

FOREIGN EXCHANGE MANAGEMENT ACT, 1999



- **CMA SONAL D. BAKSHI**
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Balance of Payment



Balance of Payment refers to the yearly financial statement of a country for the transactions in the external sector with the rest of the world. The BoP table has got two side viz, credit (export) and debit (import), hence it can be conceptualized as ‘balance sheet’ of the country with rest of the world.

Foreign Exchange

- Foreign exchange is the system or process of converting one national currency into another, and of transferring money from one country to another

EXAMPLE OF FOREIGN CURRENCY/RUPEE, 23/01/16

1.00 USD = 67.5789 INR

1 British Pound GBP = 96.4331 INR

1 EURO = 73.0018 INR

BRIEF HISTORY

- **During the British Raj foreign currency inflows and outflows controls , (Balance of Payments) lied with Her Majesty.**
 - **Even after the legislation came into force from 25th March 1947, with regulating/controlling bodies RBI and GOI, the BOP was still with her Majesty.**
 - **Post Independence BOP responsibility fell on leaders of independent India.**
 - **Imports of food clothing etc grew faster than exports, there was great dominance of multinational companies in India, there was adverse balance of payment and the need was for a more strict regulation of foreign exchange.**
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FERA

- To further strengthen the control and regulate, the then congress government enacted a new law Foreign Exchange Regulation Act 1973 with 81 section and it came into force from 1st Jan 1974
- FERA 1973 Act was introduced at a time when foreign exchange (Forex) reserves of the country were low.
- The main objective of FERA was to regulate, control and to ensure proper utilization of foreign exchange so as to promote the economic development of the country.
- FERA was a draconian police law, where violation was a criminal offence.
- There was a demand for substantial modification in FERA owing to economic liberalization and improving foreign exchange reserve positions, which lead to new act, Foreign Exchange Management

- Act, 1999.

FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (FEMA)

- After liberalisation in 1992, various sectors opened for FDI time to time which radically changed the foreign exchange position. Instead of negative balance, there was substantial foreign exchange reserve so it was felt necessary to drop out the draconian law of FERA.

The object of FEMA 1999, (effective June 1, 2000):

To consolidate and amend the law relating to foreign exchange with the object to facilitating external trade and payments and for promoting the foreign exchange market in India.

FEMA V/s FERA

- **Sections cut to 49 only (out of which 12 are operational part, rest penal provisionals) – 81/32/rest pinal**
 - **Civil Law (penalty) – against previous criminal law (imprisonment)**
 - **New Terms Capital Account Transactions and Current Account Transactions**
 - **Legal Help to Complainant allowed of a Legal counsel or Chartered Accountant.**
 - **The term `authorized person` extended to banks, money changes, offshore banking units etc.**
 - **Definition of `Resident` as per Income Tax**
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Similarities between FERA and FEMA

- The RBI and central government would continue to be the regulatory bodies.
 - Presumption of extra territorial jurisdiction as envisaged in section (1) of FERA has been retained.
 - The Directorate of Enforcement continues to be the agency for enforcement of the provisions of the law such as conducting search and seizure.
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OBJECTIVE OF THE FEMA

To facilitate the external trade and payment

To promote of an orderly maintenance of the foreign exchange market In India.

Regulation of foreign capital in India and to remove imbalance of payment.

Regulation of employment business and investment of non-residents and to regulate foreign payments.

The new law is more transparent in its application. it has laid down the areas where special permission of the reserve bank/government of India is required.

