

COMPREHENSIVE OVERVIEW OF FEMA REMITTANCES, INVESTMENT FACILITIES, AND PREVENTION OF MONEY LAUNDERING ACT (PMLA) : GUIDANCE FOR CHARTERED ACCOUNTANTS

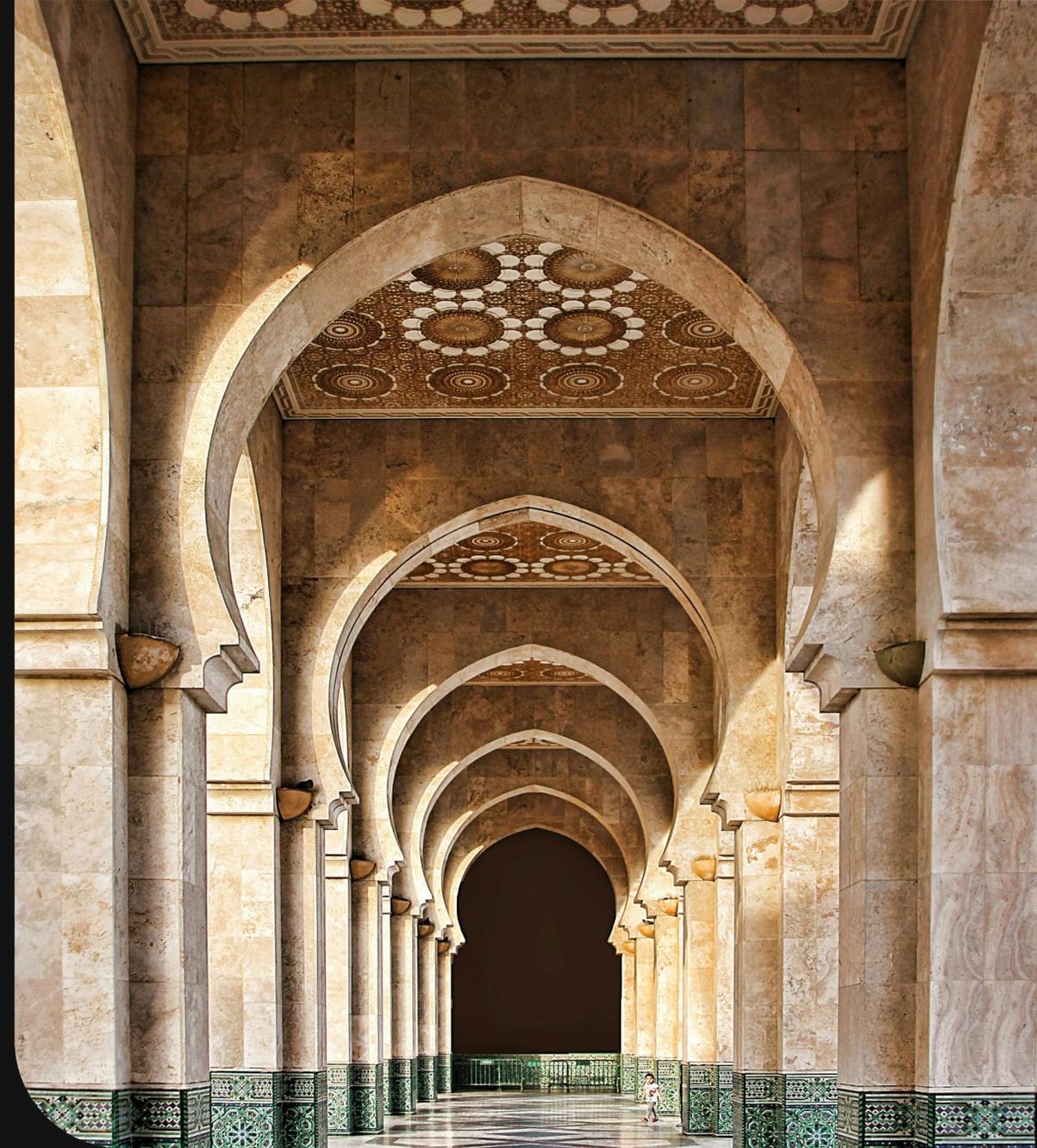
Regulatory frameworks and compliance
for financial professionals

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AGENDA OVERVIEW

- Fundamentals of FEMA for Chartered Accountants
- Remittance and Investment Facilities for Non-Residents and Residents
- Liberalised Remittance Scheme (LRS): Provisions and Practice
- Prevention of Money Laundering Act (PMLA): Implications and Safeguards

FUNDAMENTALS OF FEMA FOR CHARTERED ACCOUNTANTS



OVERVIEW OF FEMA, 1999

- Regulation of Cross-Border Transactions
 - FEMA regulates cross-border financial transactions to facilitate smooth external trade and payments.
- Promotion of Foreign Exchange Market
 - It promotes orderly development and maintenance of the foreign exchange market in India.
- Modernizing Exchange Control
 - FEMA replaced FERA to modernize India's exchange control framework for better financial regulation.



KEY OBJECTIVES AND SCOPE OF FEMA

Regulation of Cross-Border Transactions

- FEMA regulates cross-border financial transactions to facilitate smooth external trade and payments.

Promotion of Foreign Exchange Market

- It promotes orderly development and maintenance of the foreign exchange market in India.

Modernizing Exchange Control

- FEMA replaced FERA to modernize India's exchange control framework for better financial regulation.



FEMA Classifies Foreign Exchange Activities

The Following Activities have been classified under FEMA.

Section 3 – Dealing in Foreign Exchange

- Regulates foreign exchange dealings,
- Ensuring only authorised methods are used.

Section 4 – Holding of Foreign Exchange

- Restrictions apply on holding foreign currency or assets abroad unless specifically permitted.

Section 5 – Current Account Transactions

- Covers routine transactions such as:
 - Trade payments
 - Interest/loan payments
 - Travel
 - Education
 - Service payments
- These are generally permitted unless restricted.

Section 6 – Capital Account Transactions

- Covers transactions that alter assets or liabilities of residents/non-residents.
- Important provisions:
 - RBI may specify permissible debt instruments.
 - Central Government may prescribe permissible non-debt instruments.

Section 7 & 8 – Export, Realisation & Repatriation

- Exporters must realise and repatriate foreign exchange earnings to India within RBI-prescribed timelines.

