

**FEMA Act, 1999 (Foreign Exchange Management Act)**

effective date (1<sup>st</sup> June, 2000)

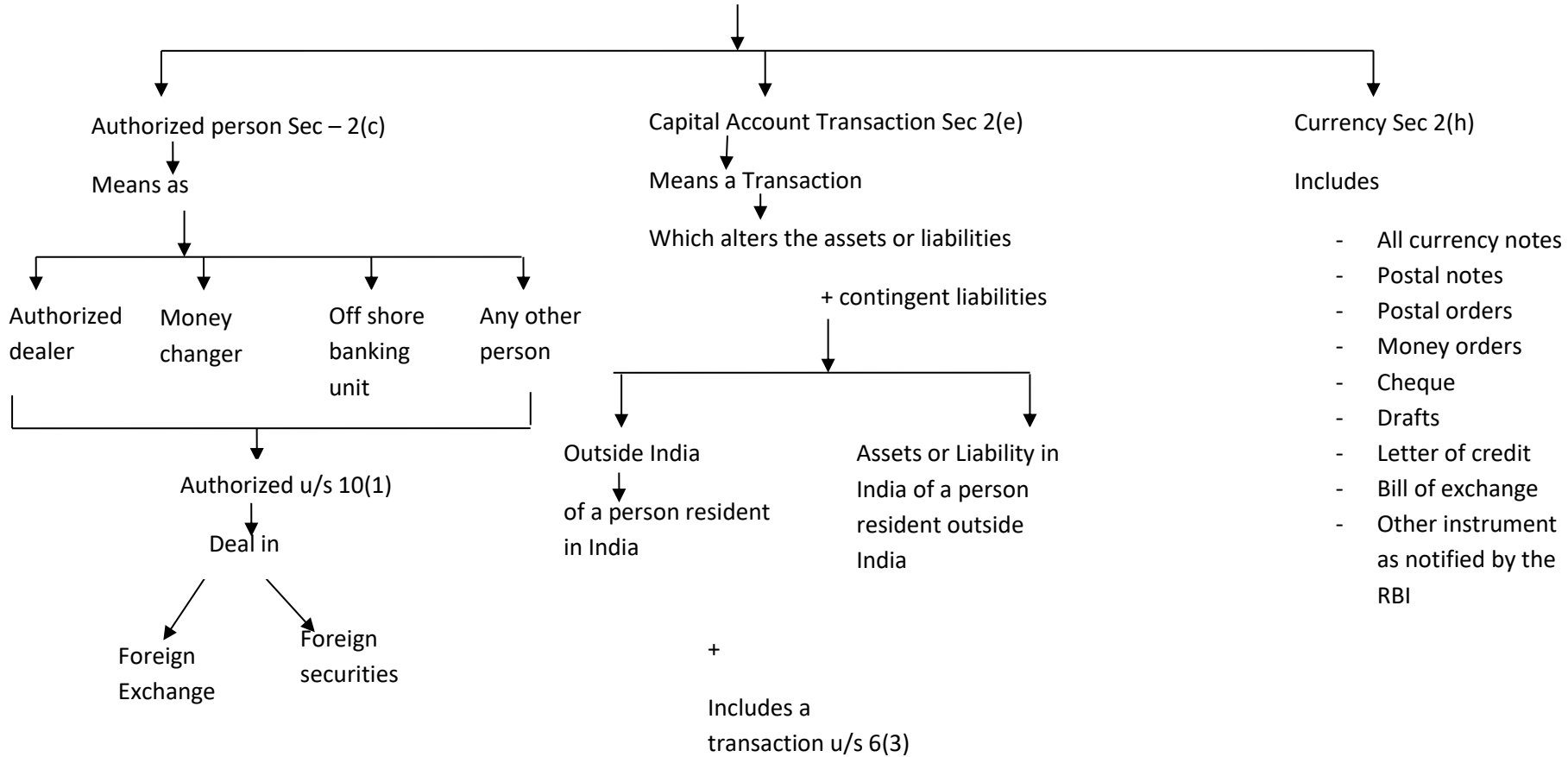
↓  
Not apply over citizen of India who are outside  
unless they are resident in India

↓  
Earlier Act called FERA  
,1973  
↓  
Now, Foreign Exchange  
Management Act ,1999