STRUCTURE

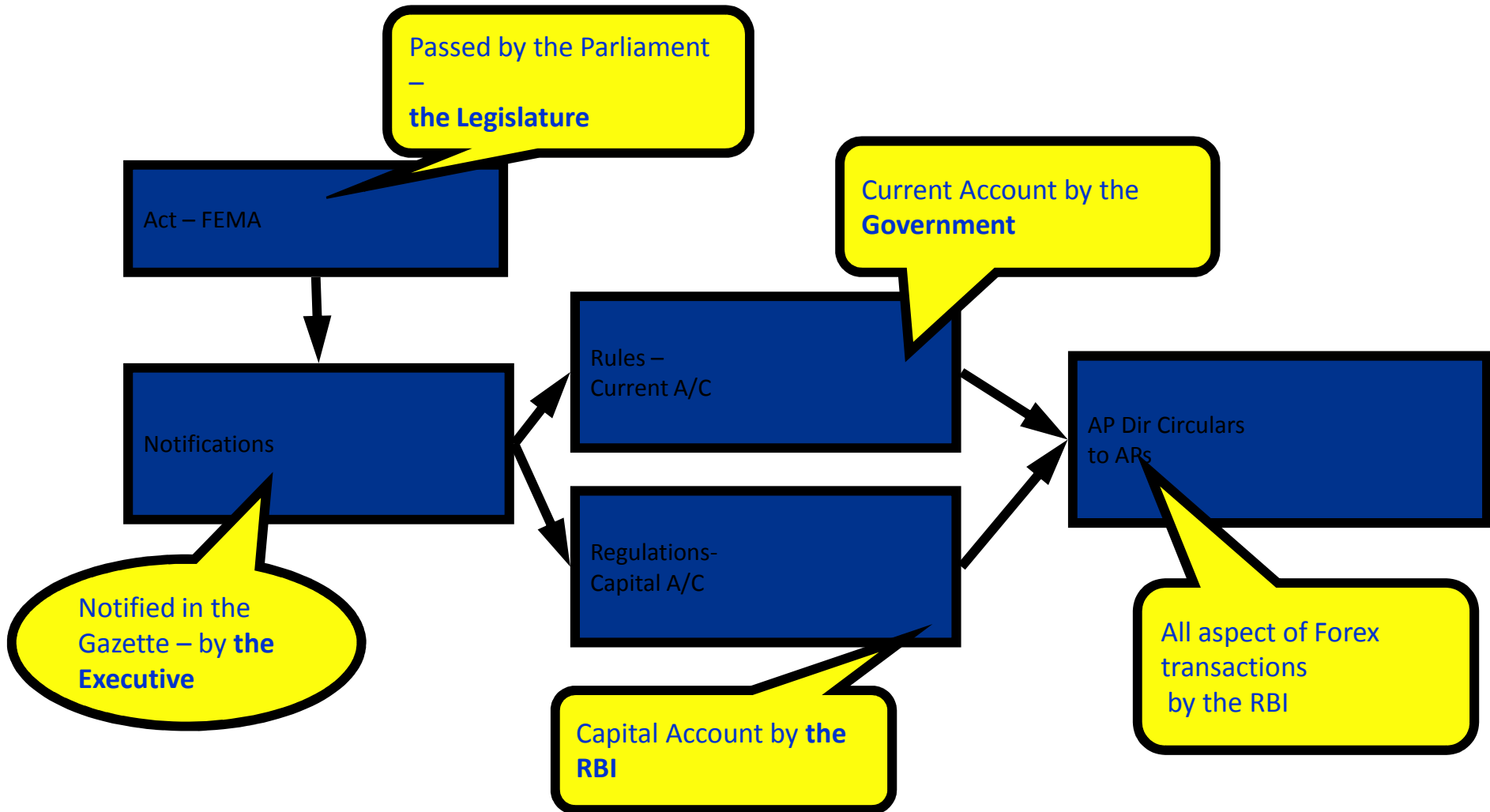
The legislations, rules and regulations, regulating Foreign Exchange Management can be divided into the following:

- FEMA Bare Act of 49 sections (Supreme Legislation)
 - 5 Sets of Rules made by Ministry under section 46 of FEMA (Subordinate or delegated Legislations)
 - 23 sets of Regulations made by RBI under section 47 of FEMA (Subordinate or delegated Legislations)
 - Master circulars issued by RBI on 1st July of every year
 - Foreign Direct Investment policy issued by Department of Industrial Policy and Promotion
 - Reserve Bank of India notifications and circulars
 - Enforcement Directorate
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OVERALL SCHEME

- FEMA makes provisions for dealings in foreign exchange.
- Broadly, all Current Account Transactions are free, however Central Government can impose reasonable restrictions by issuing rules (section 3 FEMA)
- Capital account transactions are permitted to the extent specified by RBI by issuing Regulations (Section 6 FEMA)
- FEMA envisages that RBI shall have a controlling role in **management** of foreign exchange. Since RBI cannot directly handle foreign exchange transactions, it authorizes “Authorised Persons” to deal in foreign exchange as per directions issued by RBI. (Section 10 FEMA)
- RBI is empowered to issue directions to such “Authorised Persons” u/s 11. These Directions are issued through AP(DIR) circulars. (AP stands for Authorised Person and DIR stands for Directions)
- The FEMA 1999 contains only basic legal framework. The practical aspects are covered in Rules made by Central Government and Regulations made by RBI.

Mechanism under FEMA



OVERALL SCHEME

- Industrial Policy announced by Ministry of Industry, contains provisions in respect of FDI, foreign technical collaboration, royalty payments, joint ventures abroad, etc. which are directly relevant to understanding the provisions of FEMA.
- Policy in respect of External Commercial Borrowings (ECB) and FCCB/ADR/GDR is announced and controlled by Ministry of Finance.
- Instructions/Guidelines etc. of Securities and Exchange Board of India (SEBI) become relevant when capital market is involved.

7 Chapters and 49 Sections

CHAPTER I – Preliminary (Sec 1&2)

CHAPTER II- Regulation and Management of Foreign Exchange (Sec 3 –9)

CHAPTER III – Authorised Person (Sec 10 –12)

CHAPTER IV – Contravention and Penalties (Sec 13-15)

CHAPTER V – Adjudication and Appeal (Sec 16- 35)

CHAPTER VI – Directorate of Enforcement (Sec 36-38)

CHAPTER VII- Miscellaneous (Sec 39 – 49)

Besides the FEMA, there are 5 rules and 23 regulations under the Act which help in implementation of the Act.

Substantive Provisions

Section	Description
1	Application and Commencement of FEMA
2	Definitions
3 to 9	Provisions relating to Regulations and Management of Foreign Exchange
10 to 12	Provisions relating to Authorized Person
13 to 15	Provisions relating to Contraventions and Penalties
16 to 38	Provisions relating to Adjudication, Appeal and Directorate of Enforcement
39 to 49	Miscellaneous Provisions

Extent, Application and Commencement

Section 1 of FEMA – Scope

- Extends to whole of India.
- Applies to all branches, offices and agencies outside India, of person resident in India.
- Applies to contravention committed outside India by any person to whom the Act applies.

Section 2(u) – Person

Includes

- An individual,
- HUF,
- Company,
- Firm,
- AOP or a BOI, whether incorporated or not,
- Every artificial juridical person, not falling within any of the preceding sub-clauses, and
- Any agency, office or branch owned or controlled by such persons



Important Definitions

Section 2(v) Person resident in India (PRI) means

- Person residing in India > 182 days during preceding financial year but does not include: –
 - Person who has gone out of India or who stays outside India, in either case
 - For/on taking up employment outside India, or
 - Carrying on outside India a business or vocation outside India, or
 - For any purpose, indicating intention to stay outside India for an uncertain period.
 - Person who has come to or stays in India, otherwise than
 - For/on taking up employment in India, or
 - Carrying on in India a business or vocation in India, or
 - For any other purpose, indicating intention to stay in India for an uncertain period.
- Any Person or body corporate registered or incorporated in India.
- An office, branch or agency in India owned or controlled by a person resident outside India.
- An office, branch or agency outside India owned or controlled by a person resident in India.