Instruments Available for Foreign Investment

Non-Debt Instruments

- Equity shares (listed/unlisted)
- LLP capital contributions
- AIF/REIT/InvIT units
- Equity-oriented MF units
- Junior-most tranche of securitisation
- Immovable property acquisition
- Depository receipts against equity instruments

Debt Instruments

- Government bonds
- Corporate bond
- All non-equity tranches of securitisation
- Borrowings
- Debt-based depository receipts etc

ROLE OF CHARTERED ACCOUNTANTS IN FEMA COMPLIANCE



Advisory on FEMA Regulations

Chartered Accountants advise clients comprehensively on FEMA rules to ensure regulatory adherence and risk mitigation.

Documentation Accuracy

Ensuring precise and accurate documentation is critical for FEMA compliance and smooth approval processes.

Facilitating Approvals

CAs facilitate necessary approvals by liaising with regulatory bodies and streamlining compliance procedures.

Maintaining Reporting Compliance

Maintaining compliance with FEMA reporting obligations helps minimize legal risks and penalties for clients.



DEFINING RESIDENTS AND NON-RESIDENTS UNDER FEMA

Classification Criteria

Residents and non-residents are defined by duration of stay and purpose of visit under FEMA regulations.

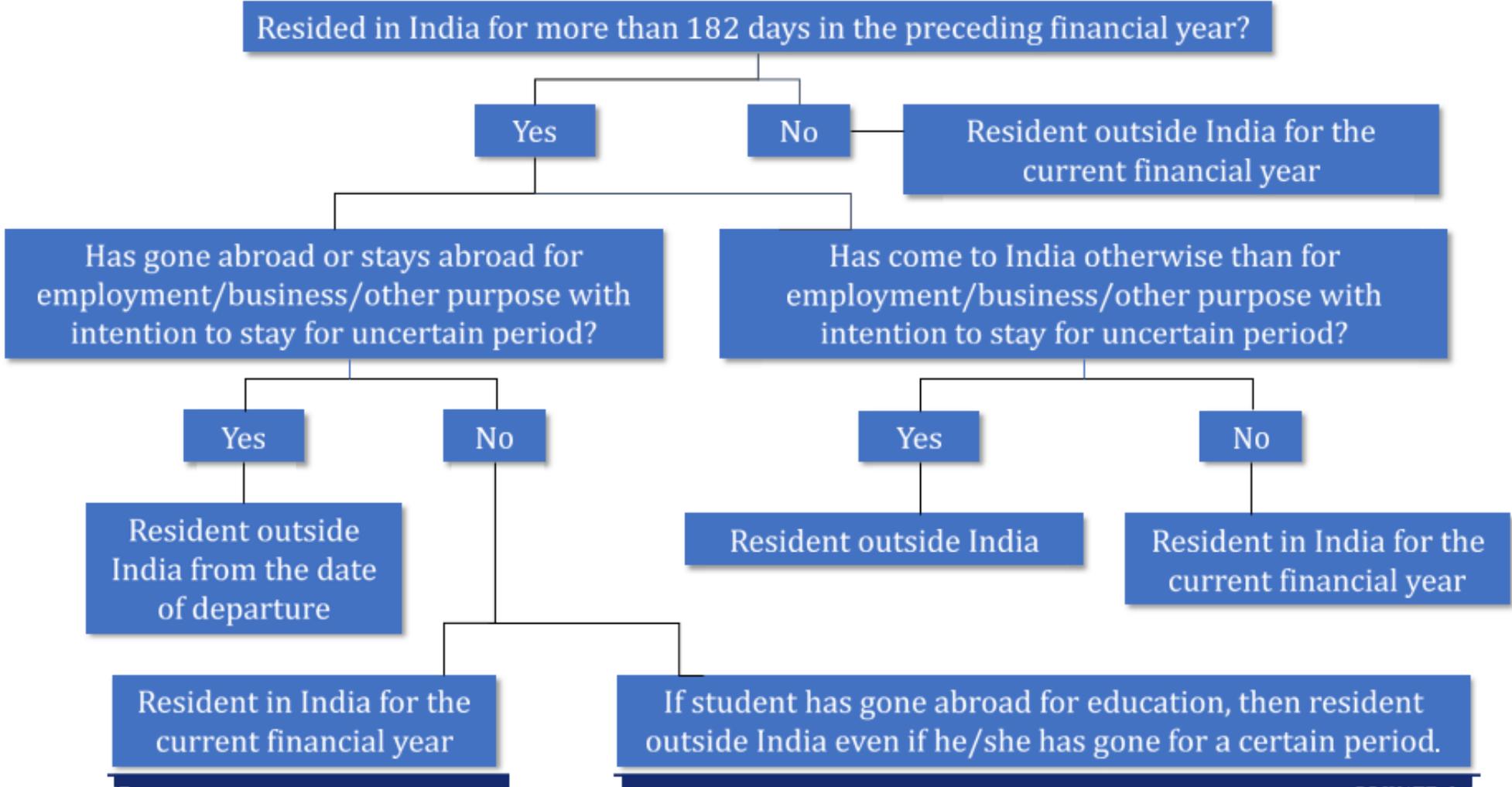
Impact on Financial Eligibility

Classification affects eligibility for remittance and investment facilities under FEMA guidelines.

Importance of Accurate Classification

Accurate client classification ensures compliance and access to correct facilities under FEMA.

RESIDENTIAL STATUS- INDIVIDUAL





PERSON RESIDENT IN INDIA

- A person is resident if he stays in India for more than 182 days in the preceding financial year, excluding those who have left India for employment, business, or indefinite stay abroad.
- Includes:
 - Corporates registered in India
 - Indian offices of foreign entities
 - Overseas offices controlled by residents.



PERSON RESIDENT IN 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. (B) A person who has **come to or stays in India**, in either case, otherwise than –
 - (a) for or on taking up **employment in India**, or
 - (b) for carrying on in India a **business or vocation** in India, or
 - (c) for any other purpose, in such circumstances as would indicate his **intention to stay in India** for an uncertain period;

- (ii) Any person or body corporate registered or incorporated in India,**
- (iii) An office, branch or agency in India owned or controlled by a PROI,**
- (iv) An office, branch or agency outside India owned or controlled by a person resident in India;**

NON-RESIDENT INDIANS



The term "**non-resident Indian**" has been defined under various regulations issued by the RBI. Each regulation defines the term in a certain manner considering its distinct purposes.