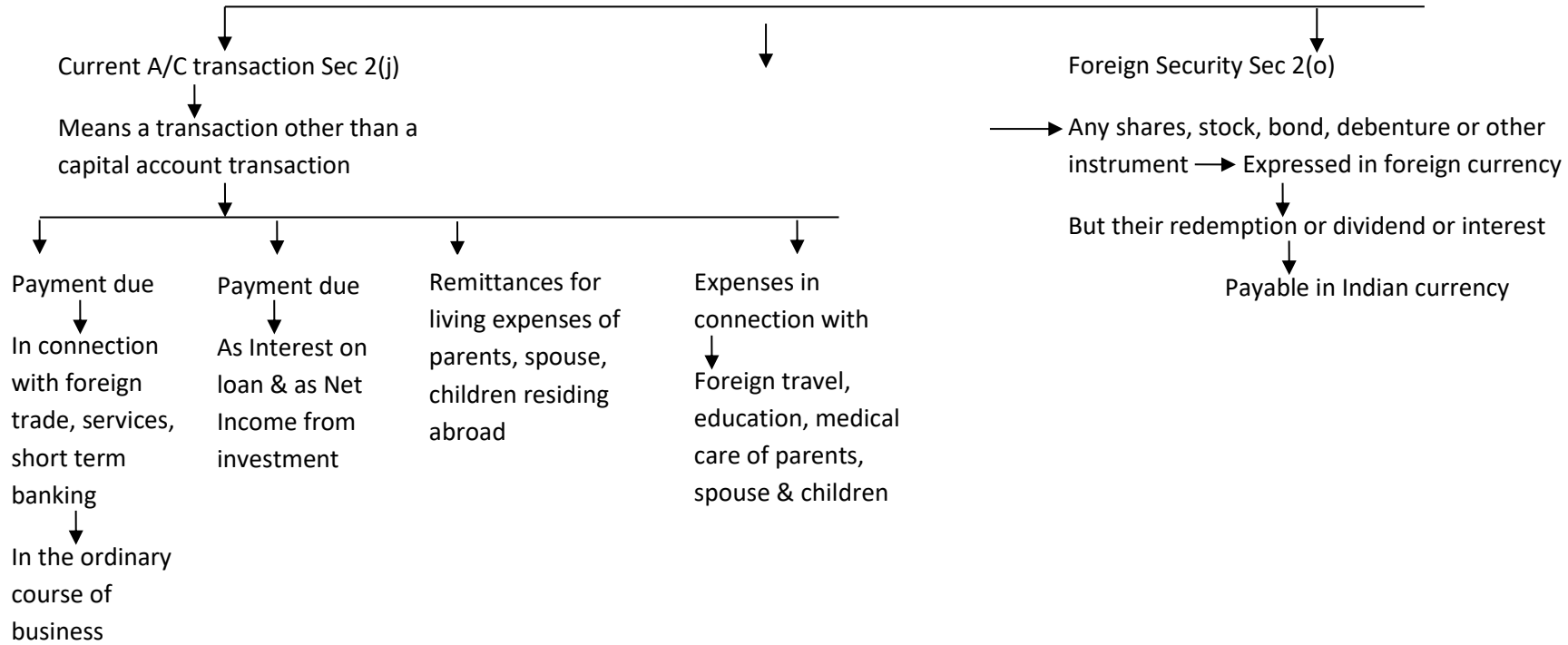
↓  
Object  
↙ ↘  
Facilitate External  
trade & Payment      For promoting the  
orderly development &  
maintenance of foreign  
market in India

↓  
Applies  
↓  
Over whole of India  
+  
all branches, offices & Agencies  
outside India  
↓  
Owned or controlled by a person  
resident in India  
+  
Any contravention committed  
outside India by any person  
↓  
To whom this Act applies

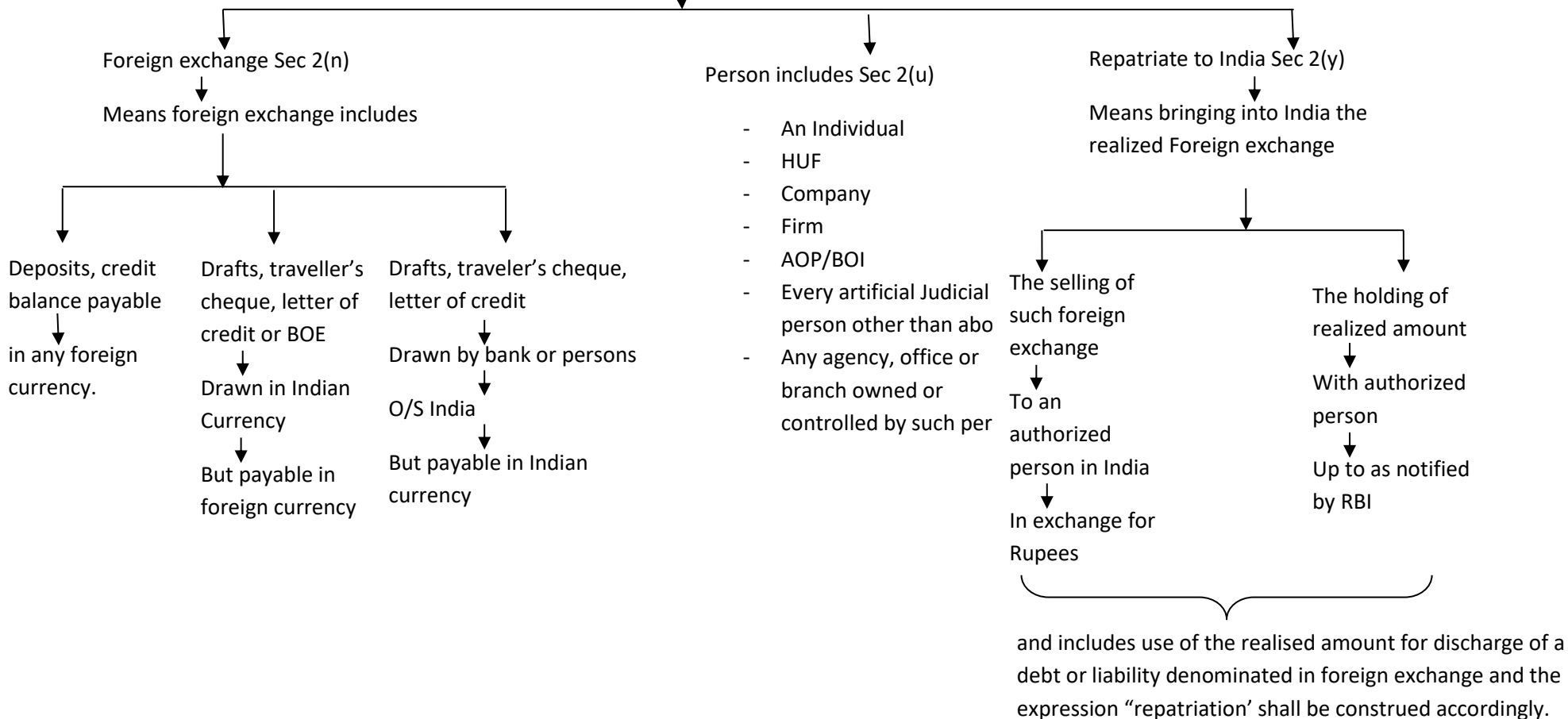
# Important Definitions



## Definition – Part 2



### Definition-3



**Section 2(v) - Person Resident in India**

‘Person resident in India’ means-

1. 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 stay OUTSIDE India, in EITHER case**

