



DAY 01 || Comprehensive Course on Foreign Exchange Management, 1999

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FEMA, 1999

A paradigm shift

- *Facilitating external trade and payment*
- *For promoting the orderly development and maintenance of foreign exchange markets in India*

FEMA, 1999

A paradigm shift

- ✓ *Facilitating external trade and payment*
- ✓ *For promoting the orderly development and maintenance of foreign exchange markets in India*

the Foreign Exchange
Regulation Act, 1947

Foreign Exchange
Management Act, 1999

Foreign Exchange Regulation
Act, 1973

FERA to FEMA

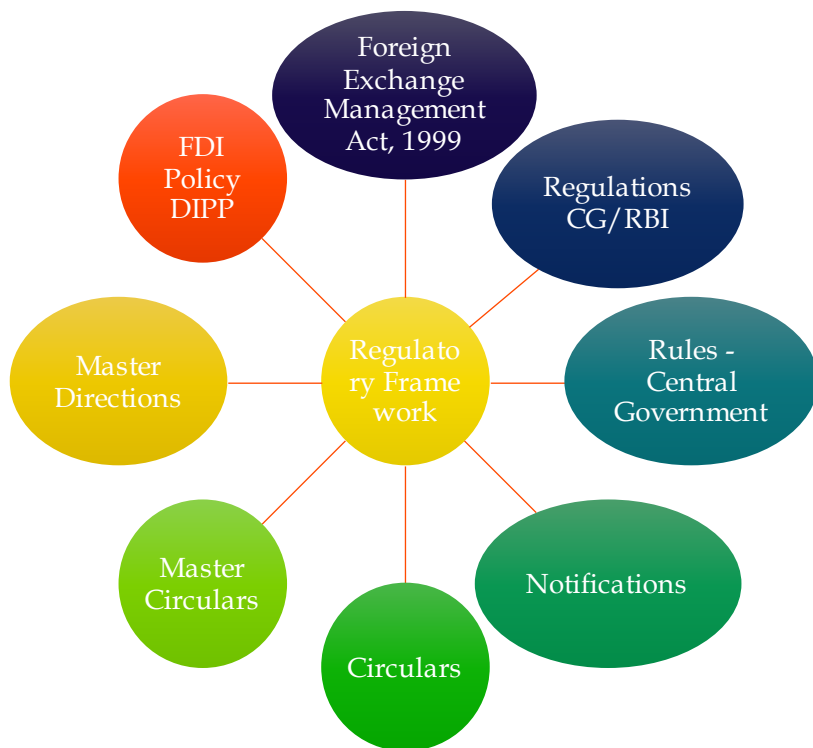
• The Foreign Exchange Regulation Act, 1973 (FERA)

- Criminal offence
- Severe penal provisions
- All acts controlled and regulated
- Applied to Indian Citizens in/outside India and Foreign Citizens in India.
- Blanket powers of search, seizure, imprisonment, etc.
- Presumption of Mens-rea

• The Foreign Exchange Management Act 1999 (FEMA)

- Civil law
- Only specified transactions fully regulated [capital account transactions]
- Citizenship not relevant - Residence criteria emphasized
- Restricted power of search, seizure, etc.
- No presumption of Mens-rea
- Contravention attracts penalty / fine and not imprisonment (except in some cases)
- Provision for compounding

