Overview of Provisions of FEMA

1. Introduction

1.1 Foreign Exchange management Act, 1999 (FEMA) came into force on 1st June 2000. It is an Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

1.2 FEMA is administered by the Reserve bank of India (RBI) and enforced by the Enforcement Directorate (ED). It applies to whole of India and all branches, offices and agencies outside India, which are owned or controlled by person resident in India i.e. extra territorial jurisdiction.

1.3 FEMA has in total 49 sections in which sections 1 to 9 are substantive and the rest are procedural /administrative.

1.4 A number of Notifications are issued after the initial 25 Notifications, most of the time only to amend the existing one or more of the 25 Notifications.

1.5 Master Circulars and Master Directions are issued to explain each Notification in a lucid manner.

1.6 Press Releases and Notifications under the series G.S.R. are issued by the Government to announce Government Policy on Foreign Investments including consolidated Foreign Direct Investment Policy and to amend the Current Account Transaction Rules from time to time.

2. Dealing in foreign exchange - Section 3

2.1 Section 3 is the major substantive provision in FEMA which bestows power on RBI for giving general or special permission for transactions involving foreign exchange or any receipt or payments between resident and non- resident.

2.2 Section 3 states that: 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 —

i. Deal in or transfer any foreign exchange or foreign security to any person not being an authorised person.

ii. Make any payment to or for the credit of any person resident outside India in any manner.

iii. Receive otherwise (than) through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation- For the purpose of this Section, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) 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 authorised person.

iv. 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.

Explanation.— For the purpose of this Section, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any Act of exchange or promissory note, or transferring any security or acknowledging any debt.

2.3 It may pertinently be noted that Section 3 applies to -

i. All the persons in India whether they are residents or non-residents as non-residents are not permitted to sell their foreign exchange in India except to an Authorised Dealer. Even two non-residents cannot deal in rupees in India for settling transactions outside India;

ii. Rupee transactions in India between non-residents and residents which are not freely permitted as resident Indians are not permitted to pay any non-resident;

iii. Rupee transactions in India between two residents representing payment by order or on behalf of any non-resident unless it is through an Authorized Dealer and represented by way of corresponding inward remittance from outside India;

iv. All persons in India whether residents or non-residents for financial transactions in India towards acquisition, creation or transfer of any asset outside India.

3. Types of Transactions under FEMA

3.1 There are 2 types of transactions under FEMA:

i. Capital Account Transactions
ii. Current Account Transactions

3.2 **Capital Account Transactions**:

3.2.1 According to Sec 2 (e) of FEMA - 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 liabilities in India of persons resident outside India, and includes transactions referred to in sub- section (3) of section 6

3.2.2 Capital account transactions are generally prohibited unless permitted. They are regulated by RBI.

3.2.3 Section 6(3) contains ten sub clauses covering a wide range of transactions. For each of such categories RBI has issued separate notifications.

No.	Transactions specified under Sec 6(3)	Notf.No
1	Transfer/Issue of Foreign Security by a PRII	Notf.No.120
2	Transfer/Issue of Foreign Security by a PROI	Notf.No.20(R)
3	Transfer/Issue of Security/Foreign security by branch, office or agency in India by PROI	Notf.No.2
4	Borrowing/Lending in Foreign currency in whatever form or by whatever name called	Notf.No.3(R)
5	Borrowing/Lending in Rupees in whatever form or by whatever name called between a PRII and a PROI	Notf.No.4
6	Deposits between PRII and PROI	Notf.No.5 (R)
7	Export, Import or holding of currency or currency notes	Notf.No.6 (R)
8	Transfer of Immovable property outside India, other than a lease ≤ 5 years, by PRII	Notf.No.7 (R)
9	Acquisition/Transfer of Immovable property in India, other than a lease ≤ 5 years by PROI	Notf.No.21 (R)
10	Giving of a guarantee/surety in respect of any debt, obligation or other liability incurred: 1)By PRII owed to PROI or 2) By PROI	Notf.No.8

*PROI – Person Resident outside India; PRII – Person resident in India

These are also notified through Notification FEMA 1, segregating the transactions of residents and non-residents as Schedule I & Schedule II respectively as discussed in the upcoming paragraphs.