In general, **NRI means a person resident outside India who is a citizen of India or a person of Indian origin.**

The above definition has been given under the regulations "**2**" of the following Regulations:

- i. FEM (Transfer or Issue of any Foreign Security) Regulations, 2004
- ii. FEM Act, 1999
- iii. FEM (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000
- iv. FEM (Borrowing and Lending in Rupees) Regulations, 2000
- v. FEM (Deposit) Regulations, 2000
- vi. FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000
- vii. FEM (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000

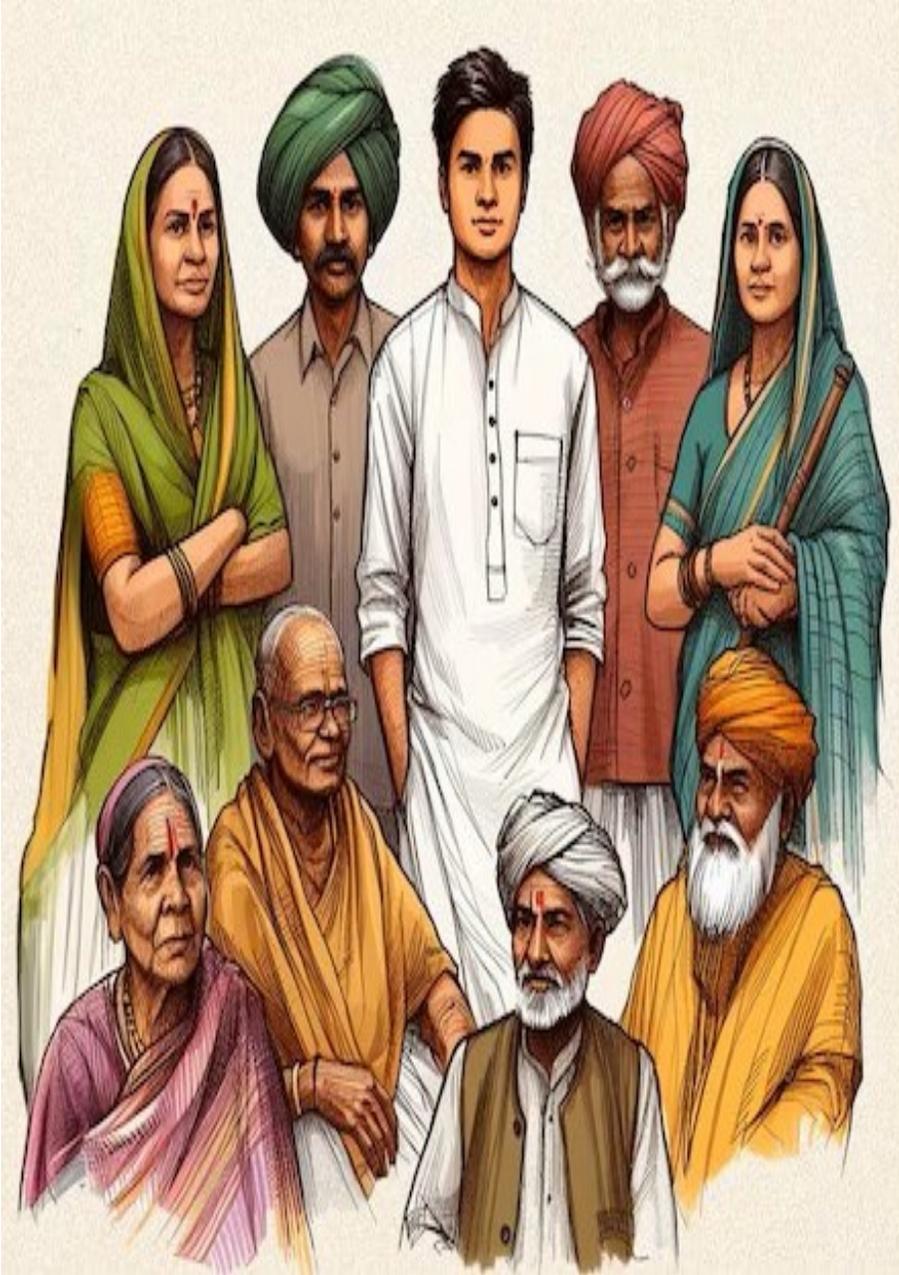
However, according to the regulation 2 of the **FEM (Remittance of Assets) Regulations, 2000**, a non-resident Indian means a person resident outside India who is a citizen of India.

Person Not Permanently Resident In India

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 **doesn't exceed 3 years** is referred to as a "person who is not permanently resident" under the explanations to Regulations 4 of the FEM (Transfer or Issue of any Foreign Security) Regulations, 2000 and FEM (Possession and Retention of Foreign Currency) Regulations, 2000 and Regulation 5 of the FEM (Remittance of Assets) Regulations, 2000.

The definition has been given for certain specific regulations issued by the RBI such as those on purchase and sale of securities in foreign currency.

Such definition is relevant only to the extent of the specific regulation and does not apply to other provisions of the law.



PERSON OF INDIAN ORIGIN

A person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

- a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 or
- b) Who belonged to a territory that became part of India after the 15th day of August 1947; or
- c) Who is a child or a grandchild or a great-grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
- d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

Explanation: for the purpose of this sub-regulation, the expression '*Person of Indian Origin*' includes an '*Overseas Citizen of India*' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955

OVERSEAS CITIZEN OF INDIA (OCI)



A foreign national, –

- i. who was a citizen of India at the time of, or at any time after 26th January, 1950; or
- ii. who was eligible to become a citizen of India on 26th January, 1950; or
- iii. who belonged to a territory that became part of India after 15th August, 1947; or
- iv. who is a child or a grandchild or a great grandchild of such a citizen; or
- v. who is a minor child of such persons mentioned above; or
- vi. who is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India- is eligible for registration as **OCI cardholder**.



OVERSEAS CITIZEN OF INDIA (OCI)

Besides, spouse of foreign origin of a **citizen of India** or spouse of foreign origin of an **OCI Cardholder** and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application is also eligible for registration as OCI cardholder.

However, no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Govt may, by notification in the Official Gazette, specify, shall be eligible for registration as an OCI Cardholder.