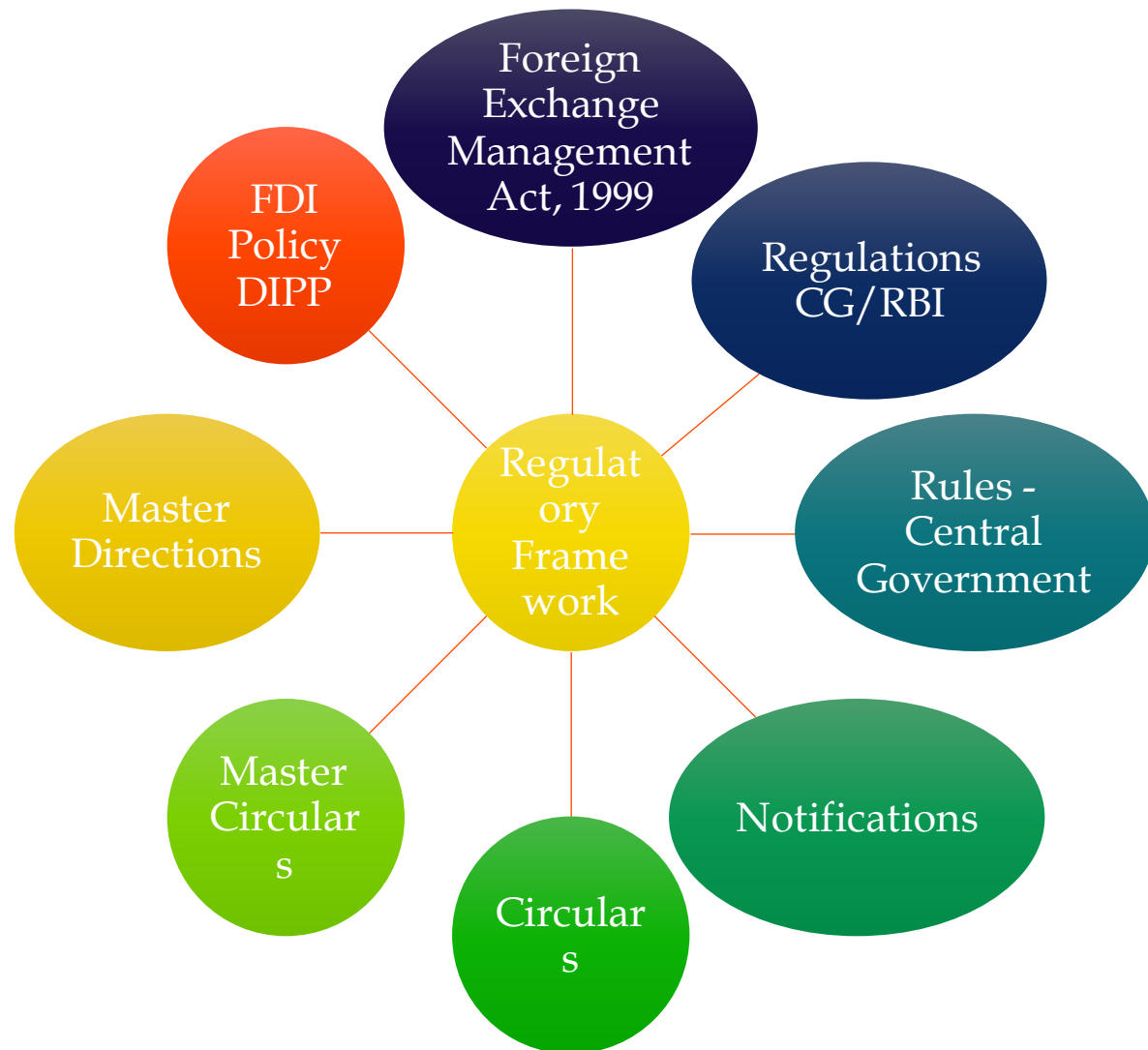
Framework of FEMA || The Act



■ Scheme of the Act

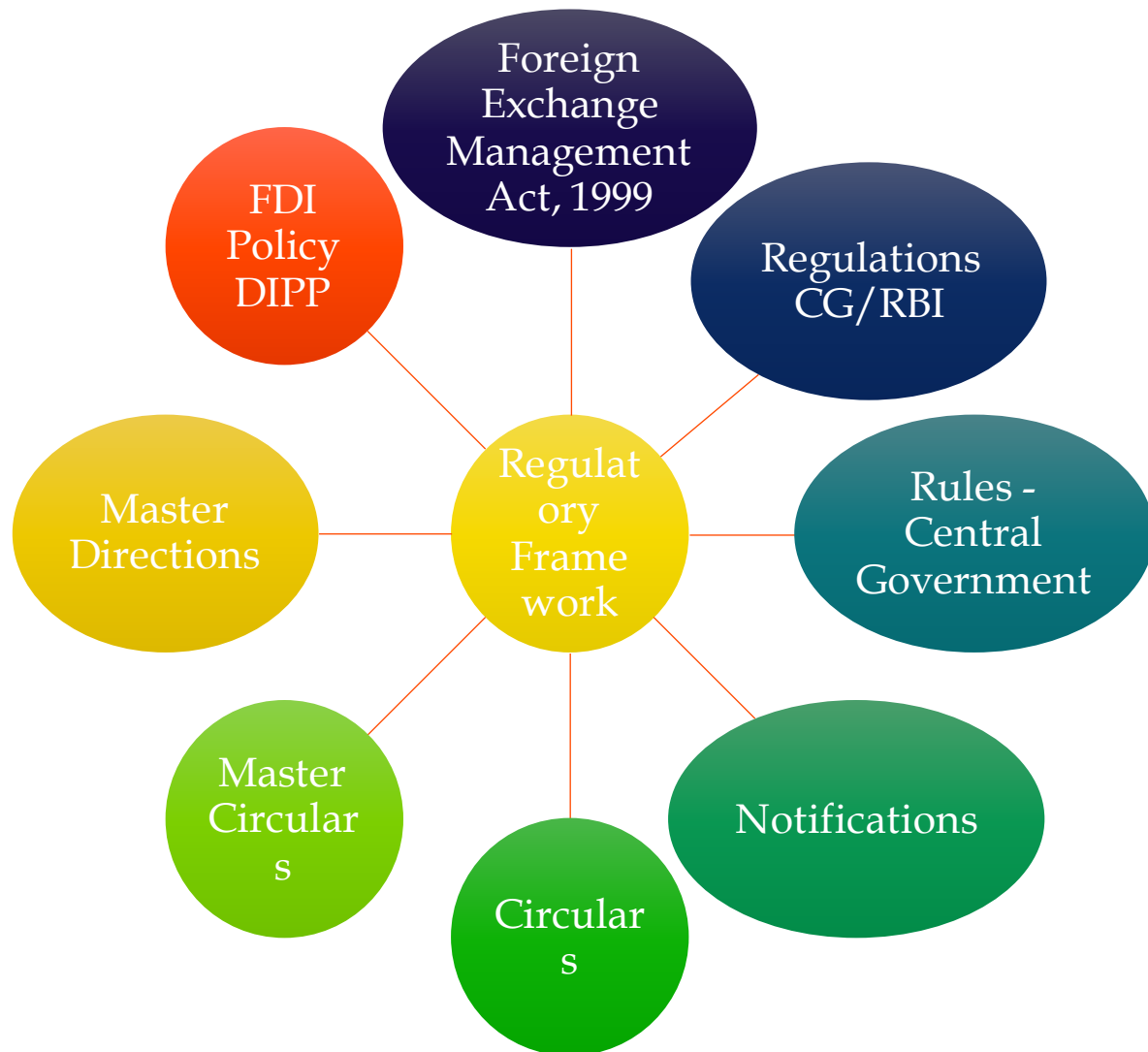
Chapters	Matters	Sections
I	■ Preliminary, Preamble and Definitions	1 to 2
II	■ Regulation and management of Foreign Exchange	3 to 9
III	■ Authorised Person	10 to 12
IV	■ Contravention and Penalties	13 to 15
V	■ Adjudication and procedure for appeal	16 to 35
VI	■ Directorate of Enforcement	36 to 38
VII	■ Miscellaneous Provisions	39 to 49

Framework of FEMA || Notifications



- RBI has initially issued 25 notifications, covering capital account transaction prescribed in section 6(3) & certain miscellaneous provisions
- 15 related to capital account transactions, 1 on export of goods and services and 9 for other regulations
- Since original notifications have undergone many changes, RBI has started revising the notifications and till date has issued 15 revised notifications [3(R), 5(R), 6(R), 7(R), 9(R), 10(R), 11(R), 12(R), 13(R), 14(R), 15(R), 18(R), 22(R), 23(R)] carrying suffix (R) for easy identification along with the year in which they are published

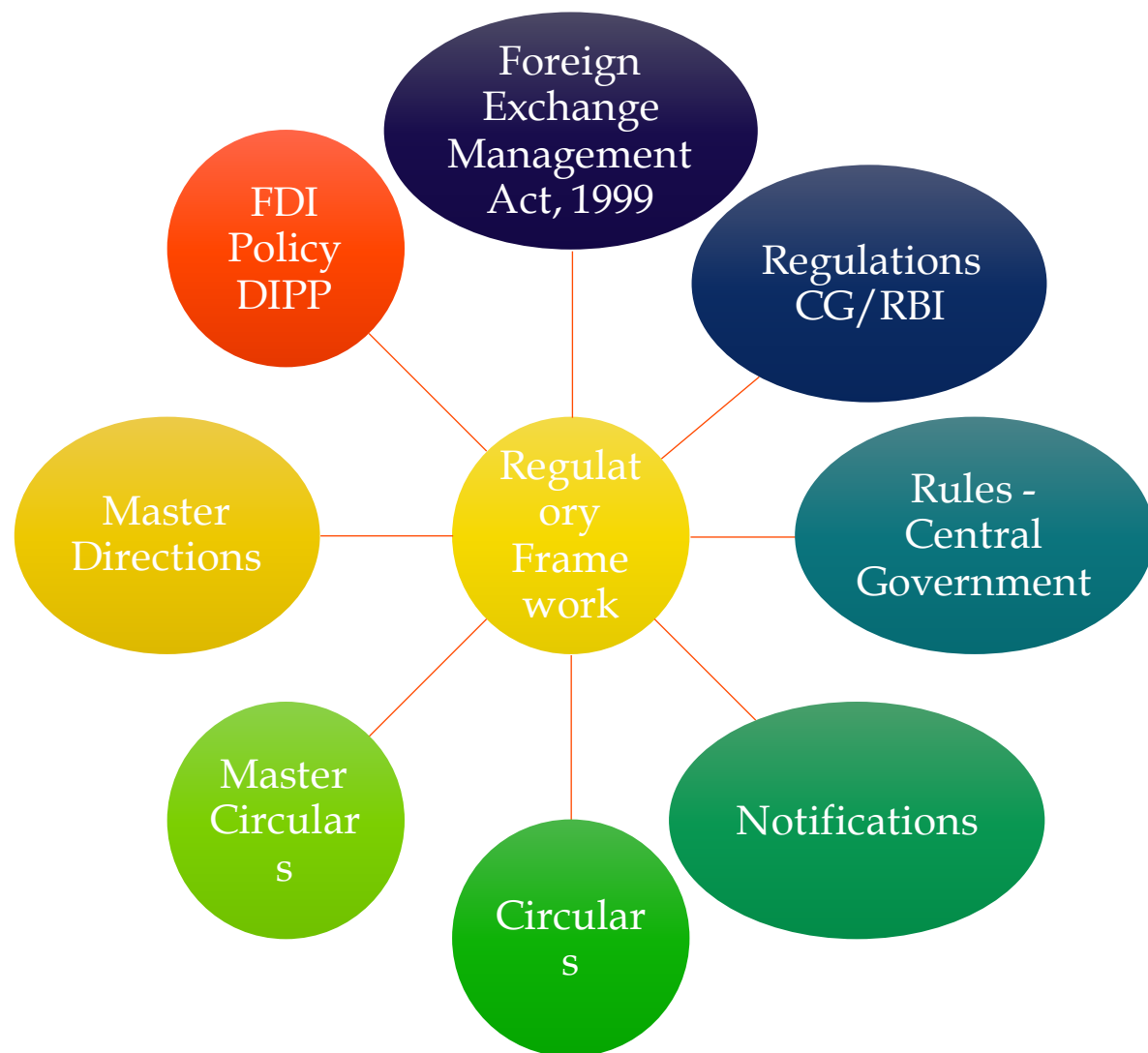
Framework of FEMA || Rules



The Central Government has notified following rules as given below:

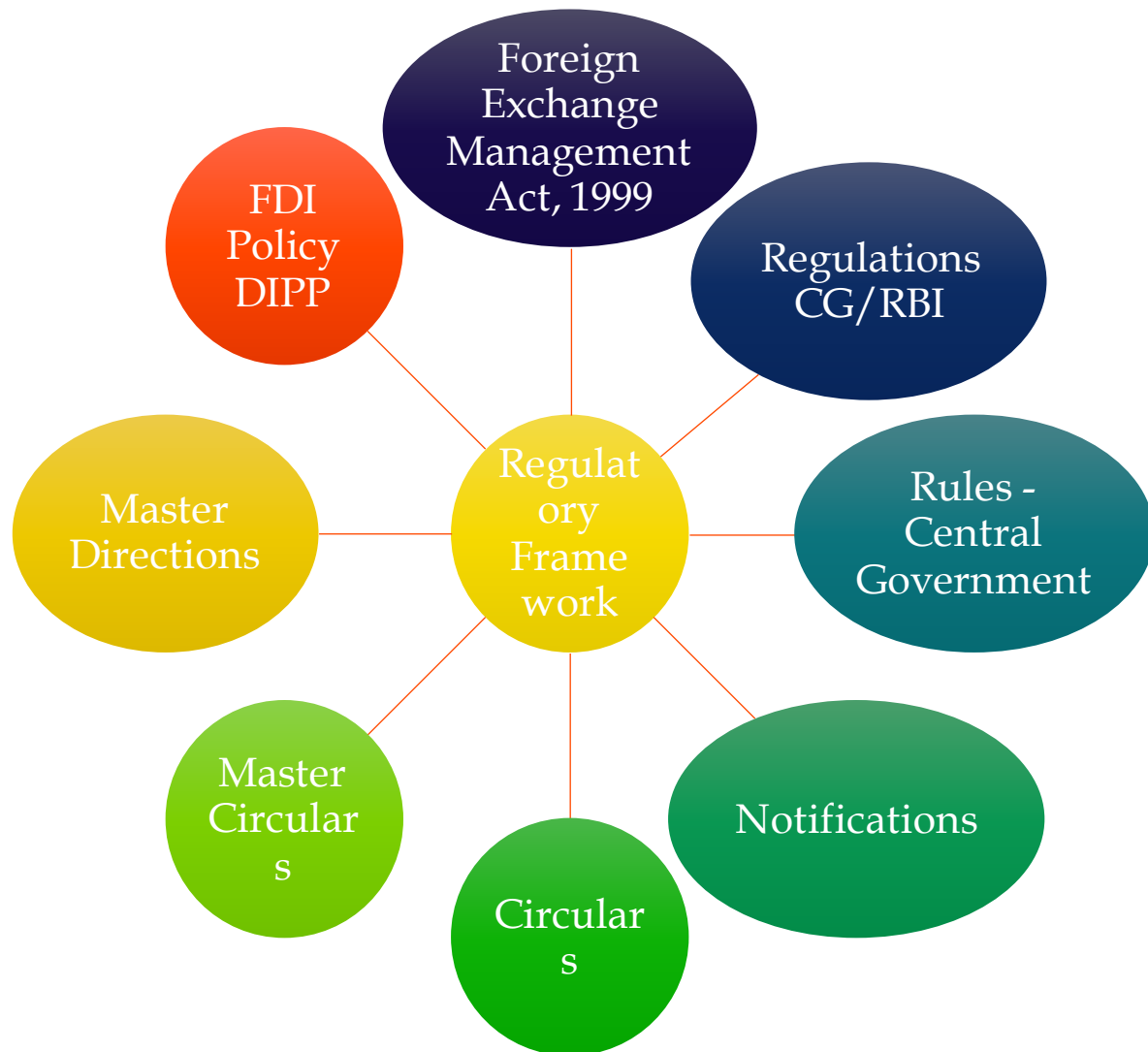
- ❖ FEM (Encashment of Draft Cheque, Instrument and Payment of Interest) Rules, 2000
- ❖ FEM (Authentication of Documents) Rules, 2000
- ❖ FEM (Current Account Transactions) Rules, 2000
- ❖ FEM (Adjudication Proceedings and Appeal) Rules, 2000
- ❖ FEM (Compounding Proceedings) Rules, 2000
- ❖ **The recent:**
 - ❖ **NDI Rules**