Section 2(w) - Person resident outside India (PROI)

- Person resident outside India means a person who is not resident in India.

Important Definitions

Non Resident Indian (NRI)

- NRI has been defined under FEMA Regulation 2(vi) of the FEMA - 5 (Deposit) Regulations 2000 as follows:
- “An NRI is a person resident outside India who is a citizen of India or is a Person of Indian Origin”
- It is possible that you may be an NRI under FEMA, yet you may be a resident under the Income tax laws.

Person of Indian Origin (PIO)

- PIO is defined differently in:
 - Regulation 2 of FEMA 5 (Deposit) Regulations, 2000
 - Regulation 2(c) of FEMA- 21 (Acquisition and Transfer of Immovable Property in India) Regulations, 2000
 - Regulation 2 of FEMA 24 (Investment in a Firm or Proprietary concern in India)
 - Most other notifications follow the FEMA 5 (Deposit) definition of PIO

Important Definitions

Section 2(e) – Capital Account Transaction	Section 2(j) – Current Account Transaction
<p>A transaction which alters the assets or liabilities</p> <ul style="list-style-type: none">➤ Outside India of persons resident in India, (including Contingent Liabilities);➤ In India of persons resident outside India; and➤ Includes transactions specified in Section 6(3).<ul style="list-style-type: none">○ Foreign security by resident;○ Any Security by non-resident;○ Transfer or issue of any security or foreign security by any branch, office or agency in India of a non-resident;○ Borrowing / Lending in Foreign Exchange;○ Borrowing / Lending in rupees between residents and non-residents;○ Deposits between residents and non residents;○ Holding of currency or currency notes;○ Acquisition / transfer of immoveable property in India / outside India (except those on lease for less than five years);○ Giving of guarantee / surety by resident / non-residents.	<p>A transaction other than a capital account transaction which include:</p> <ul style="list-style-type: none">▪ Payments due in connection with foreign trade, other current business, services, short- term banking and credit facilities in the ordinary course of business;▪ Payments due as interest on loans and as net income from investments;▪ Remittances for living expenses of parents, spouse and children residing abroad; and▪ Expenses on foreign travel, education and medical care of parents, spouse and children.

Extent, Application and Commencement (contd....)

Section 3- Dealing in Foreign Exchange, etc.

General or Special permission of RBI required to:

- Deal in or transfer of foreign exchange or foreign securities to person other than authorized person;
- Make any payment to or for the credit of a non-resident;
- Receive otherwise than through authorized person any payment by order or on behalf of a non-resident without a corresponding inward remittance;
- Enter into a 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.

Section 4- Holding of Foreign Exchange, etc.

- Restricts person resident in India to hold, own or possess or transfer any foreign exchange, foreign security or immovable property situated outside India.

Section 5- Current Account Transactions

Section 6- Capital Account Transactions

Extent, Application and Commencement (contd....)

Section 7 – Export of goods and services

- Exporter of goods/services under obligation to furnish to RBI or specified authority prescribed declaration.
- Common form called 'Export Declaration Form' devised to declare all exports from Non-EDI ports and common 'Softex' forms for single/bulk exports.
- Directions by RBI to Exporter of goods for ensuring receipt of export proceeds.

Section 8 – Realization and repatriation of foreign exchange

- Person resident in India obliged to take all reasonable steps to realize and repatriate to India all foreign exchange due or accrued.

Section 9 – Exemption from realization and repatriation in certain cases

- Possession of foreign currency or coins up to limits prescribed by RBI;
- Foreign currency accounts up to specified limits by specified persons;
- Foreign exchange acquired before 8th July, 1947;
- Foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or other legitimate means up to limits prescribed; and
- Any other foreign exchange receipt specified by RBI.

Extent, Application and Commencement (contd....)