About 25 Notifications have been issued by RBI to deal with the manner in which permissible Capital Account Transactions can be carried out.

3.2.4 <u>Notification No. FEMA 1 /2000-RB dated 3rd May 2000 "Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000".</u>

Permissible Capital Account Transactions are as under:

a. Transactions, specified in **Schedule I**, of a person resident In India.
b. Transactions, specified in **Schedule II**, of a person resident outside India.

Schedule I - Classes of capital account transactions of persons resident in India (PRII)

i. Investment by a PRII in foreign securities.
ii. Foreign currency loans raised in India and abroad by a PRII.
iii. Transfer of immovable property outside India by a PRII.
iv. Guarantees issued by a PRII in favour of a person resident outside India.
v. Export, import and holding of currency/currency notes.
vi. Loans and overdrafts (borrowings) by a PRII from a PROI.
vii. Maintenance of foreign currency accounts in India and outside India by a PRII.
viii. Taking out of insurance policy by a PRII from an insurance company outside India.
ix. Loans and overdrafts by a PRII to a PROI.
x. Remittance outside India of capital assets of a PRII.
xi. Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a PRII.

Schedule II - Classes of capital account transactions of persons resident outside India (PROI)

i. Investment in India by a PROI, that is to say: a) Issue of security by a body corporate or an entity in India and investment therein by a PROI; and b) Investment by way of contribution by a PROI to the capital of a firm or a proprietorship concern or an association of persons in India.
ii. Acquisition and transfer of immovable property in India by a PROI.
iii. Guarantee by a PROI in favor of, or on behalf of, a person resident in India.
iv. Import and export of currency/currency notes into/from India by a PROI.
v. Deposits between a PRII and a PROI.
vi. Foreign currency accounts in India of a PROI.
vii. Remittance outside India of capital assets in India of a PROI.

3.2.5 No person resident outside India shall make investment in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage –

(i) in the business of chit fund, or
(ii) as Nidhi Company , or
(iii) in agricultural or plantation activities or
(iv) in real estate business, or construction of farm houses or
(v) in trading in Transferable Development Rights (TDRs).

Explanation: For the purpose of this regulation, "real estate business" shall not include development of townships, construction of residential/commercial premises, roads or bridges.

3.3 <u>**Current Account Transactions:**</u>

3.3.1 According to section 2(j) Current account transaction means a transaction other than a capital account transaction. Such transaction includes:-

i. Payments due in connection to foreign trade, other current business, services and other short-term banking 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.

iv. Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

3.3.2 As provided under Section 5 of FEMA, any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction; Provided that the 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.

3.3.3 Current Account transactions are freely permitted, unless prohibited. They are regulated by Central Government and the same is discussed in the upcoming paragraphs.

3.3.4 As per Rule 3 of FEM (CAT) Rules, 2000, drawal of foreign exchange by any person for the following purpose is prohibited, namely:-

a. Transaction specified in the Schedule I; or
b. Travel to Nepal and/or Bhutan; or
c. Transaction with a person resident in Nepal or Bhutan;

Provided that the prohibition in clause (c) may be exempted by RBI subject to such terms and conditions as it may consider necessary to stipulate by special or general order.