Framework of FEMA || Circular



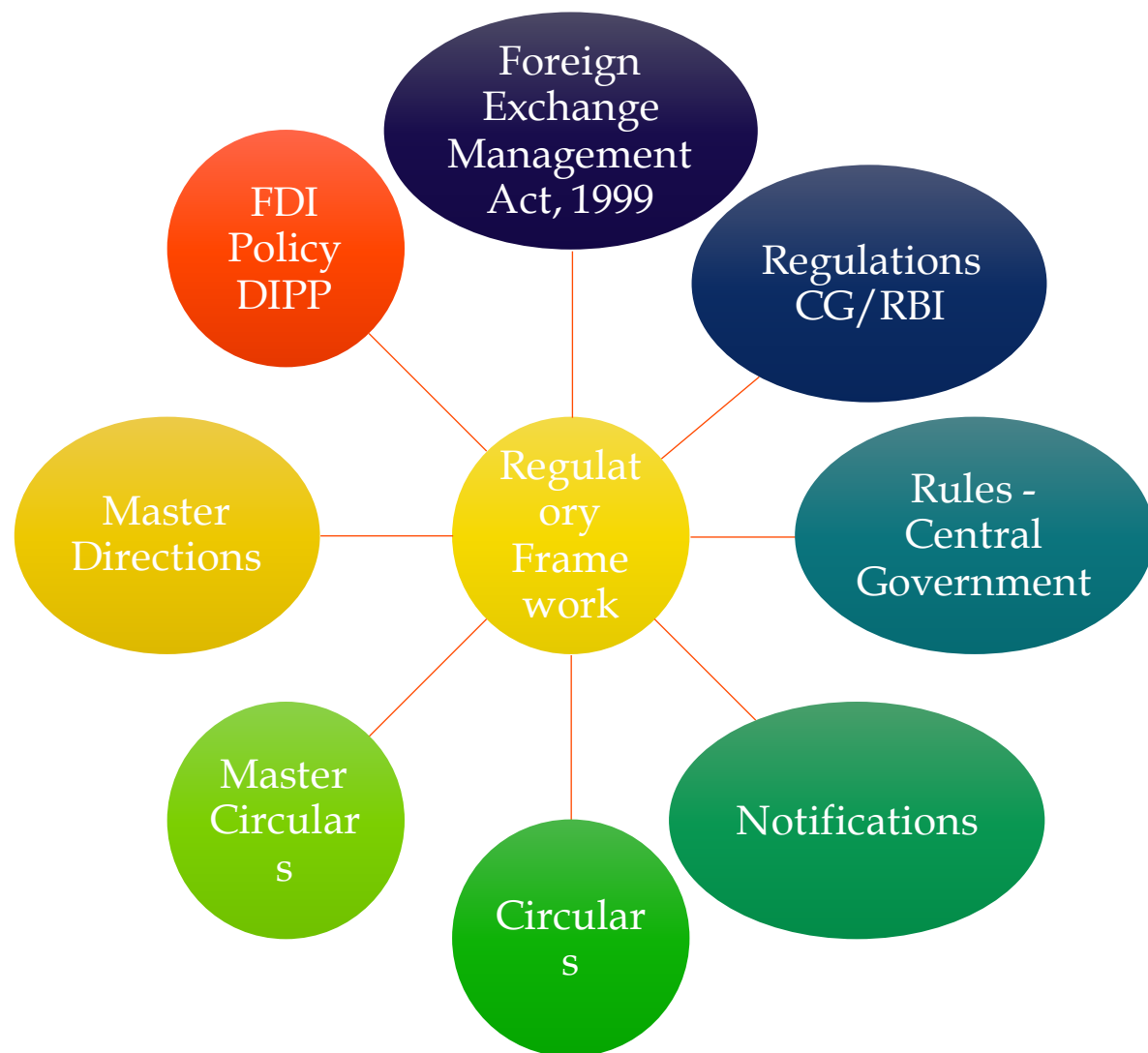
- Authorized Persons Directions issued by RBI u/s. 10(4) and 11 (1) of FEMA to Authorized Persons (AP)
- These directions are called- A.P. (DIR Series) CIRCULARS
- APs are authorized dealers, money, changers and banks who are authorized to deal in Foreign Exchange
- These Circulars are operational instructions to AP by RBI. Legal validity - Prof. Krishnaraj Goswami v. RBI [2007 (6) Bcom CR 565]

Framework of FEMA || Master Directions



- RBI has come up with Master Directions covering Foreign Transactions
- Master Directions consolidate instructions, rules and regulations on the related subject
- Master Directions are updated as and when there is change in rules and regulations or change in policy
- Erstwhile Master Circulars thus have been withdrawn with issue of Master Directions
- Till date, 19 Master Directions have been issued by RBI

Framework of FEMA || FDI Policy



Sr. No	Circulars	Effective from
1	Circular 1 of 2010	April 1, 2010
2	Circular 2 of 2010	October 1, 2010
3	Circular 1 of 2011	April 1, 2011
4	Circular 2 of 2011	October 1, 2011
5	Circular 1 of 2012	April 10, 2012
6	Circular 1 of 2013	April 5, 2013
7	Consolidated FDI Policy Circular of 2014	April 17, 2014
8	Consolidated FDI Policy Circular of 2015	May 12, 2015
9	Consolidated FDI Policy Circular of 2016	June 07, 2016
10	Consolidated FDI Policy Circular of 2017	August 28, 2017
11	Consolidated FDI Policy circular of 2020	15 th Oct 2020