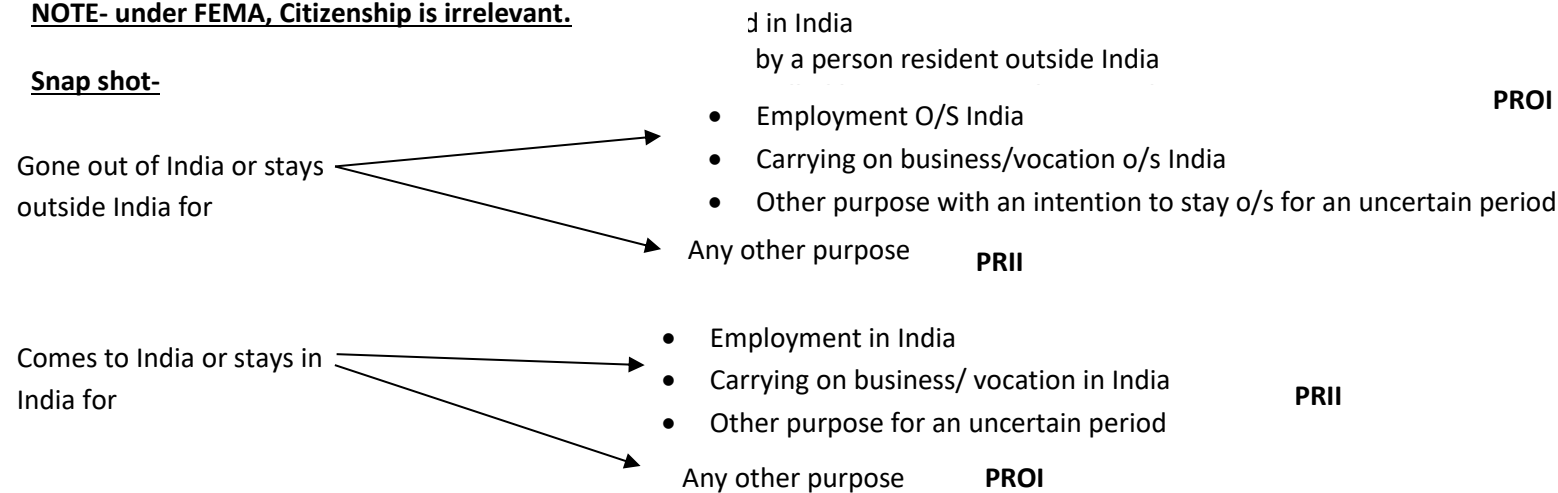
- For or on taking up employment outside India, or
- For carrying on outside India a business or vocation outside India, or
- For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

**b) A person who has come to or stay 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;
- For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

**NOTE- under FEMA, Citizenship is irrelevant.**

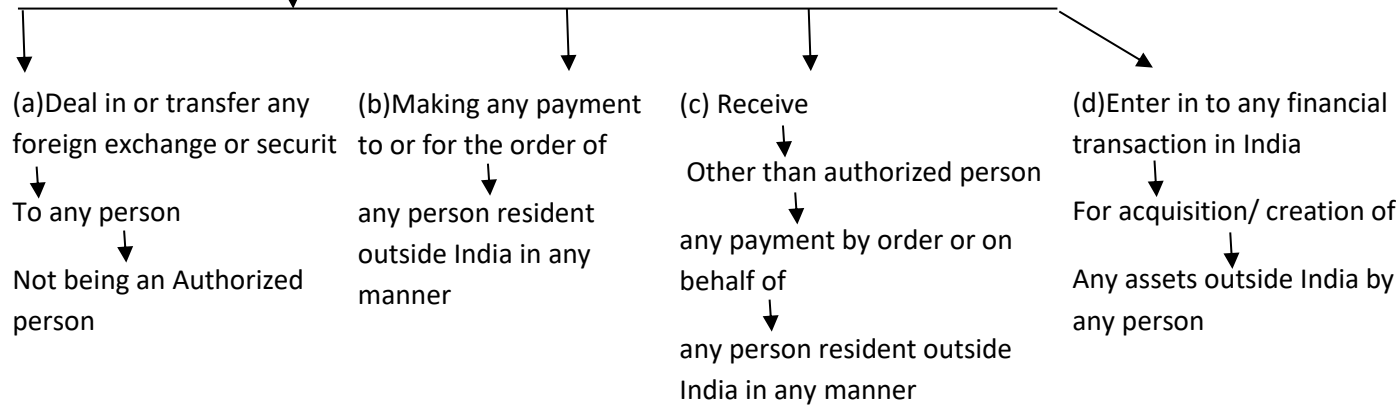
**Snap shot-**



## Dealing in Foreign Exchange/ Foreign Securities

Section 3- Restrictions on dealings in foreign exchange and foreign securities

No person shall



Relaxations in restrictions (Section 3)

All the restrictions mentioned under section 3 may be relaxed in the following manner:

- ✓ By making a provision to that effect in the Act or in rules /regulations
- ✓ By the general/special permission of the Reserve Bank.

### General permission under section 3(a)

The RBI has permitted any person to buy from any Post Office, in accordance with any law or rules made thereunder for the time being in force, any foreign exchange in the form of postal orders or money orders.