3.3.5 Current account transaction are divided into 3 Schedules under Current Account Transaction rules:

Schedule I -Transactions which are prohibited

Schedule II -Transactions which require prior approval of the Central Government

Schedule III- Transactions which require prior approval of the RBI

Schedule I -Transactions which are prohibited

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 pools, sweepstakes etc.
iv. Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
v. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
vi. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
vii. Payment related to “Call Back Services” of telephones.
viii. Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

Schedule II -Transactions which require prior approval of the Central Government

No.	Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
1.	Cultural Tours	Ministry of Human Resources Development (Department of Education and culture)
2.	Advertisement in foreign print Media for the purposes other than promotion of tourism, foreign Investments & International bidding (exceeding USD 10,000) by a state government & its public sector undertaking	Ministry of Finance, (Department of Economic Affairs)

3.	Remittance of freight of vessel chartered by a PSU	Ministry of surface Transport, (Charter wing)
4.	Payment of import through ocean transport by a Govt. department or PSU on c.i.f basis	Ministry of Surface Transport (chartering wing)
5.	Multi Modal transport operators making remittance to their agents Abroad	Registration certificate from the Director General of shipping
6.	Remittance of hiring charges of transponders by a) T.V. channels b) Internet Service Providers	a) Ministry of Information & Broadcasting b) Ministry of Communication & Information Technology
7.	Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
8.	Omitted	
9.	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$ 100,0000	Ministry of Human Resources Development (Department of Youth Affairs & Sports)
10.	Omitted	
11.	Remittance of Membership of P& I club	Ministry of Finance (Insurance Division)

Schedule III - Transactions which require prior approval of the RBI

Facilities for individuals—

1. 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.

(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:

Provided that for the purposes mentioned in 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 (hereinafter 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:

Provided further that 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:

Provided also that for a person who is resident but not permanently resident in India and—

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

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

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

Provided also that a person other than an individual may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein above.

Facilities for persons other than individual—

2. The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India.

(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;
(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 per cent 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 services procured from outside India.

Explanation:—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.

(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.

3.3.6 Thus, individuals can draw foreign exchange up to US$ 250,000 and if such amount is not sufficient, then for the purposes of emigration, maintenance of close relatives and medical & allied cost, additional foreign exchange can be drawn irrespective of the amount not exceeding the actuals.

3.3.7 Also, individuals who are resident of India can undertake any current account transactions of any value and request for the drawal of the foreign exchange from AD Bank for remittance abroad if it is not covered in any of the above Schedules to the FEM (CAT) Rules, 2000.

Non-individuals have as such no restrictions under Schedule III except as stated above in paragraph 2 of Schedule III. It may also be mentioned that non-individuals, say Companies, if required to depute their employees for foreign travel, then above limit applicable to individuals of US$ 250,000 shall not apply and the company can remit any amount during the year as required by it for the purposes of its business.

4. Residential Status under FEMA

4.1 Under FEMA, residential status is of two types:

i. Person Resident in India
ii. Person Resident Outside India

4.2 As Per sec 2(v) person resident in India" means-

A) A person residing in India for more than one hundred and eighty- two 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-

- for or on taking up employment outside India, or

- for carrying on outside India a business or vocation outside India, or

- 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-

- for or on taking up employment in India, or

- for carrying on in India a business or vocation in India, or

- for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

B) Any person or body corporate registered or incorporated in India.

C) An office, branch or agency in India owned or controlled by a person resident outside India.

D) An office, branch or agency outside India owned or controlled by a person resident in India.

4.3 Thus, in a case where a person goes abroad for one of the purposes as stated in A(a) above, he will become PROI from the day he has accepted / exercised such employment and vice versa, becomes PRII when he comes to India or such purposes as stated in A(b) above.

5. Liberalised Remittance Scheme (LRS)

5.1 The Reserve Bank of India had announced a Liberalised Remittance Scheme (the Scheme) in February 2004 as a step towards further simplification and liberalization of the foreign exchange facilities available to resident individuals. As per the Scheme, resident individuals may remit up to USD 2,50,000 per financial year for any permitted capital and current account transactions or a combination of both. All resident individuals, including minors are eligible to avail of the facility under the scheme.

5.2 Prohibited Items under the scheme:

i. Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
ii. Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty.
iii. Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.
iv. Remittance for trading in foreign exchange Abroad.
v. Remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as “non-co-operative countries and territories”, from time to time.
vi. Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.
vii. Remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan.

