coins :-</p>	<p>(i) possession without limit of foreign currency and coins by an authorised person within the scope of his authority;</p> <p>(ii) possession without limit of foreign coins by any person;</p> <p>(iii) retention by a person resident in India of foreign currency notes, bank notes and foreign currency traveller's cheques not exceeding USD 2,000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travellers cheques:</p> <p>(a) was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or</p> <p>(b) was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or</p> <p>(c) was acquired by him by way of honorarium or gift while on a visit to any place outside India; or</p> <p>(d) represents unspent amount of foreign exchange acquired by him from an authorised person for travel abroad. However, a person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and traveller's cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the regulations made under the Act. "Not permanently resident" means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.</p>
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<p>AUTHORISED PERSON</p>	<p>(1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any</p>
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[SECTION 10]	<p>other manner as it deems fit. [Sub-section (1)].</p> <p>(2) An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein [Sub-section (2)].</p> <p>(3) An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that:</p> <ul style="list-style-type: none">(a) it is in public interest so to do; or(b) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction order made thereunder; <p>Provided that no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter.</p> <p>(4) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorized person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.</p> <p>(5) An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonable satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason the believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.</p> <p>(6) Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorized person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provision of the Act for the purpose of this section.</p>
Reserve Bank's powers to issue directions to authorised person [Section 11]	<p>(1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.</p>
Power of Reserve Bank to inspect	<p>The Reserve Bank may, at any time, cause an inspection to be made by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the</p>

authorised person [Section 12]	<p>business of any authorised person as may appear to it to be necessary or expedient for the purpose of:</p> <p>(a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;</p> <p>(b) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so;</p> <p>(c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.</p>
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CONTRAVENTIONS AND PENALTIES IN BRIEF

Section no	Contravention	Quantum of Penalty
Section 11	Authorised person contravenes any direction by RBI or failure to file any return as directed by RBI	<ul style="list-style-type: none"> • Upto ` 10,000. • If continuing offence additional penalty upto ` 2,000 per day.
Section 13	Of any provision of the Act, or any rule, regulation, notification, direction or order or of any condition subject to which an authorisation issued	<ul style="list-style-type: none"> • Upto three times, the sum involved, if it is quantifiable. • If not quantifiable upto ` 2 lacs. • If continuing, further penalty upto `
Section 14	Failure to pay penalty as above – where demand is of an amount exceeding ` 1 crore. – in any other case	<p>Civil imprisonment.</p> <ul style="list-style-type: none"> • Upto 3 years • Upto 6 months.

Penalties [Section 13]	<p>(1) If any person contravenes any provisions of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day which the contravention continues.</p> <p>(1A) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be liable to a penalty up to three times the sum involved in such contravention and confiscation of the value equivalent, situated in India, the Foreign exchange, foreign security or immovable property.</p> <p>(1B) If the Adjudicating Authority, in a proceeding under sub-section (1A) deems fits, he may, after recording the reasons in writing, recommend for the initiation of prosecution and if the Director of Enforcement is satisfied, he may, after recording the reasons in writing, may direct prosecution by filing a Criminal Complaint against the guilty person by an officer not below the rank of Assistant Director.</p>
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	(1C) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be, in addition to the penalty imposed under sub-section (1A), punishable with imprisonment for a term which may extend to five years and with fine.
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Enforcement of the orders of Adjudicating Authority [Section 14]	<p>Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:</p> <p>Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or lease him on his furnishing security to the satisfaction of the adjudicating authority for his appearance at the expiration of the specified period if the arrears are not satisfied.</p> <p>When the Adjudicating Authority does not make an order of detention under sub-section (9), he shall, if the defaulter is under arrest, direct his release.</p> <p>Every person detained in the civil prison in execution of the certificate may be so detained:</p> <p>(a) where the certificate is for a demand of an amount exceeding rupees one crore, up to three years, and</p> <p>(b) in any other case, up to six months:</p> <p>Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.</p>
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ADJUDICATION AND APPEAL

Section no	Contravention	Quantum of Penalty
Section 14	Full penalty to be paid	Within 90 days from the date on which notice for payment of penalty is served.
Section 15	Compounding of Contravention under section 13	Within 180 days of receipt of application by Directorate of Enforcement.
Section 16	Complaint under section 16(1) to be dealt by Adjudicated Authority	Within 1 year of receipt of complaint.
Section 17	Appeal to Special Director (Appeals)	Within 45 days from receipt of order.
Section 19	Appeal to Appellate Tribunal	Within 45 days from receipt of order.
Section 19(5)	Appeal to be dealt with by Appellate Tribunal	Will try to dispose off the appeal within 180 days from receipt of appeal.
Section 35	Appeal to High Court	Within 60 days of communication of order or decision.

Appointment of Adjudicating Authority	For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (3) (hereinafter in this section
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	<p>referred to as the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty:</p> <p>Provided that where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit. [Section 16 (1)]</p>
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<p>Appellate Tribunal [Section 18]</p>	<p>The Appellate Tribunal constituted under sub-section(1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act..</p>
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<p>Appeal to High Court (Section 35)</p>	<p>Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal on any question of law arising out of such order:</p> <p>Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.</p> <p><i>Explanation:</i> In this section “High Court” means:</p> <p>(a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and</p> <p>(b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.</p>
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DIRECTORATE OF ENFORCEMENT

<p>Directorate of Enforcement (Section 36)</p>	<p>(1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.</p> <p>(2) Without prejudice to provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.</p> <p>(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred</p>
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or imposed on him under this Act.