Foreign nationals cannot apply for OCI in India while on Tourist Visa, Missionary Visa and Mountaineering Visa. Moreover, the foreigner has to be ordinarily resident of India to be eligible to apply for OCI registration in India.



Non-Resident Indian (NRI)

- NRI is defined under FEMA as a person resident outside India who is either a citizen of India or is a Person of Indian Origin (PIO).
- PIO means a citizen of any country other than Bangladesh or Pakistan,
 1. who at any time held Indian Passport, or
 2. who or either of whose parents or any of the grand parents was a citizen of India under Constitution of India or under Indian Citizenship Act, 1955, or
 3. who is spouse of an Indian citizen or spouse of person referred to in 1 and 2 above.

Type of Accounts

Accounts Held In India By A Person Resident Outside India

Non-Resident (External) Account (**NRE account**),

Foreign Currency (Non-Resident) Account (**FCNR(B) account**)

Non-Resident (Ordinary) Account Scheme, (**NRO account**)

Special Non-Resident Rupee Account (**SNRR account**),

Foreign Currency Accounts That Can Be Held In India

Exchange Earner's Foreign Currency (**EEFC**) Account

Resident Foreign Currency (**RFC**) Account

Resident Foreign Currency (Domestic) **RFC(D)** Account

Diamond Dollar Account

TYPES OF ACCOUNTS

PARTICULARS	NRE ACCOUNT	FCNR(B) ACCOUNT	NRO ACCOUNT
Who can open an account	<ul style="list-style-type: none"> • NRIs and PIOs (Individual of Pakistan & Bangladesh require prior approval of RBI) 	<ul style="list-style-type: none"> • NRIs and PIOs (Individual of Pakistan & Bangladesh require prior approval of RBI) 	<ul style="list-style-type: none"> • Any person resident outside India (including NRI/PIO) (Individual/Entities of Pakistan & Bangladesh require prior approval of RBI)
Who is authorized to open	<ul style="list-style-type: none"> • Authorised Dealer • Authorised Banks (including co-op bank other than AD) 	<ul style="list-style-type: none"> • Authorised Dealer 	<ul style="list-style-type: none"> • Authorised Dealer • Authorised Banks (including coop bank other than AD)
Currency	<ul style="list-style-type: none"> • INR 	<ul style="list-style-type: none"> • Forex (Any foreign currency which is freely convertible) 	<ul style="list-style-type: none"> • INR
Type of Account	<ul style="list-style-type: none"> • Savings • Current • Recurring/Fixed Deposit 	<ul style="list-style-type: none"> • Term Deposit only 	<ul style="list-style-type: none"> • Savings • Current • Recurring/Fixed Deposit
Period for fixed deposits	<ul style="list-style-type: none"> • From 1 to 3 years (However, banks are allowed to accept NRE deposits > 3 years from their AL point of view) 	<ul style="list-style-type: none"> • Between 1 to 5 years 	<ul style="list-style-type: none"> • As applicable to resident accounts (eg: even 6 months)
Rate of Interest	<ul style="list-style-type: none"> • As per guidelines issued by the Reserve Bank of India from time to time 		

TYPES OF ACCOUNTS

PARTICULARS	NRE ACCOUNT	FCNR(B) ACCOUNT	NRO ACCOUNT
Repatriability	Repatriable	Repatriable	<ul style="list-style-type: none"> • Not Repatriable except for all current income. • Individual: 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. • Entities: RBI permission
Taxability	Exempt	Exempt	Taxable
Joint account	Jointly with two or more NRIs/ PIOs <ul style="list-style-type: none"> • Jointly with 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. 		
Change in residential status from Non-resident to resident	<ul style="list-style-type: none"> • NRE accounts should be designated as resident accounts or • Funds held in these accounts may be transferred to the RFC accounts immediately upon change of residential status 	<ul style="list-style-type: none"> • FCNR (B) deposits allowed to continue till maturity at the contracted rate of interest • AD should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account 	<ul style="list-style-type: none"> • From PROI to PRI: Immediately designated as resident accounts • From PRI to PROI: Immediately designated as NRO account

NRE & FCNR (B) ACCOUNT

• Permitted Debits

- a) Local disbursements
- b) Remittances outside India
- c) Transfer to NRE/ FCNR(B) accounts of the account holder or any other person eligible to maintain such account
- d) Investment in shares/ securities/ commercial paper of an Indian company or for purchase of immovable property in India provided such investment/ purchase is covered by the regulations made, or the general/ special permission granted by RBI

CA to Certify that Money is Tax Paid (15CB)



• Permitted Credits

- a) Inward remittances from o/s India thru banking channels
- b) Personal cheques of FCA outside India / travellers cheques / bank drafts deposited by the account holder in person during his temporary visit to India
- c) Tender of foreign currency/bank notes during his temporary visit to India
- d) Transfers from other NRE/ FCNR(B) accounts
- e) Interest accruing on the funds held in the account
- f) Funds can be transferred to NRE account within this USD 1 Million facility (from NRO Account)

NRO ACCOUNT

• Permitted Debits

- a) All local payments in rupees including payments for investments subject to compliance with the relevant regulations made by RBI
- b) Remittance outside India of current income in India of the account holder net of applicable taxes
- c) Transfers to other NRO accounts (whether of account holder or other eligible person?)
- d) Balances in the NRO account cannot be repatriated abroad except by NRIs and PIOs up to USD 1 million, subject to conditions (Limit of \$1 million over and above current income repatriation)
- e) Funds can be transferred to NRE account within this USD 1 Million facility

• Permitted Credits

- a) Inward remittances from o/s India thru banking channels
- b) Tender of any permitted currency during his temporary visit to India
- c) Legitimate dues in India of the account holder
- d) Transfers from other NRO accounts
- e) Rupee gift/loan made by a resident to a NRI / PIO relative within the limits prescribed under LRS

WHO CAN INVEST UNDER FOREIGN INVESTMENT?