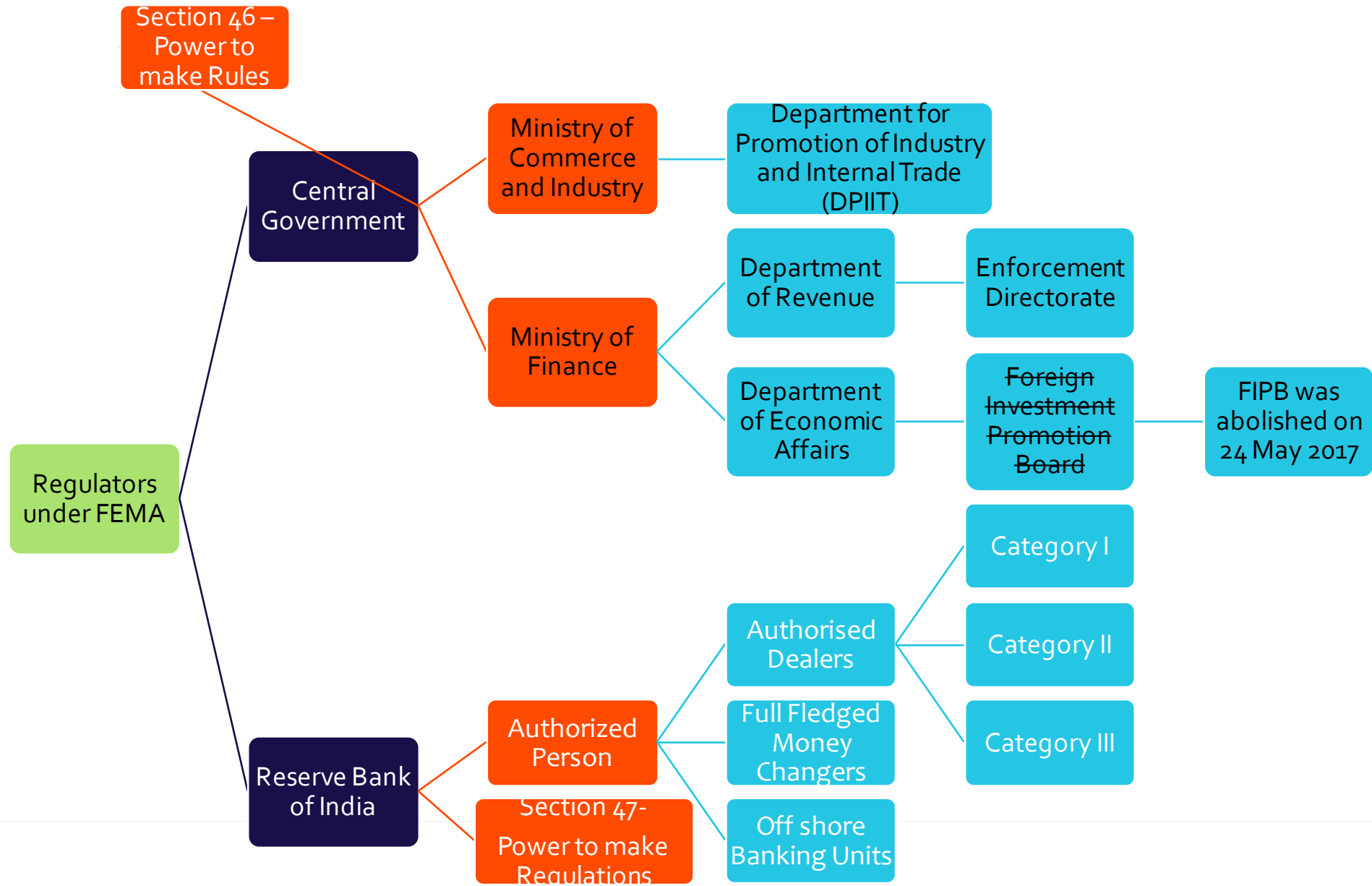
Framework of FEMA, 1999



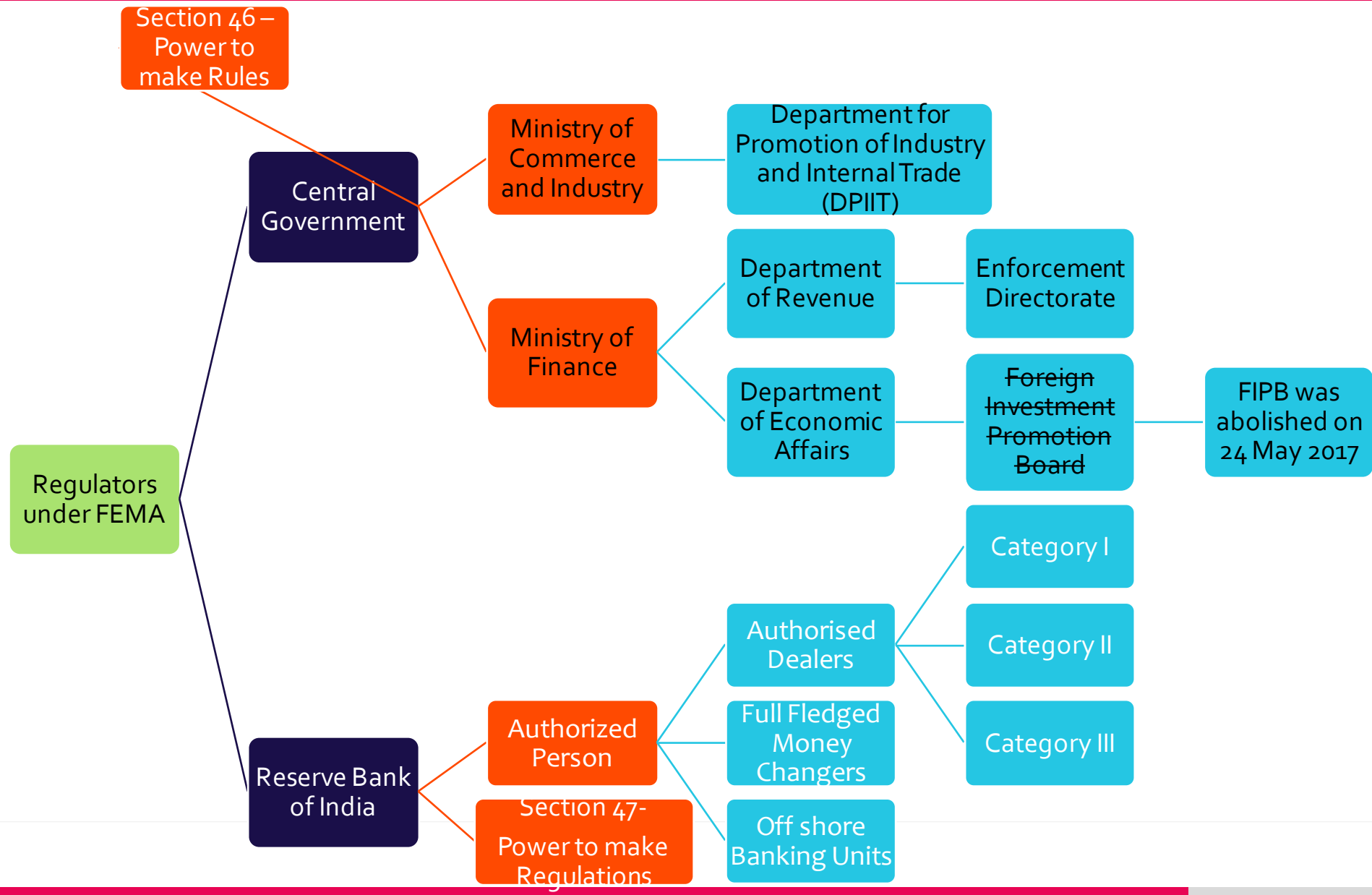
A close-up photograph of a person wearing a white lab coat, holding a smartphone in their left hand and pointing with their right index finger at the screen. The background is blurred, showing more of the lab coat and a hint of a white cup. The image is partially overlaid by a dark grey bar on the left and a white text box on the right.

Regulators under FEMA, 1999

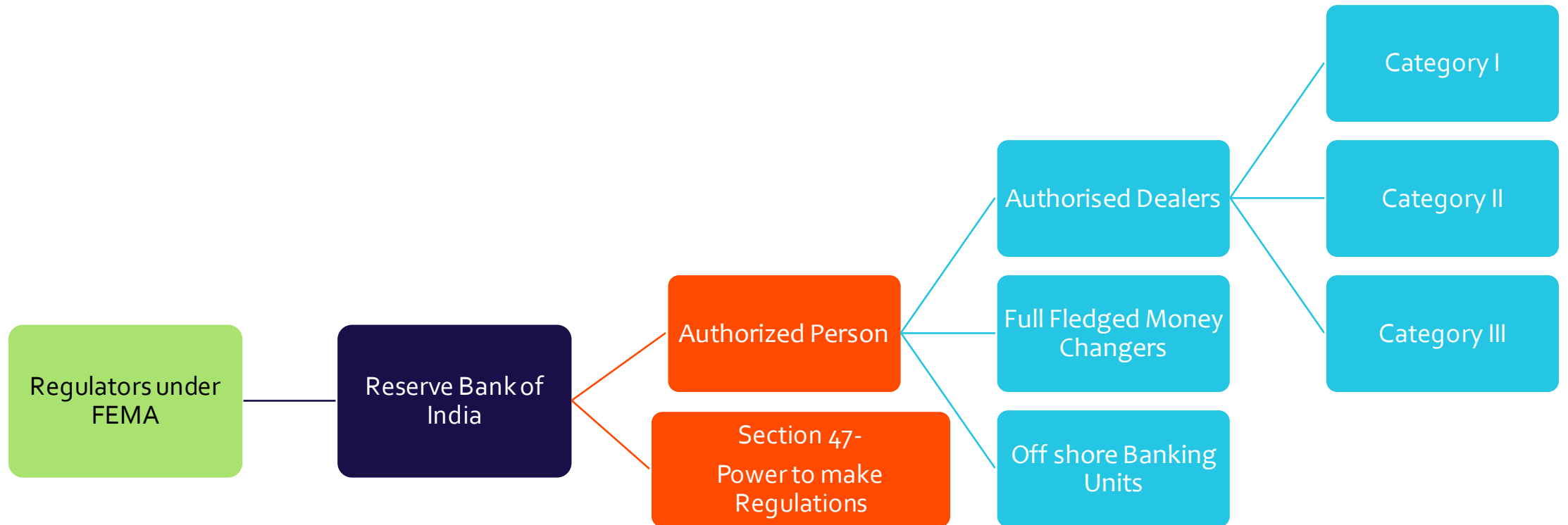
Regulators under FEMA



Regulators under FEMA



Regulators under FEMA



Reserve Bank of
India



Corporates,
Individuals etc



Reserve Bank of
India

Corporates,
Individuals etc.