5.3 Eligible Items under the scheme:

i. Acquire and hold shares or debt instruments or any other asset outside India without prior approval of the Reserve Bank
ii. Purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.
iii. Gift in rupee to his NRI/PIO close relative under LRS and credit the same to his NRO A/c
iv. Purposes under FEM (CAT) Amendment Rules, 2015

5.4 The facility under the Scheme is in addition to those already available for private travel, business travel, studies, medical treatment, etc., as described in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. However, remittances for gift and donation cannot be made separately and are subsumed under the limit available under this LRS.

5.5 For undertaking transactions under the Scheme, resident individuals may use the application-cum-Declaration Form and it is mandatory to have PAN number to make remittances under the Scheme.

5.6 Thus, LRS is an exception for PRII to carry out all the specified as well as residual current account transactions and any capital account transactions up to the value of US$ 250,000 even if it is not possible under the specific Notification or permissible capital account transaction e.g. PRII may not be able to purchase immovable properties outside India for a value above US$ as specified therein, but he can do so under LRS.

6. Banking accounts of Persons resident outside India

6.1 Acceptance of Deposits from PROI is a capital account transaction referred to in section 6(3)(f) and sub-section (2) of S. 47 of the Foreign Exchange Management Act, 1999 and is governed under the Foreign Exchange Management (Deposit) Regulations, 2016 issued vide Notification No. FEMA 5(R)/2016-RB

6.2 Under the Notification, RBI has put restrictions on acceptance of any deposit from, or make any deposit with, a person resident outside India if the same is not permitted under the Notification or specifically approved or exempted by it.

6.3 Non-Residents are permitted to invest their money in India with banks, companies, firms or proprietary concerns subject to certain conditions. Acceptance of deposits by an authorized dealer/bank from persons resident outside India would be under the following three bank deposit accounts in operation called Non-resident Ordinary (NRO) Account, Non- Resident External (NRE) Account and Non Resident Foreign Currency (Bank's Scheme) -FCNR(B) Account.

6.4 The comparative provisions of such bank accounts are given in table below:

Particulars	**Non-Resident (External) Rupee Account Scheme [NRE Account]**	**Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B) Account]**	**Non-Resident Ordinary Rupee Account Scheme [NRO Account]**
(1)	**(2)**	**(3)**	**(4)**
Who can open an account	NRIs and PIOs himself Individual/entities of Pakistan and Bangladesh shall requires prior approval of the Reserve Bank of India		Any person resident outside India himself for putting through bonafide transactions in rupees. Individuals/ entities of Pakistan nationality/ origin and entities of Bangladesh origin require the prior approval of the Reserve Bank of India. Post Offices in India may maintain savings bank accounts in the names of persons resident outside India and allow operations on these accounts subject to the same terms and conditions as are applicable to NRO accounts maintained with an authorised dealer/ authorised bank.
Joint account	May be held jointly in the names of two or more NRIs/ PIOs. NRIs/ PIOs can hold jointly with a resident relative on 'former or survivor' basis (relative as defined in Companies Act, 2013). The resident relative can operate the account as a Power of Attorney holder during the life time of the NRI/ PIO account holder.		May be held jointly in the names of two or more NRIs/ PIOs. May be held jointly with residents on 'former or survivor' basis.
Currency	Indian Rupees	Any permitted currency i.e. a foreign currency which is freely convertible	Indian Rupees