Schedule I – Foreign Direct Investment (FDI) in Indian companies

Schedule II – Foreign Portfolio Investment (FPI) in listed companies

Schedule III – Non-Resident Indian (NRI)/Overseas Citizen of India (OCI) investment (repatriation)

Schedule IV – Non-Resident Indian (NRI)/Overseas Citizen of India (OCI) non-repatriation

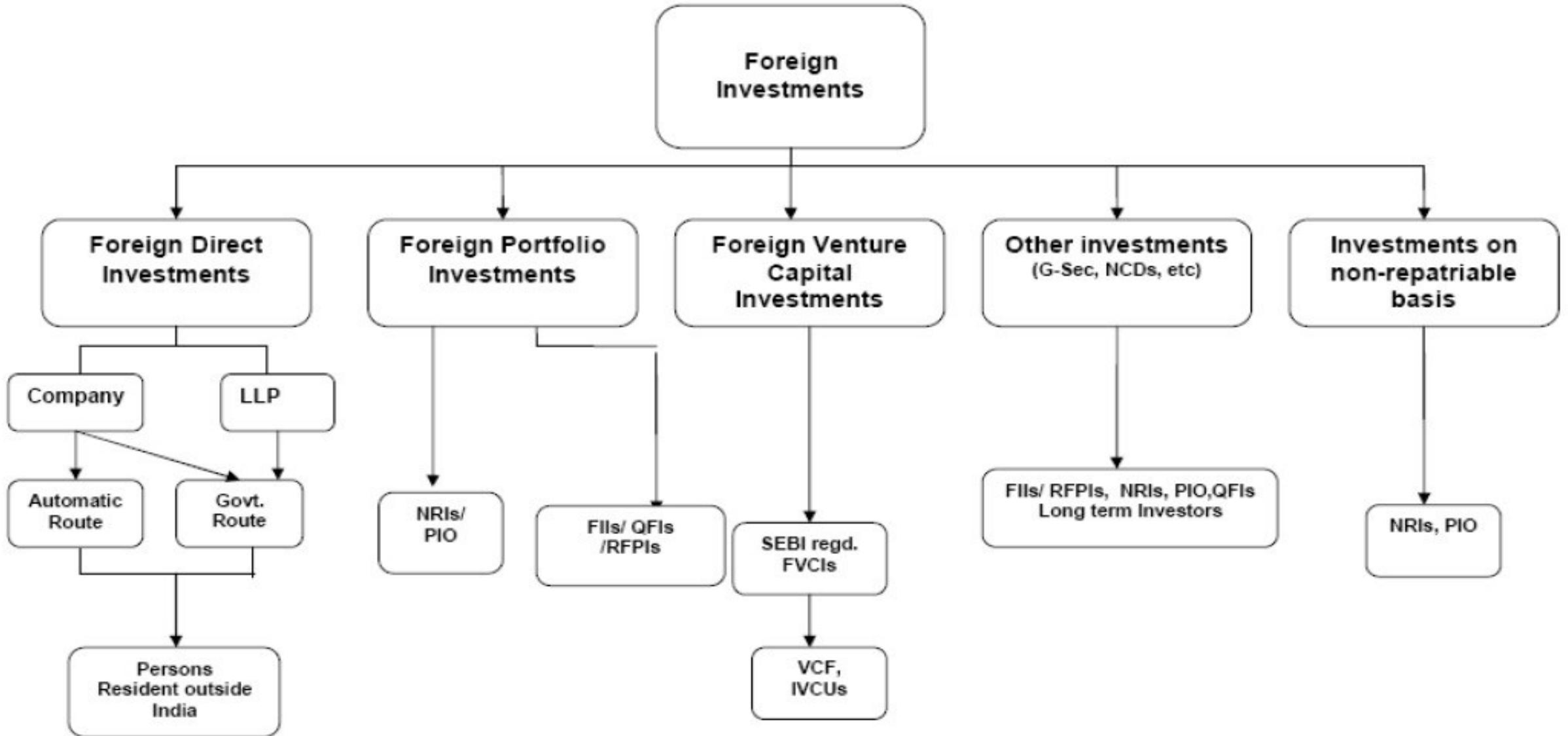
Schedule VI – LLP investment

Schedule VII – Foreign Venture Capital Investor (FVCI)

Schedule VIII – Investment Vehicles

Schedule IX/X – Depository receipts / IDRs.

FOREIGN INVESTMENT OVERVIEW



FDI – AUTOMATIC ROUTE

Majority of the sectors under the Automatic route. Illustrative list where **100% FDI is permitted*** -

AGRICULTURE SECTOR	MANUFACTURING / TRADING ACTIVITIES	SERVICE SECTOR
Floriculture & Horticulture, Animal Husbandry,	Cash and Carry Wholesale Trading	Greenfield Airport Projects
MINING	E-commerce B to B activities Market place model of e-commerce – Amendment 9th March , 2017	Existing airport projects
Exploration & mining of metal & non metal ores	Non Banking Financial Companies- Minimum Capitalisation	Helicopter Services
Coal & Lignite Mining	Greenfield pharmaceuticals	Construction Development
Mining & Mining Separation of Titanium		Industrial Parks
Petroleum & Natural Gas		R&M of Civil Aviation

WHO CANNOT INVEST?

Citizens/entities
of Pakistan and
Bangladesh

Restricted; government route only

Promotion of
Foreign
Exchange Market

- Lottery, gambling, betting
- Chit funds, nidhi companies
- Cigarette manufacturing
- Real estate business (excluding certain exceptions)
- Atomic energy, railways, defence-related activities, etc.

PROHIBITED INVESTMENTS

Following Investments are Prohibited under FEMA:-

- Lottery Business;
- Chit Fund Business;
- Gambling and Betting;
- Nidhi Company;
- Trading in Transferable Development Rights;
- Activities not open to Private Sector;
- Real Estate, Buy/Sell or Construction of Farm Houses;
- Manufacture of Cigars, Cigarettes.

FDI IN INVESTMENT VEHICLES (SCHEDULE VIII)

Investment Vehicles include AIFs, REITs, InvITs, and certain mutual funds.

Key points:

PROI (other than Pakistan/Bangladesh residents) may invest.

Downstream investments are treated as indirect foreign investment if the sponsor/manager is foreign-owned or controlled.

Cat-III AIFs with foreign investment can invest only in instruments eligible for FPIs.

TRANSFER OF EQUITY INSTRUMENTS

Permitted transfer modes vary based on investor type:

Person Resident Outside India (PROI)

- Sale/gift to another PROI
- Sale/gift to PRII
- Sale on stock exchange.

Non-Resident Indian (NRI)/Overseas Citizen of India (OCI)

- Separate rules for repatriation and non-repatriation bases.
- Gift to PROI requires RBI approval.