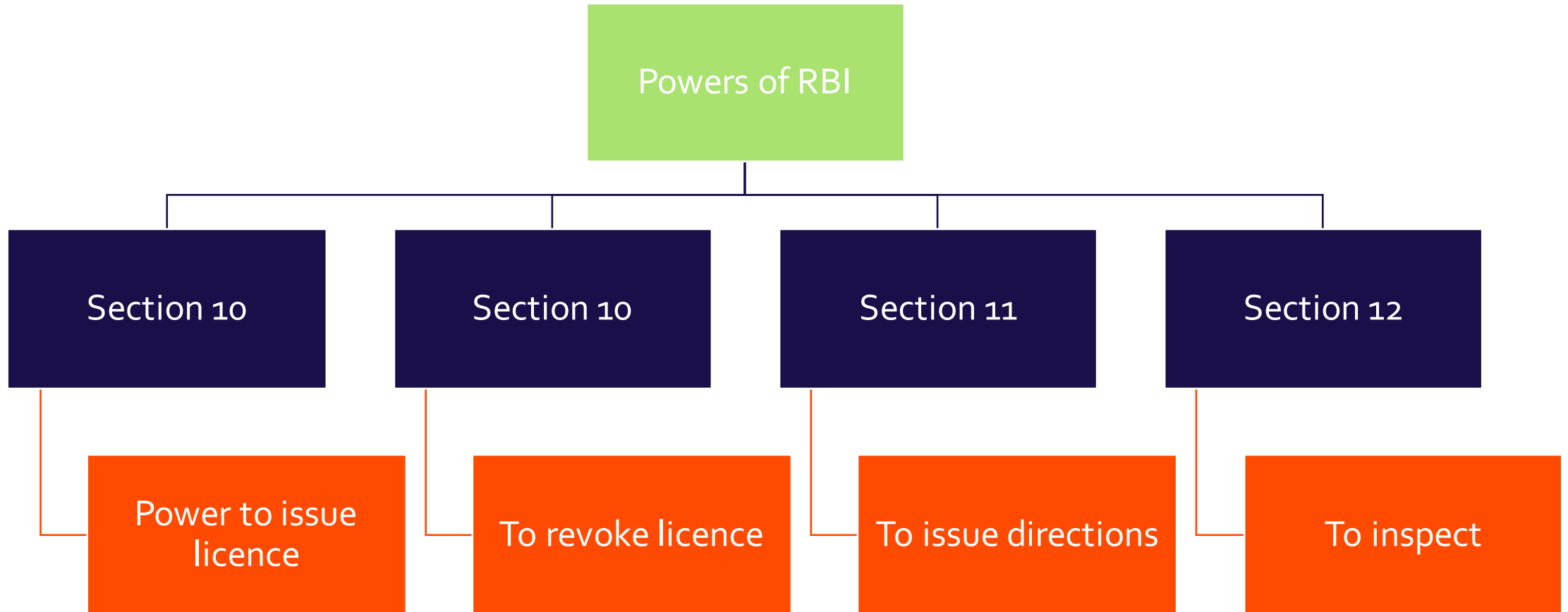
Reserve Bank
of India

Corporates,
Individuals etc.

Accountant
Valuer
Economist
IT expert
Rocket scientist !!



Powers of RBI



Section 10 || Authorised Persons

- 1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.
 - 2) An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein.
 - 3) An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that—
 - a. it is in public interest so to do; or
 - b. the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder
- **Provided** that no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter.

Section 10 || Authorised Persons

- 4) An authorised person shall, in all his dealings in foreign exchange or foreign security, **comply with such general or special directions or orders as** the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.

Section 10 – Authorised Person

An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person,

require that person to make such declaration and to give such information

as will reasonably satisfy him

that the transaction will not involve,

and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and

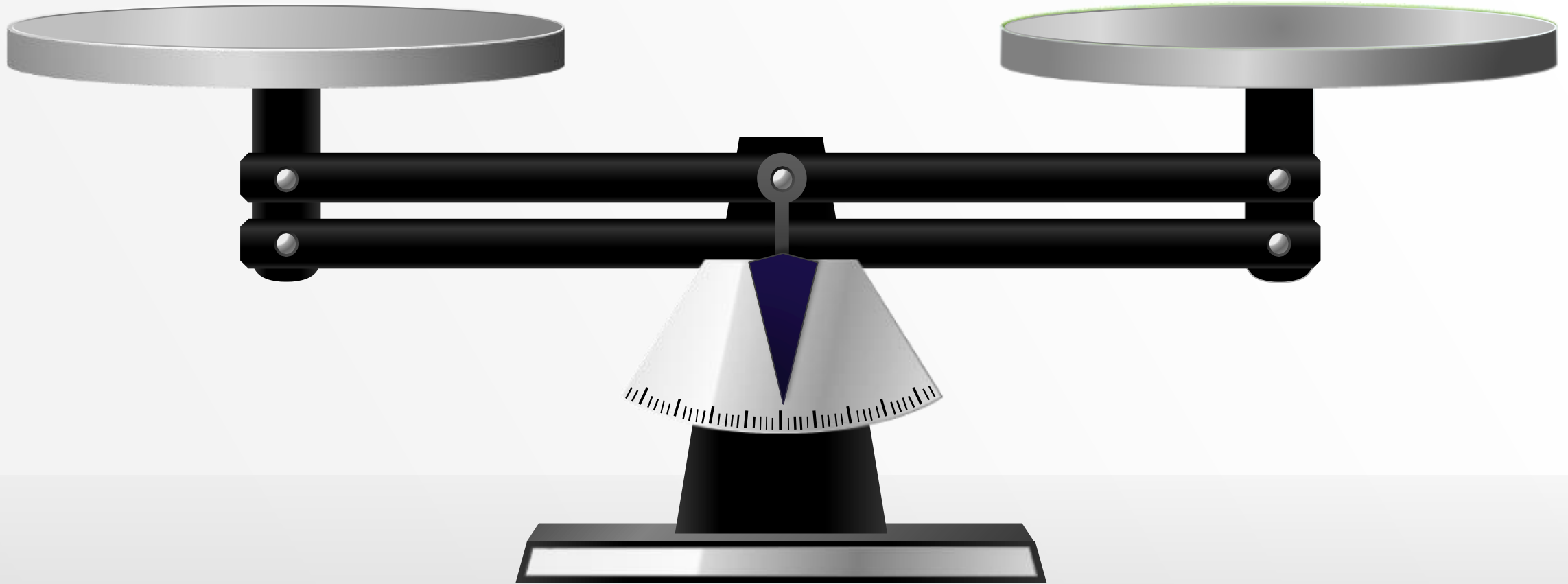
where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith,

the authorised person shall refuse in writing to undertake the transaction

and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

**Foreign Exchange
Management Act, 1999**

**Prevention of Money
Laundering Act, 2002**



Reporting

Section 10 – Authorised Person

(6) Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

Section 11 – Reserve Bank power to issue direction to authorized person

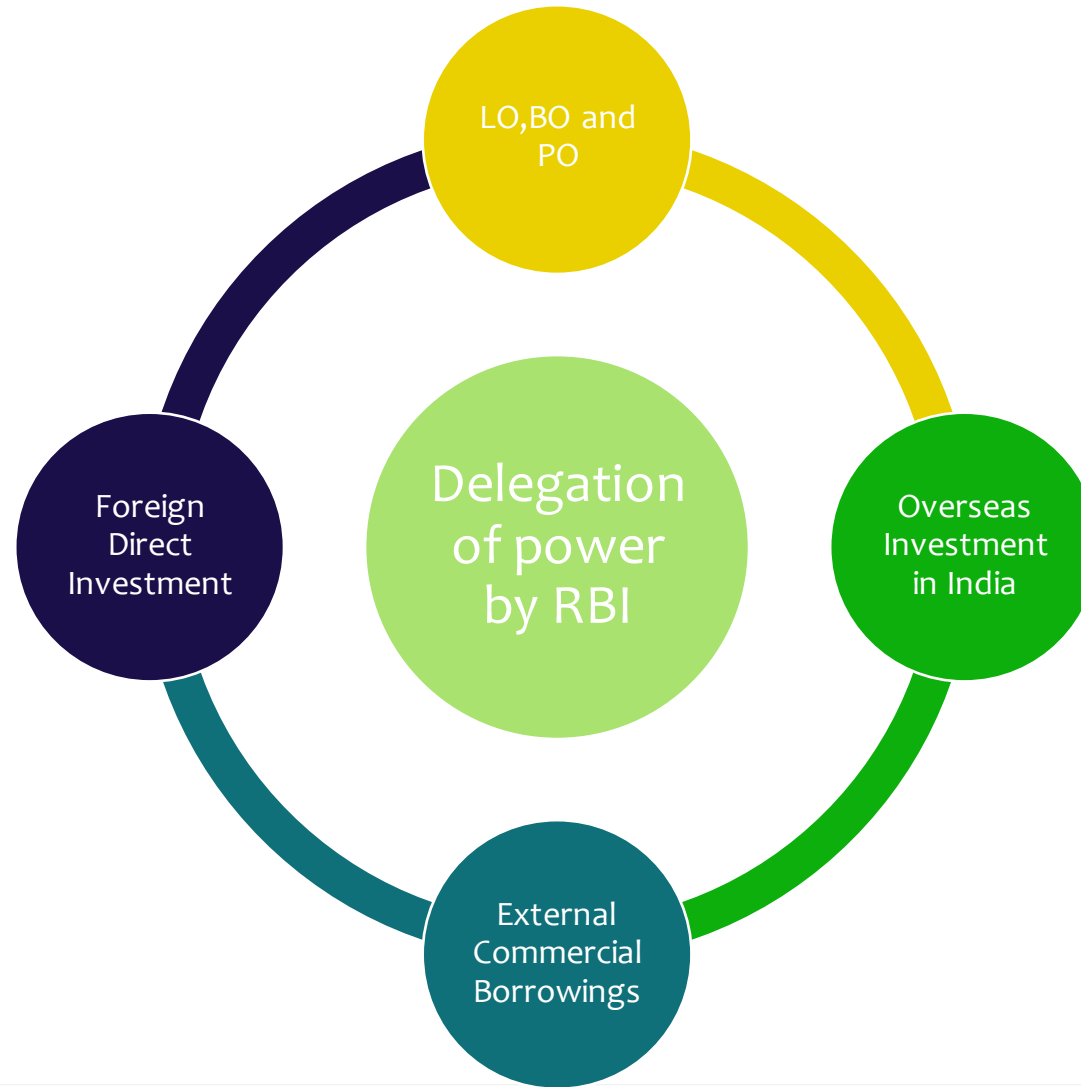
- (1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.
- (2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit.
- (3) Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

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Section 12 – Power of Reserve Bank to inspect authorised person

- (1) The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of—
- a. verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;
 - b. obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so;
 - c. securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.
- (2) It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

Delegation of powers by RBI



Section 46

Section 46 Power to make rules.— (1) The Central Government may, by notification, make rules to carry out the provisions of this Act. —

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act."