Type of Account	Savings, Current, Recurring, Fixed Deposit	Term Deposit only	Savings, Current, Recurring, Fixed Deposit
Period for fixed deposits	From one to three years, However, banks are allowed to accept NRE deposits above three years from their Asset-Liability point of view	For terms not less than 1 year and not more than 5 years	As applicable to resident accounts.
Permissible Credits	Credits permitted to this account are inward remittance from outside India, interest accruing on the account, interest on investment, transfer from other NRE/ FCNR(B) accounts, maturity proceeds of investments (if such investments were made from this account or through inward remittance). Current income like rent, dividend, pension, interest etc. will be construed as a permissible credit to the NRE account. Care: Only those credits which have not lost repatriable character Foreign Currency and travelers cheque can be deposited only by account holder during his temporary visit to India subject to Currency declaration Form..		Inward remittances from outside India, legitimate dues in India and transfers from other NRO accounts are permissible credits to NRO account. Rupee gift/ loan made by a resident to a NRI/ PIO relative within the limits prescribed under the Liberalised Remittance Scheme may be credited to the latter's NRO account.
Permissible Debits	Permissible debits are local disbursements, remittance outside India, transfer to other NRE/ FCNR(B) accounts and investments in India.		The account can be debited for the purpose of local payments, transfers to other NRO accounts or remittance of current income abroad. Apart from these, balances in the NRO account cannot be repatriated abroad except by NRIs and PIOs up to USD 1 million, subject to conditions specified in Foreign Exchange Management (Remittance of Assets) Regulations, 2016. Funds can be transferred to NRE account within this USD 1 Million facility.
Repatriablity	Repatriable		Not repatriable except for all current income. Balances in an NRO account of NRIs/ PIOs are remittable up to USD 1 (one) million per financial year (April-March) along with their other eligible assets.
Taxability	Income earned in the accounts is exempt from income tax and balances exempt from wealth tax		Taxable
Loans in India	AD can sanction loans in India to the account holder/ third parties without any limit, subject to		Loans against the deposits can be granted in India to the account holder or third party subject to usual norms and

	usual margin requirements. These loans cannot be repatriated outside India and can be used in India only for the purposes specified in the regulations. In case of loans sanctioned to a third party, there should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/ firm/ company to obtain such facilities. In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from outside India through banking channels or out of balances held in the NRO account of the account holder. The facility for premature withdrawal of deposits will not be available where loans against such deposits are availed of. The term “loan” shall include all types of fund based/ non-fund based facilities.		margin requirement. The loan amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate. The term “loan” shall include all types of fund based/ non-fund based facilities.
Loans outside India	Authorised Dealers may allow their branches/ correspondents outside India to grant loans to or in favour of non-resident depositor or to third parties at the request of depositor for bona fide purpose against the security of funds held in the NRE/ FCNR (B) accounts in India, subject to usual margin requirements. The term “loan” shall include all types of fund based/ non-fund based facilities		Not permitted
Rate of Interest	As per guidelines issued by the Department of Banking Regulations		
Operations by Power of Attorney in favour of a resident	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels. but not to any other account outside India or to another NRE Account or any Gift to Resident..		Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments in rupees, remittance of current income to the account holder outside India or remittance to the account holder himself through normal banking channel but not to any other account outside India or to another NRE Account or any Gift to Resident. While making remittances, the limits and conditions of repatriability will apply.
Change in residential status from Non-resident	NRE accounts should be designated as resident accounts or the funds held in these	On change in residential status, FCNR (B) deposits may be allowed to continue till maturity at the contracted rate	NRO accounts may be designated as resident accounts on the return of the account holder to India for any purpose indicating his intention to stay in India for an uncertain period.

to resident	accounts may be transferred to the RFC accounts, at the option of the account holder, immediately upon the return of the account holder to India for taking up employment or on change in the residential status.	of interest, if so desired by the account holder. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder.	Likewise, when a resident Indian becomes a person resident outside India, his existing resident account should be designated as NRO account.

6.5 Thus, for PROI, all the transactions whether Capital or Current, can be carried out only as per their Banking account in India.

7. <u>Hospitability to PROI by PRII</u>

7.1 Under Notification No. FEMA 16/2000-RB, dated 3rd May 2000 which deals with 'Receipt from and payment to a person resident outside India', general permission is given to residents to spend on non-resident guest on account of boarding, lodging and services related thereto and or travel within India.

7.2 Indian firms and companies are allowed to pay for cost of to and fro passage fare of their Non-Resident directors, foreign technicians, etc. coming to India for official business purposes. Similarly, Indian companies are permitted to make payment in rupees to its non-whole time director who is resident outside India and is on a visit to India for the company's work and is entitled to payment of sitting fees or commission or remuneration, and travel expenses to and from and within India.