TRANSFER OF EQUITY INSTRUMENTS (CONTD.)

Permitted transfer modes vary based on investor type:

Person Resident in India (PRII)

- Sale to Person Resident Outside India (PROI)
- Gift to PROI with conditions: -
 - ❖ Eligible Person
 - ❖ Less than 5% of total paid-up equity (fully diluted basis); or
 - ❖ Less than 5% of paid-up value of each series of debentures or preference shares or share warrants.
 - ❖ Relative relationship
 - ❖ USD 50,000 annual gift cap.

REMITTANCE OF SALE PROCEEDS

Rules depend on the investment schedule. Examples:

FDI (Schedule I): Credit to Non-Resident External (NRE)/Foreign Currency Non-Resident (FCNR(B))

FPI (Schedule II): Remittance abroad or credit to Special Non-Resident Rupee (SNRR) account

Schedule III: Credit to NRE (PIS)

Schedule IV: Only NRO account; no repatriation

LLP (Schedule VI): NRE/FCNR(B) allowed.

AD Bank can remit proceeds only if:

Security held on repatriation basis or within LRS Limits

Pricing guidelines complied with.

Tax on sale of assets paid

REPORTING REQUIREMENTS

Transfers must be reported through Foreign Currency Transfer of Shares (FC-TRS) in cases involving:

- PROI ↔ PRII transfers
- Participating interest in oil fields
- Buyback/merger/demerger transactions.

Timeline: Within 60 days of transfer or receipt/remittance.

Onus: Resident party involved in the transaction.



REPATRIATION VS NON-REPATRIATION BASIS

Feature	Repatriation Basis	Non-Repatriation Basis
Fund Remittance	Freely remittable abroad	Not freely remittable
Bank Account	Linked to an NRE account (Non-Resident External).	Linked to an NRO account (Non-Resident Ordinary).
Liquidity	High liquidity and flexibility for international transfers.	Lower liquidity, as funds are bound to the local economy.
Tax	Treaty benefits often apply	Local taxation applies
Risk	Lower risk, as funds can be moved in response to economic changes.	Higher risk if the local economy is unstable, as funds are tied to local currency and market conditions.

REMITTANCE FACILITIES FOR NON- RESIDENTS AND RESIDENTS





Remittances under FEMA

- Remittance means sending money abroad/inward through authorised channels.
- **Outward Remittance** – For imports, education, medical expenses, investments.
- **Inward Remittance** – From NRIs, foreign clients, etc.
- All remittances must be through Authorised Dealer Banks.

Liberalised Remittance Scheme (LRS)

As per the Foreign Exchange Management Act (FEMA), the Liberalised Remittance Scheme (LRS) allows any resident individual to remit up to **USD 250,000** per financial year for any permissible current or capital account transactions.

Permitted Uses:

- Education, medical treatment
- Travel (business/personal)
- Gifts & donations
- Investments abroad (equity, MFs, bonds)
- Real estate
- Maintenance of relatives

Restrictions:

- Lottery/gambling
- Margin trading, forex trading
- FATF-non-compliant jurisdictions
- Resident-to-resident gifting in foreign currency.

Documentation Required

- PAN
- KYC
- Form A2
- Identity/address proof
- Purpose-specific documents
- Income proof
- Bank form

Overseas Direct Investment (ODI)

Who Can Invest?

- Indian Party (company/LLP/partnership/body corporate), or
- Resident Individuals (with restrictions)

Prohibited Sectors

- Real estate business
- Banking

ODI Limit

- Up to 400% of net worth using AD bank drawal, EEFC balance, or ADR/GDR proceeds

Conditions for ODI

JV/WOS must conduct bonafide business

Indian Party not on RBI caution list

All transactions routed through same AD bank

Destination country must not be FATF blacklisted.

Overseas Direct Investment (ODI) - Reporting Obligations

At the time of investment

Wait for the Unique Identification Number (UIN):

- After the documents are verified, the RBI will issue a UIN for the overseas investment. – This is issued after Filing Form A2 along with other required document by AD Bank

Submit Form Form FC:

- Within 30 days of the investment, file these forms with your Authorized Dealer (AD) Bank, which will forward them to the Reserve Bank of India (RBI).

Provide necessary documents:

- Include a board resolution, proof of remittance, auditor's certificate, and valuation report.

Overseas Direct Investment (ODI) - Reporting Obligations

Other Reporting Requirements

Investment proof:

- Submit a certified copy of the share certificate to your AD Bank within six months of the remittance date.

Repatriation:

- You must repatriate all dues from the overseas entity (like dividends or royalties) within 90 days of them becoming due.

Penalties:

- Non-compliance can lead to fines and other legal actions from the RBI under the Foreign Exchange Management Act (FEMA).

Overseas Direct Investment (ODI) - Reporting Obligations

Ongoing Reporting

Annual Performance Report (APR): (For All)

File with your AD Bank for each Joint Venture (JV) or Wholly Owned Subsidiary (WOS).

Due date: December 31st of each year, following the accounting year of the foreign entity.

Includes: Audited financial statements of the foreign entity, management declarations, and a certification from a chartered accountant.

Annual Return on Foreign Liabilities and Assets (FLA): (For Corporate)

Submit the FLA return to the RBI via its FLAIR portal.

Due date: July 15th of each year.

Applies to: All Indian entities that have made or received foreign investment in the previous financial year.

Disinvestment Conditions

- Sale allowed without RBI approval if:
 - Listed JV/WOS sold on exchange
 - Unlisted entity sale at fair value
 - No outstanding dues (dividends, royalties, export receivables)
 - JV/WOS at least one year old and APR filed.



PREVENTION OF MONEY LAUNDERING ACT (PMLA)

Implications and Safeguards

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WHAT IS MONEY-LAUNDERING ?

- “Process by which illegally obtained funds are given the appearance of being obtained legally”

-Justice N.V Ramana (Chief Justice, High Court)

- Activities often done by terrorists and drug traffickers and have cross-border implications.
- Essence of the offence lies in process of converting ill gotten money of crimes and projecting the same as untainted property.



OBJECTIVES AND MAJOR PROVISIONS OF PMLA

Legal Framework for Money Laundering

PMLA provides a structured legal framework to detect and prosecute money laundering offenses effectively.