(2) without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the imposition of reasonable restrictions on current account transactions under section 5;

(aa) the instruments which are determined to be debt instruments under sub-section (7) of section 6;

(ab) the permissible classes of capital account transactions in accordance with sub-section (2A) of section 6, the limits of admissibility of foreign exchange, and the prohibition, restriction or regulation of such transactions;";

(b) the manner in which the contravention may be compounded under sub-section (1) of section 15;

(c) the manner of holding an inquiry by the Adjudicating Authorities under sub-section (1) of section 16;

(d) the form of appeal and fee for filing such appeal under sections 17 and 19;

(e) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals) under section 23;

(f) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and the office of the Special Director (Appeals) under sub-section (3) of section 27;

(g) the additional matters in respect of which the Appellate Tribunal and the Special Director (Appeals) may exercise the powers of a civil court under clause (i) of sub-section (2) of section 28;

(gg) the aggregate value of foreign exchange referred to in sub-section (1) of section 37A

(h) the authority or person and the manner in which any document may be authenticated under clause (ii) of section 39; and

(i) any other matter which is required to be, or may be, prescribed.

Amendment by Finance Act, 2015 || Section 46

- **Section 46 Power to make rules.—** (1) The Central Government may, by notification, make rules to carry out the provisions of this Act. —

(1) without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the imposition of reasonable restrictions on current account transactions under section 5;

(aa) the instruments which are determined to be debt instruments under sub-section (7) of section 6;

(ab) the permissible classes of capital account transactions in accordance with sub-section (2A) of section 6, the limits of admissibility of foreign exchange, and the prohibition, restriction or regulation of such transactions;

(gg) the aggregate value of foreign exchange referred to in sub-section (1) of section 37A

Section 47

(1) The Reserve Bank may, by notification, make regulations to carry out the provisions of this Act and the rules made there under

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for,-

[(a) the permissible classes of capital account transactions involving debt instruments determined under sub-section (7) of section 6, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of such capital account transactions under section 6;]

(b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of section 7;

(c) the period within which and the manner of repatriation of foreign exchange under section 8;

(d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;

(e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;

(f) the limit up to which foreign exchange acquired may be exempted under clause (d) of section 9;

(g) the limit up to which foreign exchange acquired may be retained under clause (e) of section 9;

[(ga) export, import or holding of currency or currency notes;]

any other matter which is required to be, or may be, specified.

[(3) All regulations made by the Reserve Bank before the date on which the provisions of this section are notified under section 6 and section 47 of this Act on capital account transactions, the regulation making power in respect of which now vests with the Central Government, shall continue to be valid, until amended or rescinded by the Central Government.]

Subs. by Finance Act, 2015 (20 of 2015), dated 14-05-2015 and effective from 9th day of September, 2015, prior to substitution it read as:

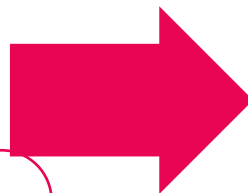
“(a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;”

Amendment by Finance Act, 2015 || Section 47

Section 47 of FEMA Act, 1999 which empowered RBI to make regulations has been amended to the extent that all regulations made by RBI till date under Section 6 and Section 47 on capital account transactions, the regulation making power in respect of which now vests with the Central Government, shall continue to be valid, until amended or rescinded by the Central Government

Previous

- “(a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;”



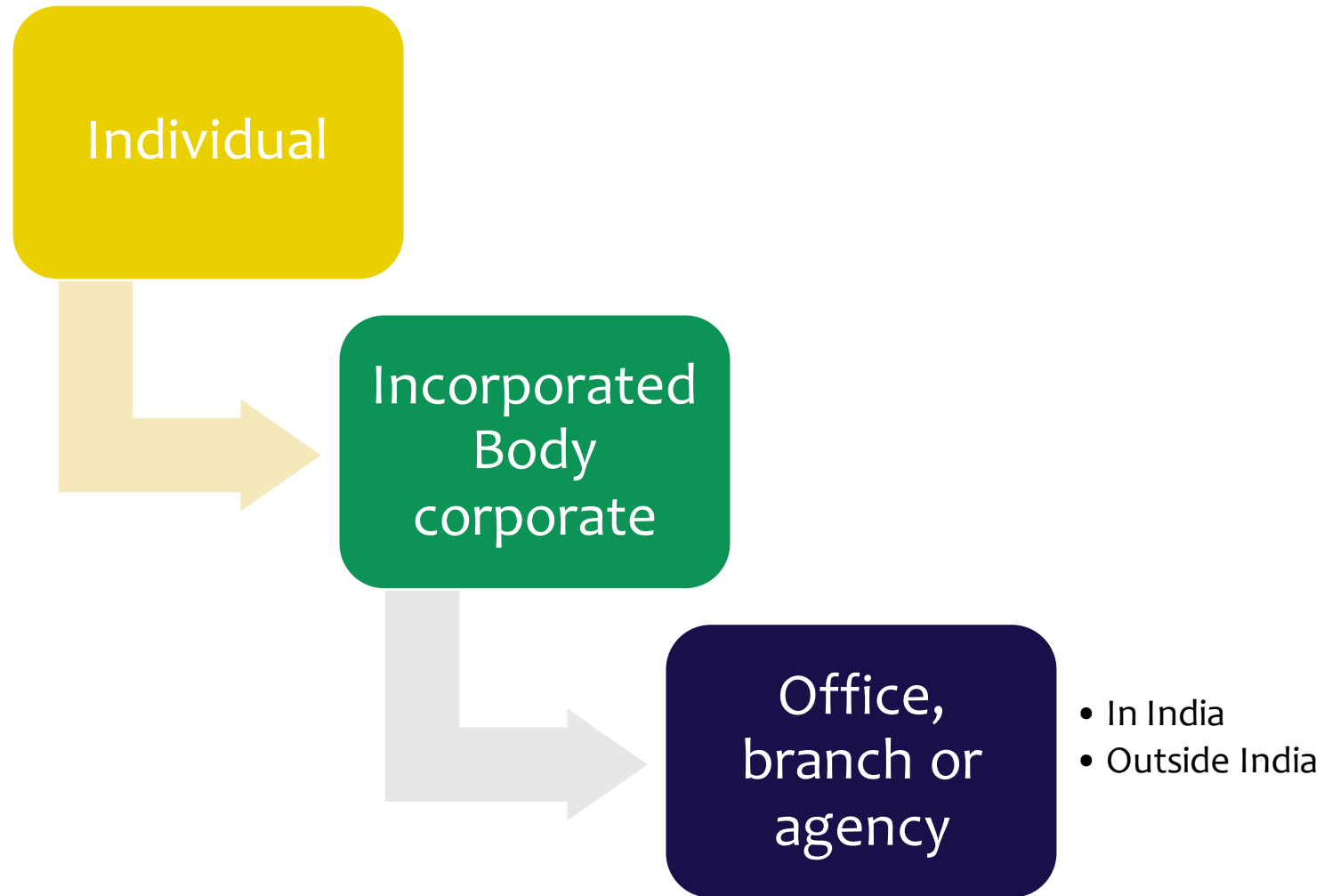
After Amendment

- [(a) the permissible classes of capital account transactions **involving debt instruments** determined under sub-section (7) of section 6, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of such capital account transactions under section 6;]

Residential Status



Residential Status under FEMA



Residential Status under FEMA || Person Resident In India || Sec. 2(v)(i)

PERSON RESIDENT IN INDIA Sec. 2(v)(i) of FEMA:

Residing in India for > 182 days during the course of preceding F.Y. but doesn't include

(A) going out of India or staying outside India

- for taking up employment

- for carrying business or vocation

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

(B) coming to India or staying in India otherwise than

- for taking up employment

- for carrying business or vocation

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

Residential Status under FEMA || Person Resident In India || Sec. 2(v)(i)

First Limb

- More than 182 days in the preceding year

Period of Stay

Second Limb -Leaving India

- Taking employment
- Doing any business
- Stay for uncertain period

Third Limb – Coming to India except for

- Taking employment
- Doing any business
- Stay for uncertain period

Exceptions to period of stay

Residential Status under FEMA || Person Resident In India || Sec. 2(v)(i)