7.3 Loan by Resident individual in rupees is also permitted in favour of the NRI relative subject to compliance with Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 (Notification No. FEMA 4/2000-RB dated 3rd May, 2000), as amended from time to time.

8. <u>Export & Import of Goods and Services:</u>

8.1 Imports:

8.1.1 Persons Resident in India can import goods and services as permitted under Section 5 of FEMA read with Foreign Exchange Management (Current Account Transaction) Rules, 200 and by complying with other procedures under EXIM Policy & Customs Act. The FED Master Direction – Import of Goods and Services dt. 01.01.2016 provide for the detailed provisions relating to import of goods & services.

8.1.2 Import of goods can be freely made unless they are included in the negative list requiring licence under the Foreign Trade Policy in force. Where foreign exchange acquired has been utilised for import of goods into India, the AD Category-I bank is required to ensure that the importer furnishes evidence of import in Import Data Processing and Monitoring System ('IDPMS'), Postal Appraisal Form or Customs Assessment Certificate, etc., and satisfy himself that goods equivalent to the value of remittance have been imported.

8.1.3 Payments for imports should be made within six months from the date of shipment except in cases where amounts are withheld towards guarantee of performance etc. Deferred payment arrangements can be made including suppliers and buyers credit providing for payments beyond a period of six months from date of shipment up to a period of less than three years. Such trade credits are permitted under Automatic route for imports into India up to USD 50 million per import transaction for import of all items (permissible under the Foreign Trade Policy) with a maturity period (from the date of shipment) up to one year (in case of non-capital goods or operating cycle whichever is less) and up to three years (in case of import of capital goods).

8.2 Exports:

8.2.1 Provisions relating to export of goods & services are specified in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 issued under Notification No. FEMA 23(R)/2015-RB dt. 12.01.2016

8.2.2 Export u/s. 2(1) of FEMA 1999 means, with its grammatical variations and cognate expressions, the

i) Taking out of India to place outside India any goods,

ii) Provisions of services from India to any person outside India.

Broadly stated, the supply of goods & services outside India shall be treated as Exports. However it is pertinent to note the definition of services. It has been defined u/s. 2(zb) of FEMA as under:

"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.

Notification No. FEMA 23(R) also defines "Export' under its regulation No.2(iv) as including 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 electronic media.

8.2.3 The period of realization and repatriation of export proceeds of goods/software/services shall be nine months from the date of export for all exporters including Units in Special Economic Zones (SEZs), Status Holder Exporters, Export Oriented Units (EOUs), Units in Electronic Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) & Bio-Technology Parks (BTPs) until further notice.

For goods exported to a warehouse established outside India, the proceeds shall be realized within fifteen months from the date of shipment of goods.

8.2.4 The declaration form along with the prescribed export documents are to be submitted to an authorized dealer within 21 days from the date of export or within such extended time as is permitted by the authorised dealer.

Authorised dealer requires the documents for various purposes, inter alia, for monitoring the receipt of payment of the full value of goods exported. After the documents have been negotiated/sent for collection, the AD shall report the transaction through Export Data Processing and Monitoring System (EDPMS) to the Reserve Bank and retain the documents at their end.

8.2.5 An exporter is permitted to receive advance payment from a buyer/third party named in the export declaration made by the exporter, outside India subject to the following conditions:

i) The shipment of goods is made within one year from the date of receipt of advance payment; however, where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment, an exporter may receive advance payment.

ii) The rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points;

iii) The documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

iv) In the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.

8.3 It may be noted that PROI is not eligible to Import or Export unless they are authorised by the RBI under Notification No. FEMA 22(R) dealing with Liaison Office / Branch Office / Project Office.