Due Diligence Requirements

The Act mandates intermediaries to perform due diligence to identify and verify customers and transactions.

Record-Keeping and Reporting

Intermediaries must keep detailed records and report suspicious transactions to authorities promptly.

Prevention of Money Laundering Act, 2002 (PMLA)

- The Prevention of Money Laundering Act, 2002 (PMLA) is India's primary legislation to combat money laundering and related financial crimes.
- It establishes a comprehensive legal and institutional framework for the detection, investigation, and prosecution of money laundering offenses, including the attachment and confiscation of property obtained through such crimes.

Framework of the Act



PMLA aims to prevent money laundering, confiscate illicit property, and protect the financial system.

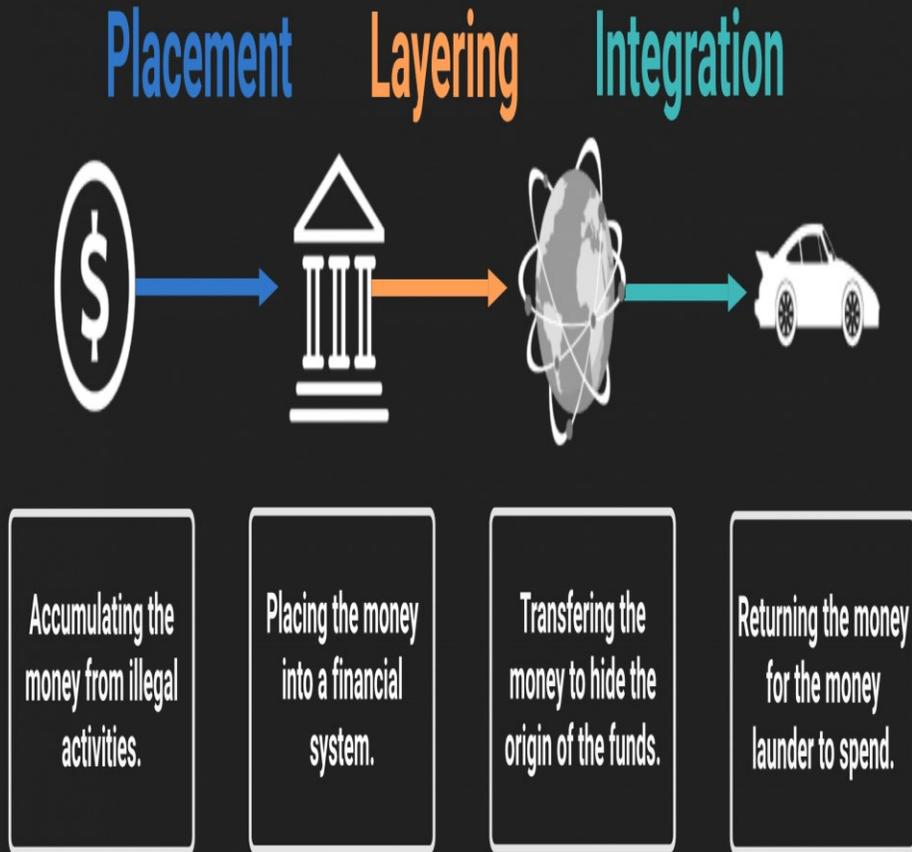
It empowers ED and RBI to monitor, investigate, and enforce AML compliance.

Covers prevention, investigation, attachment, adjudication, prosecution, and international cooperation.

Establishes Special Courts and Appellate Tribunals for speedy trials and appeals.

Requires banks and financial institutions to maintain detailed client and transaction records to detect suspicious activities.

Money laundering stages



HOW DOES MONEY-LAUNDERING TAKE PLACE

- Usually, the process of Money Laundering goes through the following three stages :
 - **Placement:-** The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial system.
 - **Layering:-** The Money Launderer typically engages in series of continuous conversions or movements of funds, within financial or banking system by way of numerous accounts, to hide true origin and distance them from their criminal source.
 - **Integration:-** In the third stage, the Launderer moves the funds to reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income.

Penal Provisions under PMLA

PMLA



Section 3 defines money laundering as involvement – direct or indirect – in any activity related to proceeds of crime, including concealment, possession, acquisition, use, or projecting them as clean assets.

Section 4 provides punishment of 3 to 7 years of rigorous imprisonment, extendable to 10 years for certain serious scheduled offences.

The Enforcement Directorate (ED) has powers to attach, freeze, and confiscate properties linked to money laundering.

Offences under PMLA are cognizable and non-bailable, allowing authorities to arrest without a warrant under specified conditions.

SECTION 3- OFFENCE OF MONEY-LAUNDERING

- Whosoever directly or indirectly attempts to
 - indulge or
 - knowingly assists or
 - knowingly is a party or
 - is actually involved in any process or activity connected

[proceeds of crime including its concealment, possession, acquisition or use and **projecting or claiming**] it as **untainted property** shall be guilty of offence of money-laundering.



ESSENTIAL INGREDIENTS OF SECTION 3

Directly or
Indirectly;

Attempts to
indulge;

Knowingly
assists or
knowingly is a
party;

In any process or
activity;

Proceeds of
Crime;

Concealment;

Possession;

Acquisition;

Projecting or
claiming;

Untainted
Property;

Money-
laundering

SUSPICIOUS TRANSACTIONS



Specifies a form of transaction referred to clause (h) of the Rules, including attempted transactions, whether or not made in cash which, to a person acting in good faith:-

- Gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved;
- appears to be made in circumstances of unusual or unjustified complexity;
- Appears to have no economic rationale or bonafide purpose;
- Gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.

Every reporting entity shall furnish to FIU-IND information of all suspicious transactions whether or not made in cash.

PUNISHMENT UNDER THE ACT, 2002

Section 4 prescribes the punishment for Money-Laundering as under:



Rigorous Imprisonment for a term



which shall not be less than 3 years, but



which may extend to 7 years/10 years, and



shall also be liable to fine.

AUTHORITY UNDER THE ACT

Director / Additional Director / Joint Director



Deputy Director



Assistant Director



Officers

POWERS OF THE ENFORCEMENT DIRECTORATE RELATING TO SEARCH, SEIZURE AND ARREST

Search of premises

- **Section 17 gives wide powers of search and seizure** to the investigating agency.
- The investigating agency, has any reason to believe (and such belief should be recorded in writing) the commission of offence under the Prevention of Money-laundering Act, 2002 and possession of proceeds of crime, it can enter and seize property/records etc., make an inventory of the same.
- The seizure memo is required to be signed by two independent witnesses. Whereas this section provides for search of premises, Section 18 provides for search of an individual.