First Limb

- More than 182 days in the preceding year

Period of Stay

Second Limb -Leaving India

- Taking employment
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- Stay for uncertain period

Third Limb – Coming to India except for

- Taking employment
- Doing any business
- Stay for uncertain period

Exceptions to period of stay

Residential Status under FEMA || Person Resident In India || Sec. 2(v)(i)

First Limb

- More than 182 days in the preceding year

Period of Stay

FEMA Principal – Intention must be supported by the facts

Second Limb -Leaving India

- Taking employment
- Doing any business
- Stay for uncertain period

Non resident even when he has stayed in India for more than 182 days in preceding F.Y

Third Limb – Coming to India except for

- Taking employment
- Doing any business
- Stay for uncertain period

Resident even when he has not stayed in India for more than 182 days in preceding F.Y

Exceptions to period of stay

Residential Status under FEMA || Person Resident In India || Sec. 2(v)(i)

- ✓ Mr. Rakesh, an Indian national takes up employment with a Company in US and migrates to New York
- ✓ Mrs. Rekha Rakesh shifts to New York to stay with her husband.
- ✓ On retirement of Mr. Rakesh, both Mr. and Mrs. Rakesh return to India for permanent settlement.
- ✓ Mr. Vijay, a Development Manager with a company in Mumbai goes for six months to USA on export promotion tour.
- ✓ Mr. Vijay joins a company in New York as a partner and shifts his residence.
- ✓ Mr. Dilip is Manager in CCI and is deputed to New York office.

Residential Status under FEMA || Person Resident In India || Sec. 2(v)(i)

- ✓ Mr. Rakesh, an Indian national takes up employment with a Company in US and migrates to New York, **Mr. Rakesh is a Non-Resident from the day of he migrates to USA for employment.**
- ✓ Mrs. Rekha Rakesh shifts to New York to stay with her husband. **She becomes a Non-Resident as she has moved with the intension to stay with him.**
- ✓ On retirement of Mr. Rakesh, both Mr. and Mrs. Rakesh return to India for permanent settlement. **They become Residents of India immediately upon return.**
- ✓ Mr. Vijay, a Development Manager with a company in Mumbai goes for six months to USA on export promotion tour. **He continues to be a Person Resident of India.**
- ✓ Mr. Vijay joins a company in New York as a partner and shifts his residence. **He becomes a Non-Resident.**
- ✓ Mr. Dilip is Manager in CCI and is deputed to New York office. **He will be a Non-Resident during the period of his posting to New York.**

Residential Status under FEMA || Person Resident In India || Sec. 2(v)(i)

- ✓ Mr. A, an American national has taken up employment with Bank of America, Mumbai.
- ✓ Mr. Aachyut, a student, goes abroad for higher studies for a period of 3 years.
- ✓ Mr. Anand, a non-resident comes to India for marriage of his two children and intends to leave India soon thereafter. His stay in India continues for more than eighteen months and more than six months in each of the past two years.

Residential Status under FEMA || Person Resident In India || Sec. 2(v)(i)

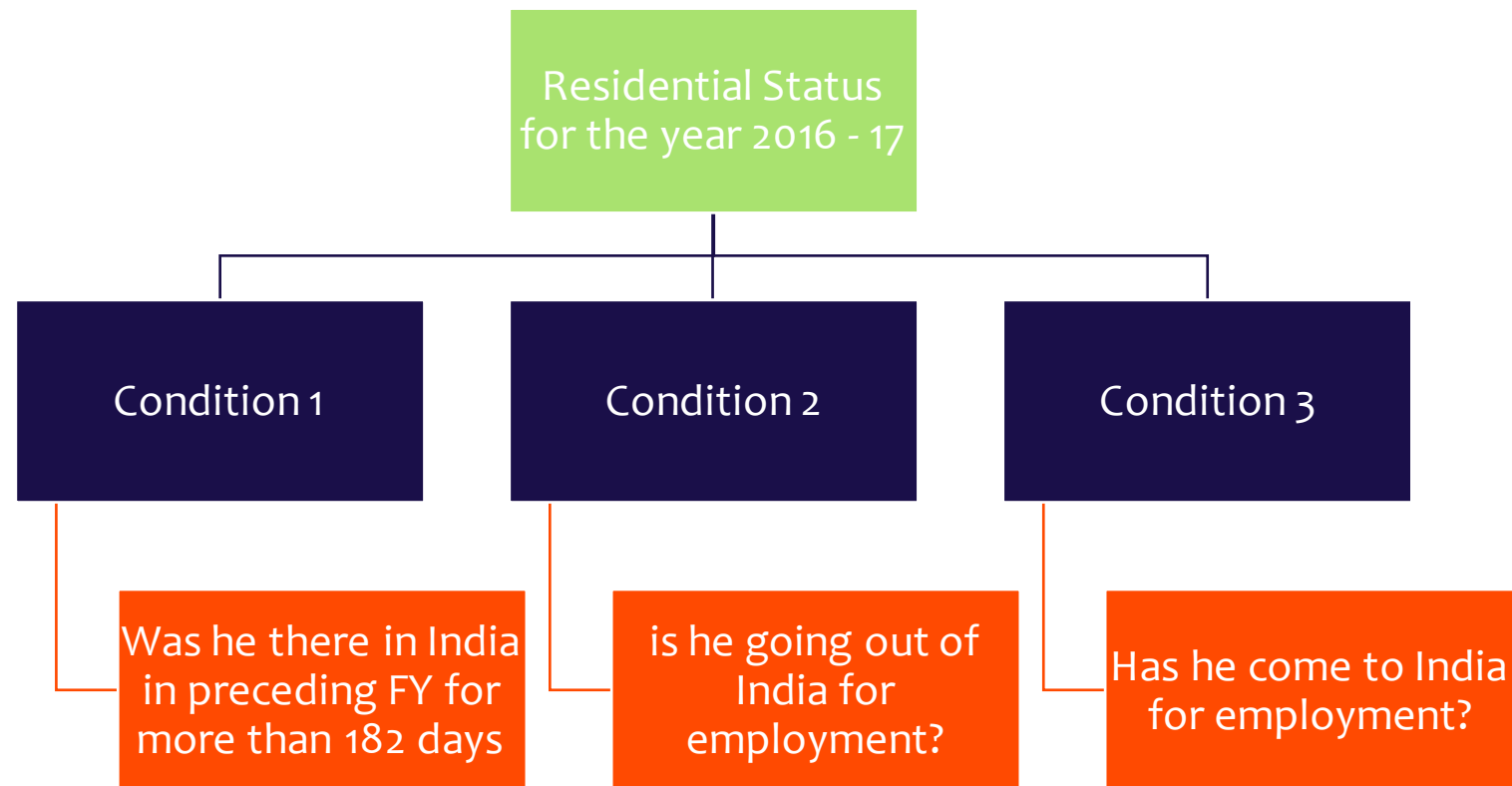
- ✓ Mr. A, an American national has taken up employment with Bank of America, Mumbai. He becomes a resident of India
- ✓ Mr. Achyut, a student, goes abroad for higher studies for a period of 3 years. Based on the language of RBI Circular No. 45/2003 dt. 8.12.2003, Mr. Achyut has the option to be treated as a non-resident immediately if he goes abroad for an uncertain period or on his stay abroad exceeding 182 days in a preceding financial year.
- ✓ Mr. Anand, a non-resident comes to India for marriage of his two children and intends to leave India soon thereafter. His stay in India continues for more than eighteen months and more than six months in each of the past two years. If Mr. Anand has not taken up any employment in India nor does have any business in India and if he continues to have employment or business, house, office etc. abroad; he will be able to establish that he is a non-resident.

Person Resident In India || Sec. 2(v)(i) || Example

- Skhan had resided in India during the financial year 2015-2016 for less than 182 days. He had come to India again on April 1, 2016 for employment. What would be his residential status during the financial year 2016-2017?
- Year under consideration