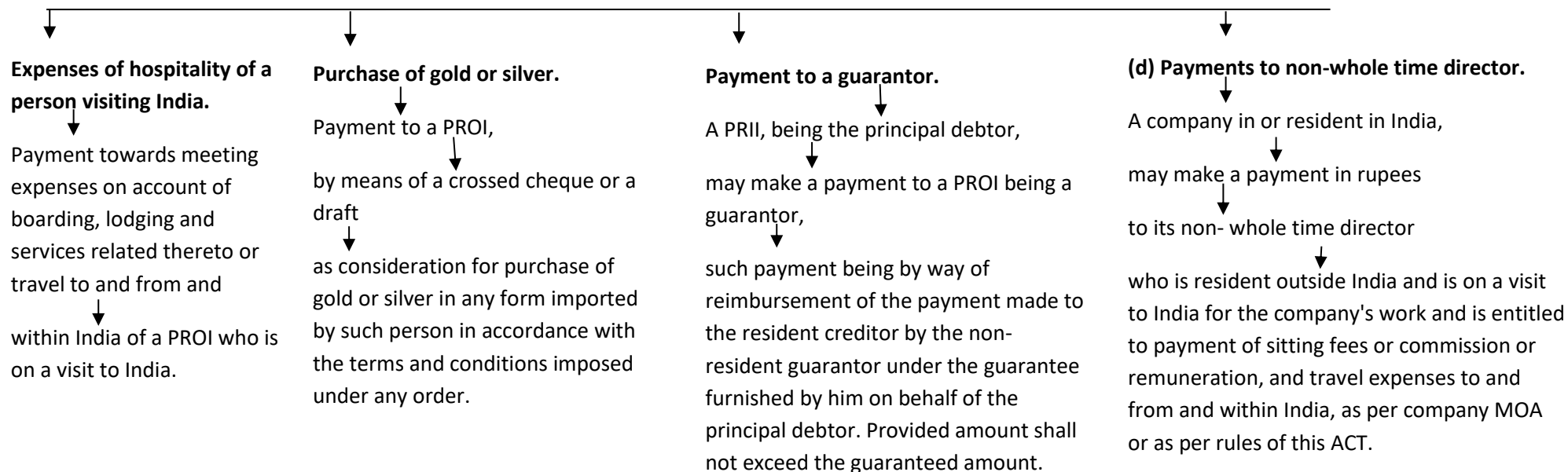
### General permission under sections 3(b), 3(c) and 3 (d)

The prohibitions imposed by clauses (b), (c) and (d) of section 3 shall not apply to any transaction entered into in Indian rupees by or with -

- ✓ a person who is a citizen of India, Nepal or Bhutan resident in Nepal or Bhutan
- ✓ a branch situated in Nepal or Bhutan of any business carried on by a company or a corporation incorporated in India, Nepal or Bhutan; and
- ✓ a branch situated in Nepal or Bhutan of any business carried on as a partnership firm or otherwise, by a citizen of India, Nepal or Bhutan.

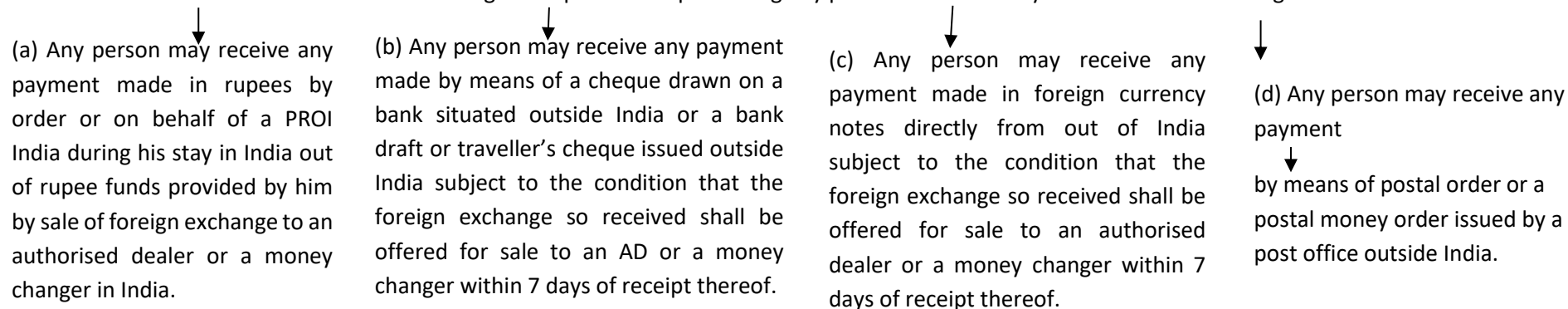
## RBI – General permission for payments by a person resident in India

The RBI has issued a general permission permitting any person resident in India to make payment in Indian rupees in the following cases