Section 10 – Authorized Person (AP)

- RBI to authorize persons to act as authorized dealer, money changer or off-shore banking unit or in any other manner.

Section 11 – Control / Penalty on Authorized Person

- AP to comply with provisions of Act, Rules, Regulations, Notifications, etc.
- Inspection by RBI.
- Penalty for contravention of any direction by the authorized person or failure to file any return with RBI up to Rs 10,000 plus Rs 2,000 per day.

Section 12– 19- Penalties/Adjudicating Authorities

- Section 12 - Power of RBI to inspect AP
- Section 13 - Penalties
- Section 14 - Orders of Adjudicating Authority
- Section 15 - Power to compound contravention
- Section 16 - Appointment of Adjudicating Authority
- Section 17 - Appeal to Special Director
- Section 19 - Appeal to Appellate Tribunal

FEMA - Current Account Transactions Rules, 2000

FEMA Current Account Transaction Rules

- Transactions expressly prohibited – Schedule I read with Rule 3
- Transactions which require prior approval of Government of India – Schedule II read with Rule 4
- Transactions which require prior approval of RBI – Schedule III read with Rule 5
- Relaxations from Rule 4 and 5 for many items paid from Resident Foreign Currency (RFC) Account and Exchange Earners Foreign Currency (EEFC) Accounts.



Current Account Transactions

Transactions Expressly Prohibited (Schedule I read with Rule 3)

1. Remittance out of lottery winnings;
2. Remittance of income from racing / riding or any other hobby;
3. Remittance for purchase of lottery tickets, banned/prescribed products;
4. Payment of commission on exports made towards equity investment in Joint Venture / Wholly Owned Subsidiary abroad of Indian companies;
5. Remittance of dividend by any company where dividend balancing is applicable;
6. Payment of commission on exports under Rupee state credit route, except commission up to 10 percent of invoice value of exports of tea and tobacco;
7. Payment related to 'Call Back Services' of telephones;
8. Remittance of interest income on funds held in Non – Resident Special Rupee (Account) Scheme.

Prior approval of Government of India – (Schedule II read with Rule 4)

1. Cultural Tours
2. Advertisement in foreign print media exceeding USD 10,000 except for promotion of tourism, foreign investments and international bidding
3. Remittance of freight of vessel chartered by a Public Sector Unit
4. Payment for import by a Government Department on C.I.F. basis
5. Multi- modal transport operators making remittance to their agents abroad
6. Remittance of hiring charges of transponders by TV channels, Internet service providers
7. Remittance of container detention charges exceeding the rate prescribed
8. Remittance of prize money / sponsorship of sports activity abroad exceeding USD 1,00,000 by person other than International / National / State Level sports bodies
9. Remittance for membership of P & I club