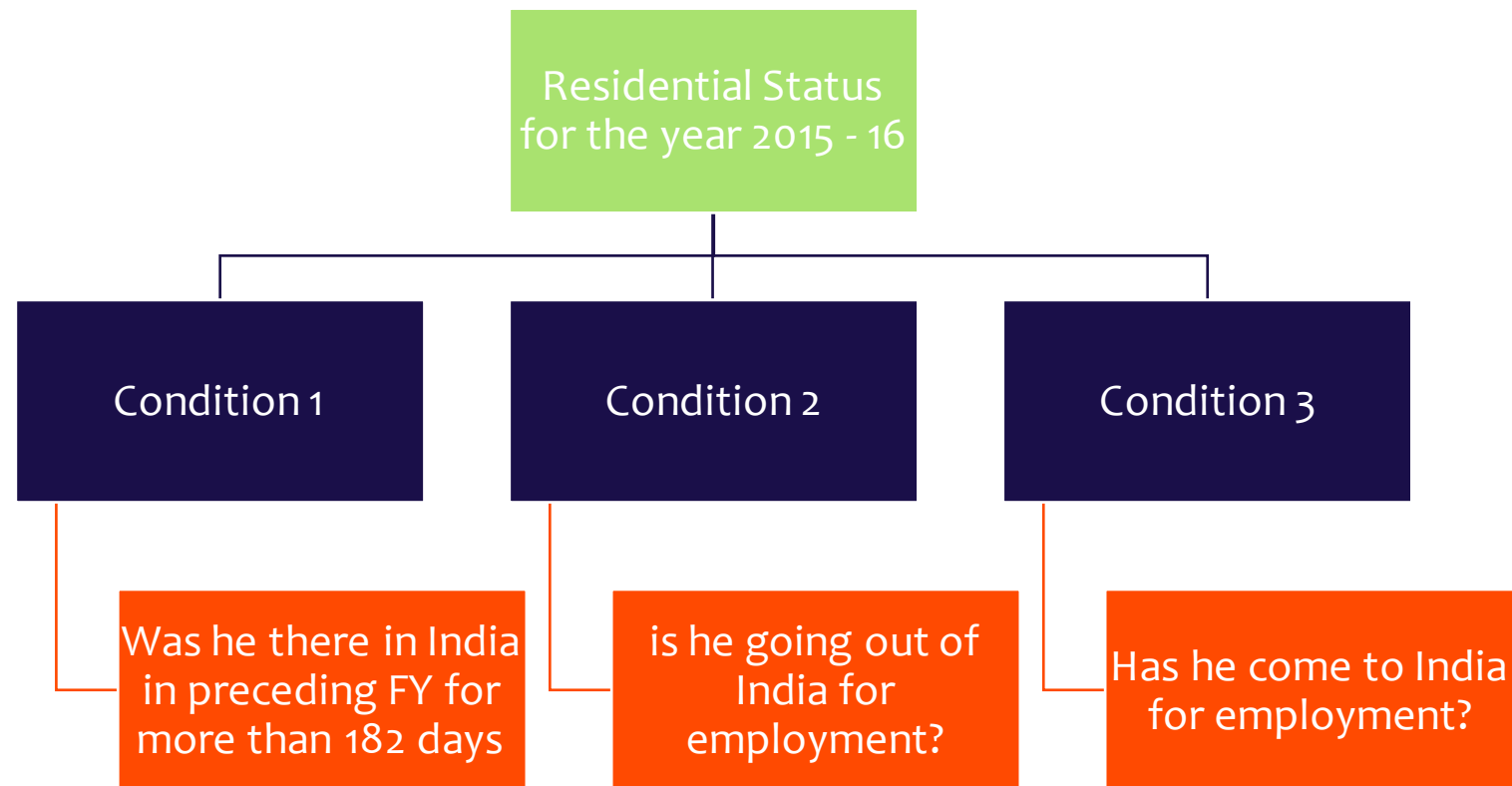
Person Resident In India || Sec. 2(v)(i) || Example

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Person Resident In India || Sec. 2(v)(i) || Example

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Person Resident In India || Sec. 2(v)(i) || Example

- Skhan had resided in India during the financial year 2015-2016 for less than 182 days. He had come to India again on April 1, 2016 for employment. What would be his residential status during the financial year 2016-2017?
- Skhan had come to India for taking up employment.
- During the financial year 2015-2016, he was in India for less than 182 days.
- Since, he has not fulfilled the condition of staying in India for more than 182 days, Skhan may not be considered as a resident person for the financial year 2016-2017.
- Here, as he come to India on 1st April, 2016, so he may primarily not be able to be considered as person resident in India from 1st April 2016.
- However as he has come for employment, he will be considered as Indian resident from 1st April 2016.

Person Resident In India || Sec. 2(v)(i) || Example

- Mr. henalal had resided in India during the financial year 2015-2016 for less than 182 days. He had come to India on April 1, 2016 for business. He intends to leave the business on April 30, 2017 and leave India on June 30, 2017. What would be his residential status during the financial year 2016-2017 and during 2017-2018 up to the date of his departure?

Person Resident In India || Sec. 2(v)(i) || Example

- Mr. Henalal had resided in India during the financial year 2015-2016 for less than 182 days. He had come to India on April 1, 2016 for business. He intends to leave the business on April 30, 2017 and leave India on June 30, 2017. What would be his residential status during the financial year 2016-2017 and during 2017-2018 up to the date of his departure?

Mr. Henalal will be considered as person resident in India' from 1st April 2016. As regards, financial year 2017-2018, Mr. would continue to be an Indian resident from 1st April 2017.

If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure.

It may be noted that even if Mr. Henalal is a foreign citizen, if he has not left India for any these purposes, he would be considered, 'person resident in India' during the financial year 2017-2018. Thus it will depend on the purpose of leaving India which will decide his status from 1st July 2017

Person Resident In India || Sec. 2(v)(i) || Example

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

Person Resident In India || Sec. 2(v)(i) || Example

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

Answer: Mr. Z had resided in India during financial year 2015-2016 for more than 182 days. After that he has gone to USA for higher studies. In other words, he has not gone out of, or stayed outside India for or on taking up employment, or for carrying a business or any other purpose, in not circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2016-2017. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

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

Person Resident In India || Sec. 2(v)(i) || Example

Miss Ann is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the airways are headquartered. However, for security considerations, she was based on Mumbai.

During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Miss Ann stayed in India at Mumbai base' for more than 182 days in the preceding financial year.

Person Resident In India || Sec. 2(v)(i) || Example

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During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Miss Ann stayed in India at Mumbai base' for more than 182 days in the preceding financial year.

She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period.

Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Ann may have stayed in India for more than 182 days, she cannot be considered to be an Indian resident. If however she has been employed in Mumbai branch of British Airways, then she will be considered as Indian resident.

- Foreigner national deputed to India for employment:
- Does he become Resident in India?
- If so can he buy immovable property in India?

Press Release of Ministry of Finance dated 1st February 2009 - Government advice on acquiring land by persons resident outside India.

In case of foreign nationals, physical condition to stay for more than 182 days is mandatory for buying of Immovable Property.

Along with period of stay intention also needs to be established.

Travel related documents and nature of Visa can establish intention of a person.

Residential Status under FEMA

Section 2(v) Person resident in India means (cont'd.)

(ii) Any Person or body corporate registered or incorporated in India

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

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

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

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

Person Resident In India || Sec. 2(v)(i) || Example

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

Person Resident In India || Sec. 2(v)(i) || Example

- **Tooo Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore. Headquarter at Mumbai controls the branch of robotic unit. What would be the residential status of robotic unit in Mumbai and that of the Singapore branch?**
- **Answer:**
- Toooo Ltd. being a Japanese company would be a person resident outside India. (Section 2(w))
- Section 2(u) defines 'person'.

(u) "Person" includes-

(i) An individual,

(ii) A Hindu undivided family,

(iii) A company,

(iv) A firm,

(v) An association of persons or a body of individuals, whether incorporated or not,

(vi) Every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) Any agency, office or branch owned or controlled by such person;

Person Resident In India || Sec. 2(v)(i) || Example

- **Tooo Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore. Headquarter at Mumbai controls the branch of robotic unit. What would be the residential status of robotic unit in Mumbai and that of the Singapore branch?**
- **Answer:**
- Toooo Ltd. being a Japanese company would be a person resident outside India. (Section 2(w))
- Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such person'. The term such person' appears to refer to a person who is included in clauses (i) to (vi).
- **Accordingly, robotic unit in Mumbai, being a branch of a company, would be a person'.**
- Section 2(v) defines 'person resident in India'.
- Under clause (iii) thereof person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. **Robotic unit is in Mumbai** is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.
- However, robotic unit in Mumbai, though not owned controls Singapore branch, which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Singapore branch is person resident in India.

Residential Status under FEMA – A Third Category

Not permanently resident in India



As per Regulation 5 of FOREIGN EXCHANGE MANAGEMENT (REMITTANCE OF ASSETS) REGULATIONS

Not permanently resident means a person resident in India for employment of a specified duration (irrespective of length) or for a specific job duration which does not exceed three years.

Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015

'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

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5. Permission to an Indian entity to remit funds in certain cases:-

- (1) An entity in India may remit the amount being its contribution towards the provident fund/ superannuation/ pension fund in respect of the expatriate staff in its employment who are resident in India but not permanently resident therein.
- Explanation:
- For the purpose of this Regulation, -
- (a) 'expatriate staff' means a person whose provident/ superannuation/ pension fund is maintained outside India by his principal employer outside India;
- (b) 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

Residential Status under FEMA

- **Possession of foreign currency**

- A person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travellers cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the regulations made under the Act.

- **Remittance of salary**

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.

Intention or Stay



Person Resident in India || Intention as well as period of stay

- In a case when a non-resident individual comes for employment in India, RBI may ignore arithmetic requirement of 182 days stay in India during the preceding financial year and treat such person a ‘person resident in India’ – Refer Para 4.9 of the Master Direction on “Deposits and Accounts” issued by RBI, dated April, 2016 which is reproduced as follows-

Para 4.9

“NRE accounts should be designated as resident accounts or the funds held in these accounts may be transferred to the RFC accounts, at the option of the account holder,

- i) immediately upon the return of the account holder to India for taking up employment or*
- ii) on change in the residential status. ”*

- However, when it comes to determination of residential status for Acquisition of Immovable Property in India, RBI strictly follows arithmetic condition which requires stay of more than 182 days in India during the preceding financial year.

Person Resident in India || Intention as well as period of stay

RBI does not determine
the residential status

It is determined by
operation of the law

The onus is on the
individual to prove his
residential status, if it is so
questioned by any
authority



**Thanks
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