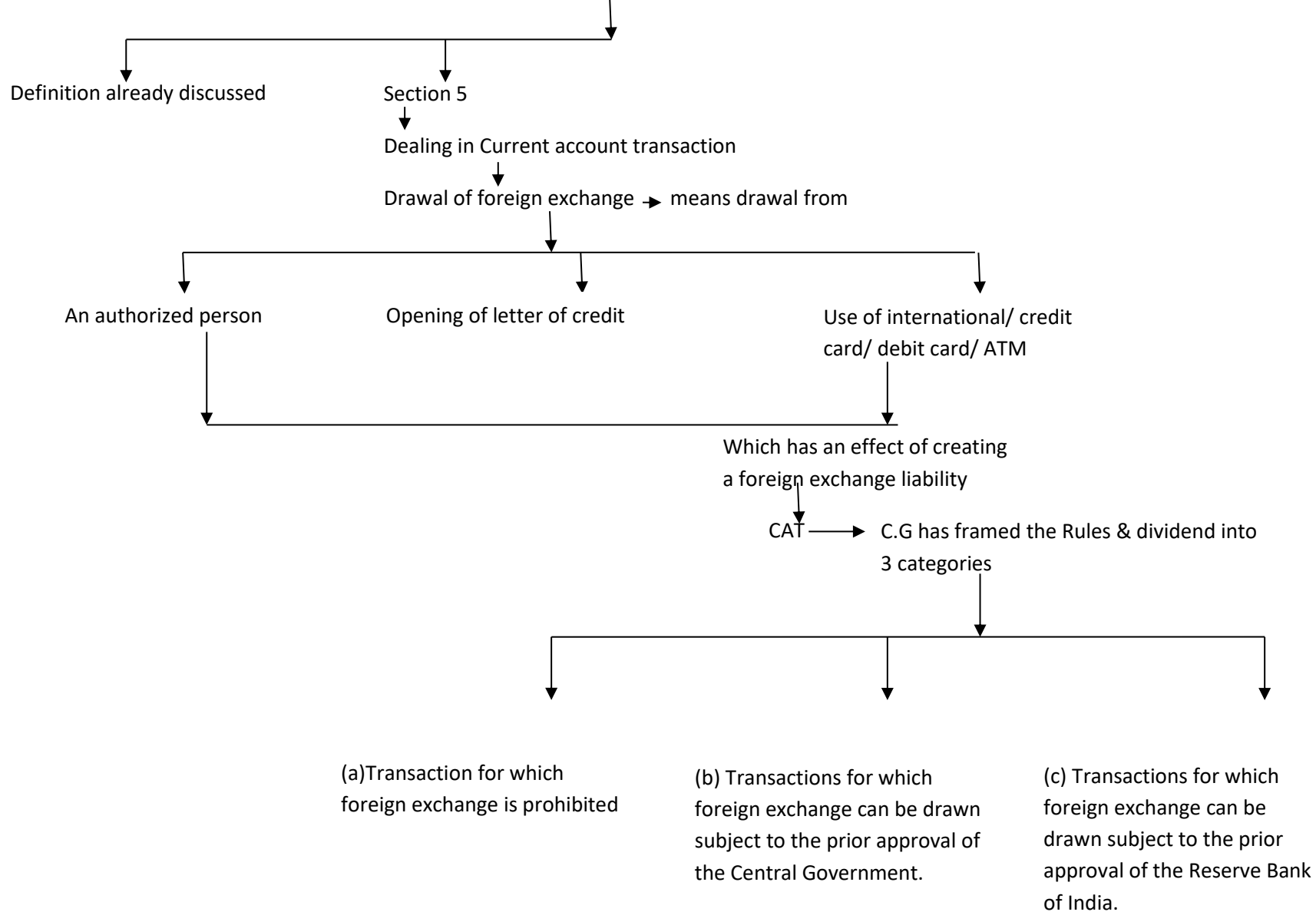


## Receipts by a person resident in India - General permission

The Reserve Bank of India has issued a general permission permitting any person to receive any amount in the following cases



## Current Account Transaction – Sec 5



## **RULES ON CURRENT ACCOUNT TRANSACTION**

The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. As per these rules, the current account transactions have been divided into the following 3 categories:

- (a) Transactions for which drawal of foreign exchange is prohibited.
- (b) Transactions for which foreign exchange can be drawn subject to the prior approval of the Central Government.
- (c) Transactions for which foreign exchange can be drawn subject to the prior approval of the Reserve Bank of India. Transactions for which drawal of foreign exchange is prohibited

### **Rule 3 read with Schedule prohibits drawal of foreign exchange (by any person) for the following purposes:**

1. Payment for travel to Nepal and/or Bhutan.
2. Any transaction with a person resident in Nepal or Bhutan.
3. Remittance out of India from-
  - √ lottery winnings or
  - √ racing/ridings or
  - √ any other hobby.
4. Remittance for purchase of-
  - √ lottery tickets; or
  - √ banned/prescribed magazines; or
  - √ football pools, sweep stakes, etc.
5. Payment of commission on exports under Rupees State Credit Route, except payment of commission upto 10% of the invoice value of export of tea and tobacco.
6. Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
7. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
8. Payment related to 'Call Back Services' of telephones.
9. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

### **Transaction permissible with approval of Central Government**

Rule 4 read with Schedule II, prior approval of Central Government shall be required for drawal of foreign exchange (by any person) for the following purposes:

1. Remittance of freight of vessel chartered by a PSU.
2. Multi-modal transport operators making remittance to their agents abroad.
3. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping.
4. Advertisement in foreign print media by a State Government and its Public Sector Undertaking exceeding US\$10,000. Exception- No restriction if payment is made for promotion of-
  - (a) tourism; or
  - (b) foreign investments; or
  - (c) International bidding.
5. Payment of imports through ocean transport by a Government Department or a PSU on CIF basis (i.e. other than f. o. b. and f. a. s. basis).
6. Remittance of prize money or sponsorship of sports activity abroad exceeding US\$1,00,000.  
Exception- No restriction if payment is made by-
  - (a) International Level sports bodies; or
  - (b) National Level sports bodies; or
  - (c) State Level sports bodies.
7. Remittance of hiring charges of transponders by TV Channels and Internet Service Providers.
8. Cultural Tours
9. Remittance for membership of P&I (Protection & Indemnity Insurance) Club.

Exception- No approval of the Central Government is required where the payment is made out of or under held in Resident Foreign Currency (RFC) Account of the remitter or EEFC A/C (except for remittance for membership of P&I Club)

### **Transactions permissible with approval of Reserve Bank**

Rule 5 read with Schedule III makes the following provisions in this regard:

1. Facilities for individuals:

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Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only (referred to as 'the Liberalised Remittance Scheme'). Any additional remittance in excess of USD 2,50,000 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 specialized training or for meeting expenses of medical treatment 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.