Current Account Transactions – Illustrative Transactions

--Schedule III read with Rule 5

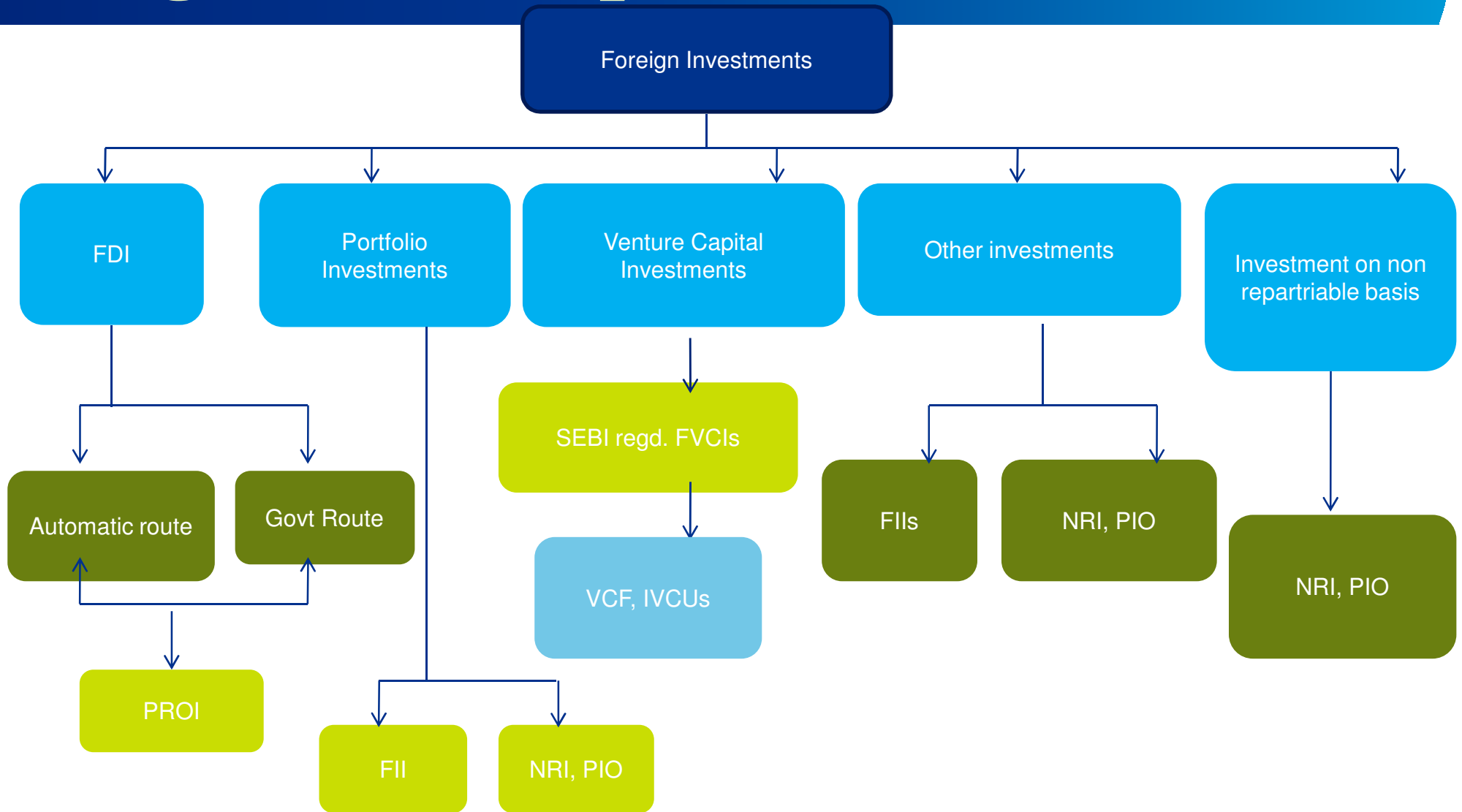
Sr. No.	Transaction	Limits without any RBI approval
1	Private Visit (except Nepal & Bhutan)	USD 10,000 per Financial Year (FY)
2	Gift Remittance	USD 5000 per FY per remitter or donor *
3	Donations	USD 5000 per donor*
2	Exchange facilities for employment abroad	USD 100,000
3	Medical Treatment abroad	Estimate from doctor in India or doctor / hospital abroad
4	Consultancy services	<ul style="list-style-type: none"> ▪ For Infrastructure Projects - USD 10,000,000 per project ▪ For other services – USD 1,000,000 per project
5	Re-imburement of pre-incorporation expenses	Exceeding higher of: <ul style="list-style-type: none"> ▪ USD 1,00,000 ▪ 5 % of investment brought into India

** Remittance of gift and donation are subsumed under the LRS scheme*




FOREIGN DIRECT INVESTMENT

Diagrammatic presentation



CHAPTER IV CONTRAVENTION AND PENALTIES

13. Penalties.-(1) If any person contravenes any provision 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 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 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 during which the contravention continues



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