9. Facilitation of Business for individuals – overriding provisions of Overseas Investments:

9.1 Regulation relating to overseas investment is notified by RBI as Notification No. FEMA 120/RB dated 7-7-2004 (the notification) as amended from time-to-time. Accordingly, an Indian Party is eligible to make overseas direct investment under the Automatic Route. An Indian Party is a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act 1932 or a Limited Liability Partnership (LLP) incorporated under the LLP Act, 2008 and any other entity in India as may be notified by the Reserve Bank.

9.2 With effect from August 05, 2013, as provided by Regn. 20A of FEMA 120, a resident individual (single or in association with another resident individual or with an 'Indian Party' as defined in the Notification) satisfying the criteria as per Schedule V of the Notification, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India. Such investment shall be within the overall limit prescribed under the provisions of Liberalised Remittance Scheme.

9.3 The LRS Scheme is a parallel code to FEMA Ntf. 120 and hence no further recourse to provisions of FEMA Ntf. 120 is required or necessary. It may be noted that portfolio investment is outside the purview of FEMA Ntf. 120 and therefore unutilized limit of LRS may be used for other than direct investments e.g. portfolio investments

9.4 The salient conditions for direct overseas investment by individuals are as under:

i. JV or WOS abroad should not be engaged in the real estate business or banking business or in the business of financial services activity.

ii. The JV or WOS abroad shall be engaged in *bona fide* business activity.

iii. JV/WOS should not be located in the countries identified by the Financial Action Task Force (FATF) as "non co-operative countries and territories" as available on FATF website www.fatf-gafi.org or as notified by the Reserve Bank.

iv. The resident individual shall not be on the Reserve Bank's Exporters Caution List or List of defaulters to the banking system or under investigation by any investigation/enforcement agency or regulatory body.

v. At the time of investments, the permissible ceiling shall be within the overall ceiling prescribed for the resident individual under Liberalised Remittance Scheme as prescribed by the Reserve Bank from time-to-time. It should be noted that the investment made out of the balances held in EEFC/RFC account shall also be restricted to the limit prescribed under LRS.

vi. The overseas JV or WOS, to be acquired/set up, shall be an operating entity only and no step down subsidiary is allowed to be acquired or set up by the JV or WOS.

vii. The valuation shall be as in same manner as applicable to overseas investment by Indian Party as per Regulation 6(6)(a) of the Notification.

viii. The financial commitment by a resident individual to/on behalf of the JV or WOS, shall be only in form of equity shares and compulsorily convertible preference shares. Thus, financial commitment by way of loans & guarantees is prohibited.

9.5 Investment by resident individuals in an overseas venture other than by way of direct investment are permitted as follows under Ntf. FEMA 120 -

9.5.1 Acquire shares of foreign company (under General permission of RBI) by way of:

(a) Gift from Person Resident outside India

(b) Cashless Employees Stock Option Scheme issued by company outside India.

(c) Inheritance from any person Resident in India or outside India

(d) Subscription of shares of such foreign parent company offered under its ESOP Schemes, irrespective of the percentage of the direct or indirect equity stake in the Indian company. Subscription of such shares is permitted to an employee, or, a director of an Indian office or branch of a foreign company, or, of a subsidiary in India of a foreign company, or, an Indian company in which foreign equity holding, either direct or through a holding company/Special Purpose Vehicle. The consideration payable by resident Indian maybe borne either by foreign company issuing shares or its Indian branch or office or subsidiary or the company in India in which foreign equity holding is not less than 51%.

(e) Out of the funds of Resident Foreign Currency account (RFC), all restrictions regarding utilisation of foreign currency balances including any restrictions on investment in any form outside India shall not apply to RFC account.

9.5.2 Indian Resident can acquire the shares of foreign company under general permission:

(a) As minimum qualification shares of a foreign company for holding the post of a director in that company to the extent prescribed as per the law of the host country where the company is located provided it does not exceed the limit prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.

(b) By way of right shares issued by a foreign company provided they were held by virtue of holding shares in accordance with FEMA.