However, for the purposes mentioned at item numbers (iv), (vii) and (viii) above, an individual may draw the foreign exchange exceeding USD 2,50,000 if it is so required by the country of emigration, medical institute offering the medical treatment or the university, respectively.

- ❖ If an individual remits any amount under the Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 2,50,000 by the amounts or emitted. 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.

India of such foreign company, may make remittance upto his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Explanation: or 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 3, years, is a resident but not permanently resident:

- ❖ A person other than an individual may also draw the foreign exchange, mutatis mutandis, within the limit prescribed under the Liberalised Remittance Scheme for the purposes mentioned hereinabove.

**Exception-** No approval of the Reserve Bank is required where the payment is made out of the funds held in Resident Foreign Currency (RFC) Account of the remitter.

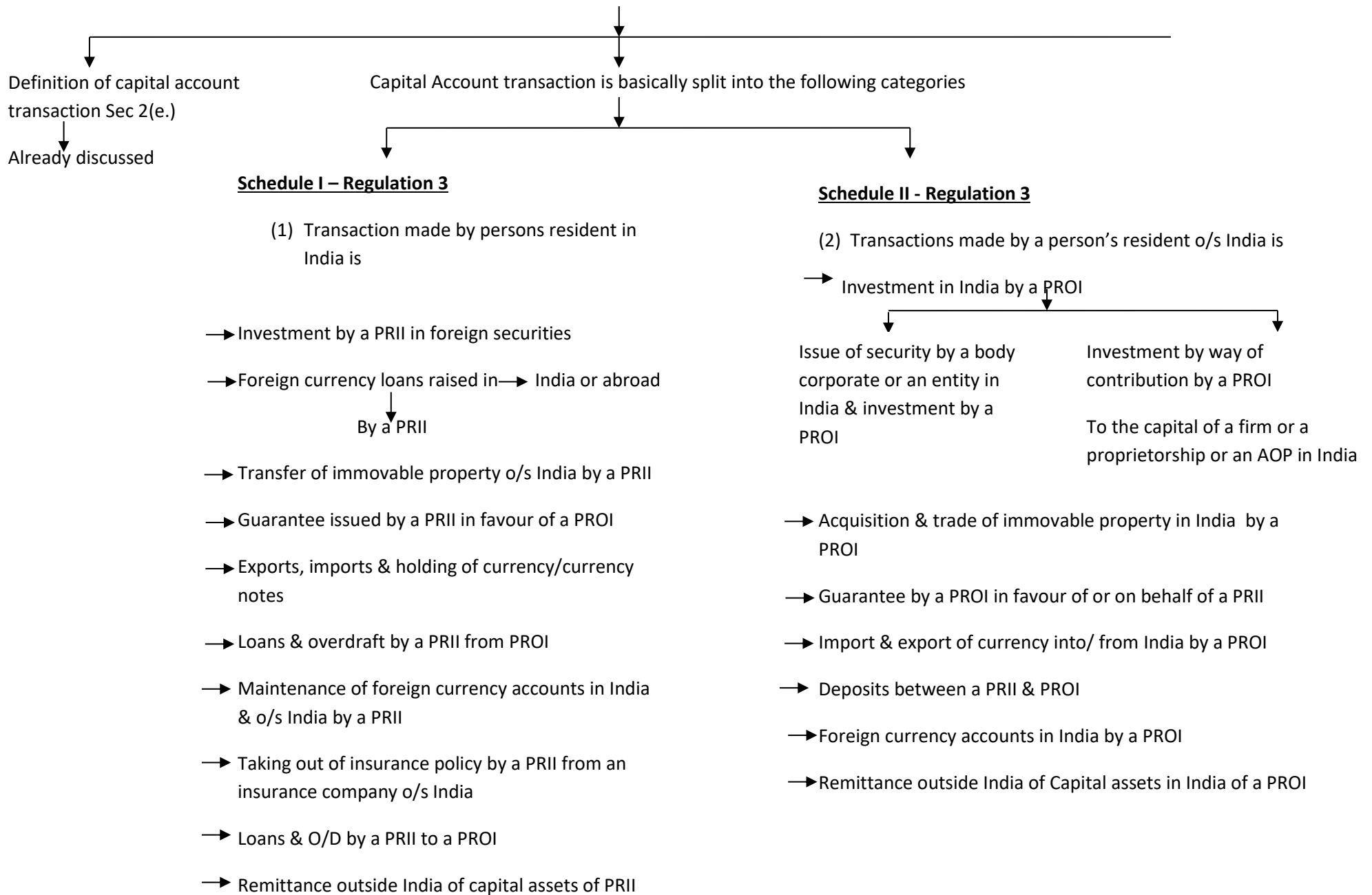
## **2. Facilities for persons other than individual**