Power of search and seizure: The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13. [Section 37(1)]

TEST YOUR KNOWLEDGE

Question 1

'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

Answer

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)) Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'. Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned is controlled by Print unit in Pune which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Dubai Branch is a person resident in India.

Question 2

Mr. Ram had resided in India during the Financial Year 2014-2015 for less than 183 days. He again came to India on 1st May, 2015 for higher studies and business and stayed upto 15th July, 2016. State under the Foreign Exchange Management Act, 1999.

- (i) If Mr. Ram can be considered 'person Resident in India' during the Financial year 2015-2016 and*
- (ii) Is citizenship relevant for determining such a status?*

Answer

(i) No. Mr. Ram cannot be considered 'Person resident in India' during the financial year 2015- 2016 notwithstanding the purpose or duration of his stay in India during 2015-2016. An individual has to be present in India for more than 182 days in the preceding financial year. Mr. Ram does not satisfy this condition for the financial year 2015-2016.

(ii) No. Citizenship is no more relevant for determining the status.

Question 3

Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:

- (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.*
- (ii) US Dollar 1,00,000 for sending a cultural troupe on a tour of U.S.A. Advise him whether he can get Foreign Exchange and if so, under what conditions?*

Answer

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(i) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane can not withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission. In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c) read with section 10 of the Foreign Exchange Management Act, 1999.

Question 4

State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

(i) *X, a Film Star, wants to perform alongwith associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.*

(ii) *R wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?*

Answer

Approval to the following transactions under FEMA, 1999:

(i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Government of India irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the Government of India.

(ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses in connection with medical treatment abroad, shall require prior approval of the Reserve Bank of India. Therefore, R can draw foreign exchange up to the USD 2,50,000 and for additional remittance in excess of this limit for bearing the expenses of medical treatment in UK, prior permission/approval of RBI will be required.

Question 5

Referring to the provisions of the Foreign Exchange Management Act, 1999, examine whether V, an exporter is bound to make declaration on gift exported from India to United Kingdom a jewellery valued at ` 20,000 to his friend in Australia.

Answer

In accordance with provisions of the FEMA, 1999 as contained in section 7 read with section 8, it imposes on an exporter to make appropriate declaration of the value of the goods being exported and he is also required to repatriate the foreign exchange due to India in respect of such exports to India in the manner within the time as may be prescribed. Under section 8, the exporter is under an obligation to realise and repatriate to India such foreign. However, if there is an delay in the receipt of export, it will not be a violation which shall be punishable. Section 8 applies to a resident who shall take all the reasonable steps, depending upon the individual case. There are certain categories of export for which declaration need not be made. These are given under the Regulation 4 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. According to the regulation, export of goods by way of gift shall be accompanied by a declaration by the exporter that they are not more than five lakh



rupees in value. Taking into consideration the above, since the value of gift of jewellery to V's friend in Australia is less than ` 5 lac in value, the gift does not need any declaration to be furnished by exporter to the specified authority.

Question 6

Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

- (i) M requires U.S. \$ 5,000 for remittance towards hire charges of transponders.*
- (ii) P requires U.S. \$ 2,000 for payment related to call back services of telephones*

Answer

Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are free transactions and some others are prohibited transactions. Accordingly,

- (i) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.
- (ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P will not succeed in acquiring US \$ 2,000 for the said purpose.

Question 7

Mr. Suresh resided in India during the Financial Year 2013-14. He left India on 15th July, 2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2014-15 and 2015-16?

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

Answer

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period. Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2013-14 left on 15.7.2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident for 2014-15, as he has gone to stay outside India for a 'certain period' (If he goes abroad with intention to stay outside India for an 'uncertain period' he will not be resident with effect from 15-7-2014.

Mr. Suresh will not be resident during the Financial Year 2015-2016 as he did not stay in India during the relevant previous financial year i.e. 2014-15. Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittance (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Question 8

Mrs. Chandra, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property? State whether Mrs. Chandra can sell the property and

repatriate outside India the sale proceeds.

Answer

As per sub-section 5 of section 6 of the FEMA, 1999, a person resident outside India 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 such person when he was resident in India or inherited from a person who was resident in India. Accordingly, in the problem, Mrs. Chandra, a resident outside India, may acquire or hold any immovable property of his father in India by way of inheritance in both the conditions, firstly, where her father, a resident outside India, had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or as per the provisions of these Regulations or secondly, where her father, a resident in India.

Repatriation of sale proceeds: A person referred to in sub-section (5) of section 6 of the Act, or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property. Thus, accordingly Mrs. Chandra can sell the property and repatriate outside India the sale proceeds only with the prior permission of the RBI.

Question 9

(i) Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

(ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Answer

Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999): According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawl of foreign exchange.

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 2,50,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

Therefore, Mr. Z can draw foreign exchange up to the USD 2,50,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital or doctor abroad.

Question 10

Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

(A) US\$ 1,20,000 for studies abroad on the basis of estimates given by the foreign university.



(B) Gift Remittance amounting US\$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Answer

(A) Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US \$ 2,50,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case since US \$ 1,20,000 is the drawal of foreign exchange, so permission of the RBI is not required.

(B) Gift remittance exceeding US \$ 10,000: Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US \$ 2,50,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, so there is no need for any permission from the RBI.