(c) By way of purchase by the employees/directors of an Indian promoter company of shares of an overseas – JV or WOS in the field of software, provided the consideration does not exceed the ceiling as stipulated by Reserve Bank from time to time and the shares so acquired do not exceed 5% of the paid-up capital of the overseas JV/WOS. The percentage shareholding of the Indian promoter company inclusive of the shares allotted to its employees is not less than the percentage of shares held by it earlier.

(d) By way of purchase, by resident employees and working directors of Indian company in Knowledge based sector, of foreign securities under ADR/GDR linked stock option schemes up to the ceiling as stipulated by the Reserve Bank from time-to-time.

10. <u>Penalties & Compounding:</u>

10.1 The Adjudicating authority appointed by the Central Govt. under section 16 of the FEMA, 1999 may impose penalty provided u/s. 13 of the FEMA, 1999 on the person who have committed contravention of any rules, regulations, act or directions issued under FEMA. As provided u/s. 16(6) of the FEMA, 1999 every adjudicating authority shall deal with the complaint as expeditiously as possible and dispose of the same within a period of one year from the date of receipt of the complaint. In case of compounding by RBI, a period of 6 months is specified under section 15 on compounding.

10.2 In terms of Section 13(1), if any person contravenes any provision of FEMA, 1999, or any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization 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 the amount is quantifiable or up to Rs. 2 lakhs, where the amount is not directly quantifiable and where the contravention is a continuing one, further penalty which may extend to Rs. 5,000 for every day after the first day during which the contravention continues.

10.3 Contraventions cannot be compounded which have been finally adjudicated and disposed of by the Adjudicating Authority. Application may be filed for compounding any contravention either during the course of investigation or when the complaint is made including those which are under adjudication process, until they are not disposed of.

10.4 Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal in form of compounding.

Section 15 of FEMA permit compounding of contraventions as defined under section 13 of FEMA except the contravention under section 3(a) of FEMA for a specified sum after offering an opportunity of personal hearing to the contravener. For this purpose, an application is required to be made by the person committing such contravention, either before or after the institution of Adjudication Proceedings. The Government of India has notified Foreign Exchange (Compounding Proceedings) Rules, 2000 for guiding on compounding of contravention. The detailed process for compounding is laid down in FED Master Direction No. 4/2015-16 dated 1-1-2016 as amended from time to time.

Wilful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank. Further, in terms of the proviso to rule 8 (2) of Foreign Exchange (Compounding Proceedings) Rules, 2000 inserted vide GOI notification dated February 20, 2017, if the Enforcement Directorate is of the view that the compounding proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, such cases will not be compounded by the Reserve Bank.

10.5 Seizure of Assets:

10.5.1 Section 37A of FEMA stipulates special provisions relating to assets outside India in contravention of Section 4. Accordingly, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property. However, no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

10.5.2 The order of seizure along with relevant material shall be placed before the Competent Authority within a period of thirty days from the date of such seizure. The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure either by confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person. While computing the period of one hundred eighty days, the period of stay granted by court shall be excluded and a further period of at least thirty days shall be granted from the date of communication of vacation of such stay order.

10.5.3 The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure. However, if, at any stage of the proceedings, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure.

11. Special relationship with Nepal & Bhutan:

11.1 A special rupee territory status is allocated to Nepal and Bhutan by virtue of which:

i. Overseas investment in Nepal & Bhutan is allowed in Rupees only
ii. Indian currency is allowed to be exported & imported to & from Nepal and Bhutan irrespective of limit (limit is Rs. 25,000 for other countries)
iii. Rupee is freely convertible within Nepal and Bhutan with the local currency of Nepal and Bhutan respectively
iv. Current account payments by PRII is allowed without any limit but only in Rupees and no foreign exchange can be drawn.

12. Conclusion:

This Article is only to explain the basis and concepts under FEMA. The important transactions of Foreign Direct Investment (FDI), External Commercial Borrowings (ECB), Borrowing in Rupees, Immovable properties in India and outside India, opening of Branch in India and outside India, amount of currency that can be possessed, etc. may be discussed in subsequent Journal along with developments and jurisprudence.