POWERS OF THE ENFORCEMENT DIRECTORATE RELATING TO SEARCH, SEIZURE AND ARREST

Search of person

- Under Section 18 (4) of the Prevention of Money-laundering Act, 2002, the investigating authority, if, has a reason to believe that a person has secreted about his possession, ownership or control, proceeds of crime, in that case the person can be searched.
- Before the search of a person, as per his wish, the authority shall take the said person before a Gazetted officer superior in rank to the authority or a Magistrate within 24 hours excluding the time of journey.
- The property seized has to be forwarded to the adjudicating authority for further orders.



Chartered Accountants as a reporting entity in PMLA

- Chartered accountants (CAs) who engage in specific "designated" financial transactions on behalf of clients are considered reporting entities under the Prevention of Money Laundering Act (PMLA).
- This includes activities like
 - buying/selling immovable property,
 - managing client money or securities, and
 - organizing contributions for companies,
- which requires CAs to
 - verify client identities,
 - maintain transaction records, and
 - report suspicious activities to the authorities.

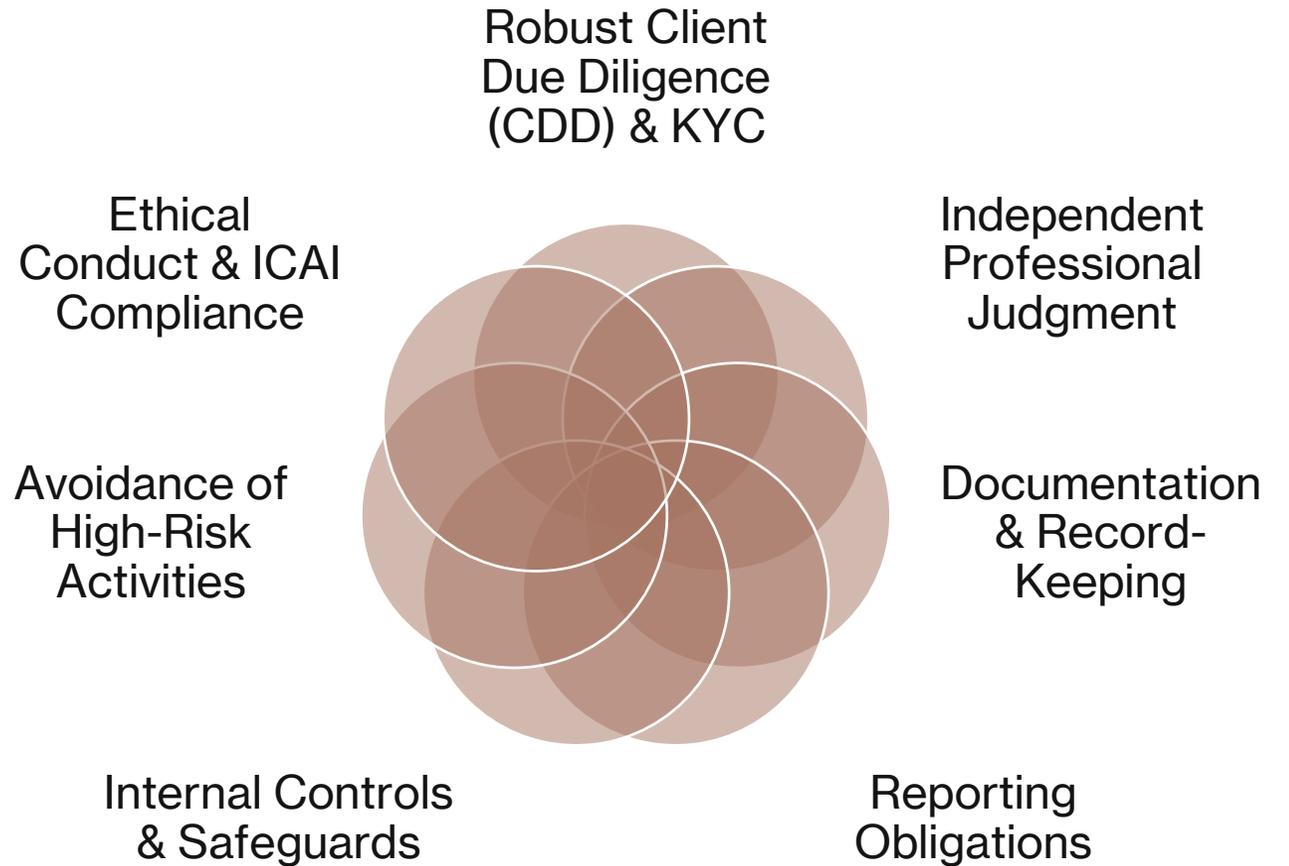


Key obligations for CAs as reporting entities

- **Client Due Diligence (KYC):** Verify the identity of clients and their beneficial owners.
- **Record Keeping:** Maintain records of all transactions for a specified period.
- **Enhanced Due Diligence:** Conduct enhanced due diligence in certain situations, including examining the ownership and financial position of clients.
- **Suspicious Transaction Reporting:** Report any suspicious transactions to the Financial Intelligence Unit (FIU).



Safeguards for Chartered Accountants (CAs) - Key safeguards



GUIDANCE FOR CAS TO AVOID PROSECUTION

Maintain strong internal controls, proper KYC, and regular AML training.

Ensure all staff understand reporting and documentation requirements.

Do not assist in any activity involving proceeds of crime; keep written compliance records.

Seek clarification from regulators on doubtful or high-risk transactions.

Keep complete documentation of due diligence and client communication as per law.

Follow all compliance obligations with professional skepticism to avoid prosecution.

TAKEAWAYS

The PMLA, 2002 provides a holistic legal regime for anti-money laundering, with strict penal provisions for offenders and robust compliance requirements for professionals.

Professionals can safeguard themselves by adhering to due diligence norms, maintaining proper records, technology upgradation, regulatory updates and adoption and fulfilling their obligations as reporting entities under the law.

For this Presentation and Other Presentations & Handbooks by CA. Vaibhav Jain

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