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

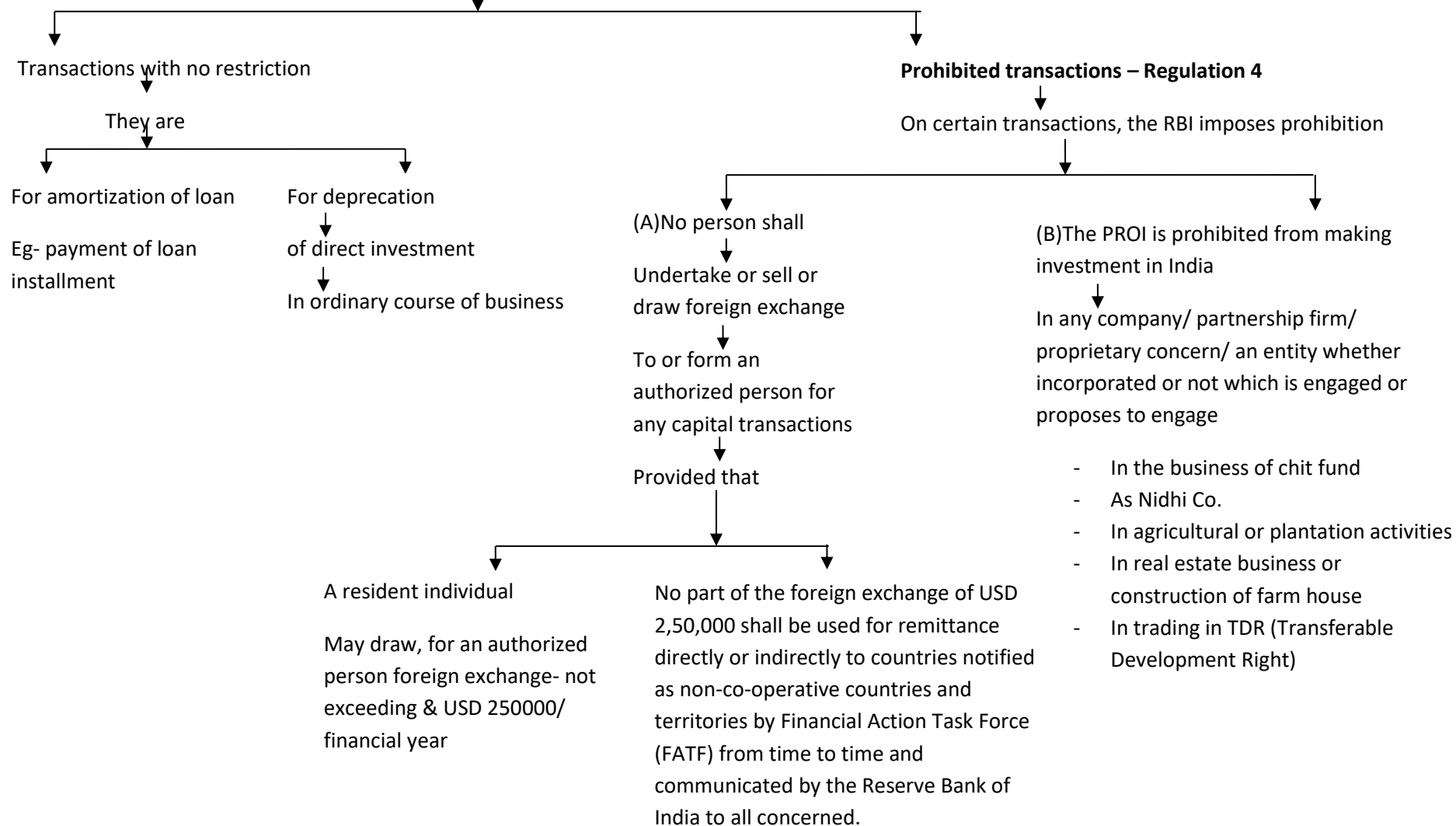
- i. Donations exceeding 1% of their foreign exchange earnings during the previous 3 financial years or USD 50,00,000, whichever is less, for-
  - (a) Creation of chairs in reputed educational institutes;
  - (b) Contribution to funds (not being an investment fund) promoted by educational institutes; and
  - (c) Contribution to a technical institution or body or association in the field of activity of the donor Company.
- ii. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever more is.
- iii. Remittances exceeding USD1,00,00,000 (1 Crore) per project for any consultancy services in respect of infrastructure projects and USD10,00,000(Rs 10 Lacs)perproject,forotherconsultancyservicesprocuredfromoutsidIndia.
- iv. Remittances exceeding 5% of investment brought into India or USD 1, 00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Exception-No approval of the Reserve Bank is required where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter

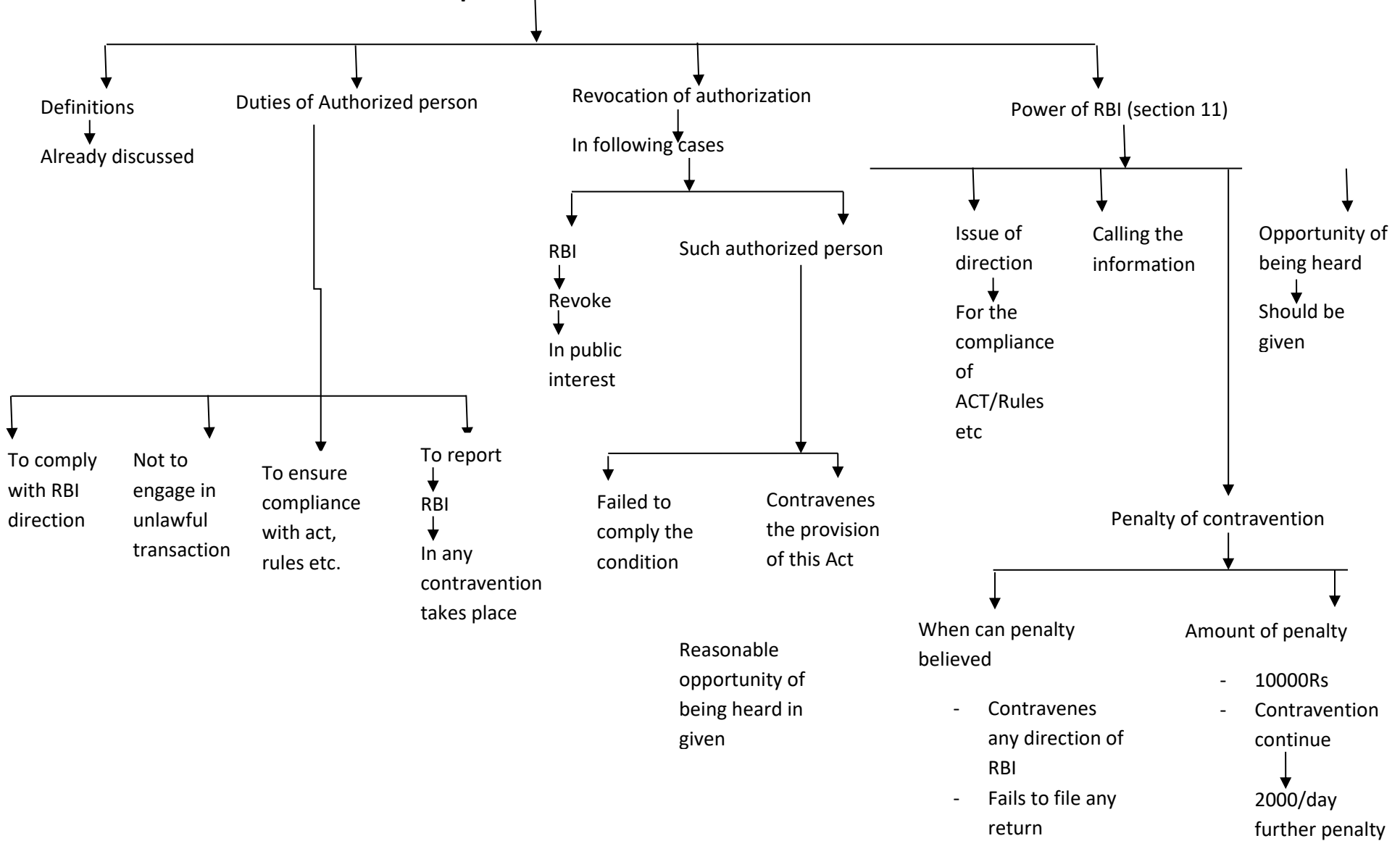
## Capital Account transaction (section-6)



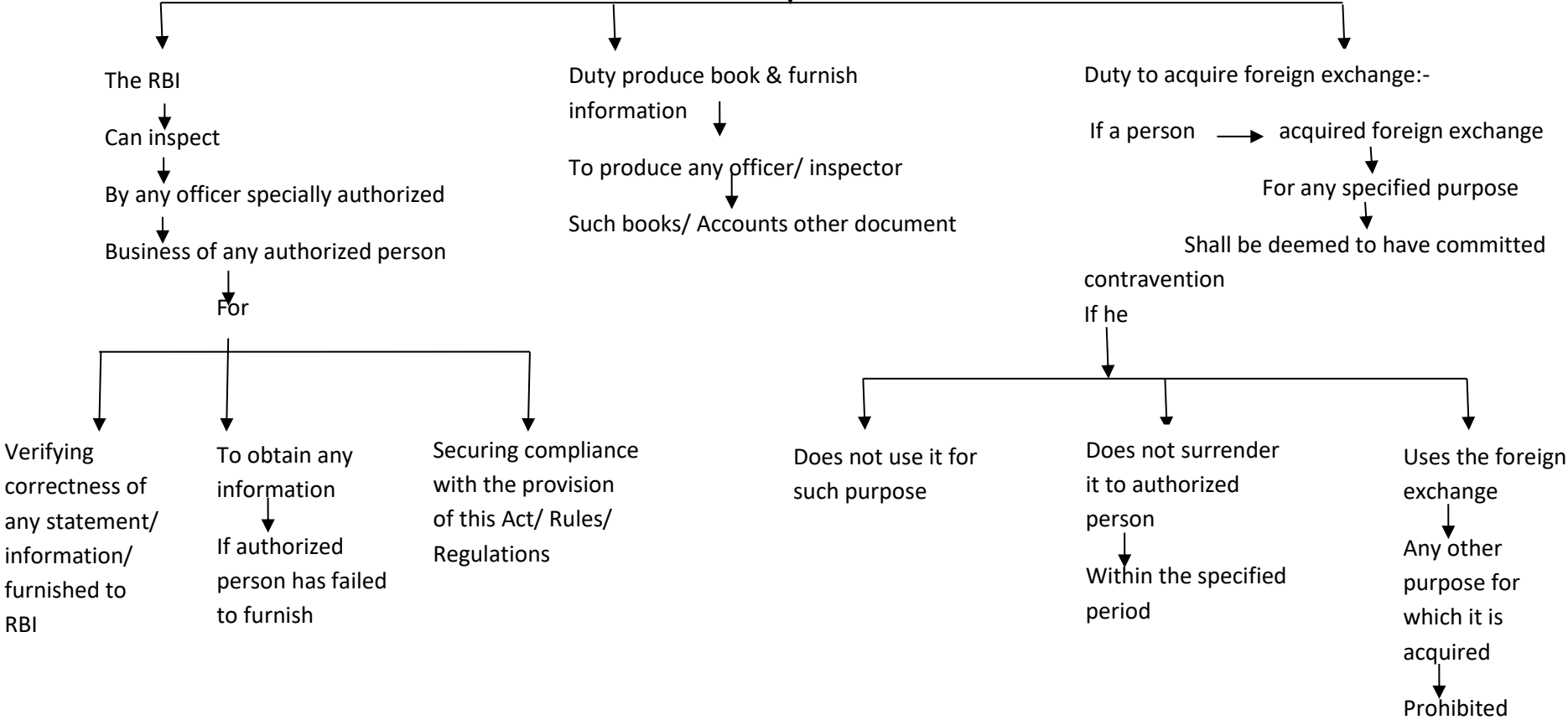
## Capital account Transaction 2<sup>nd</sup> Chart



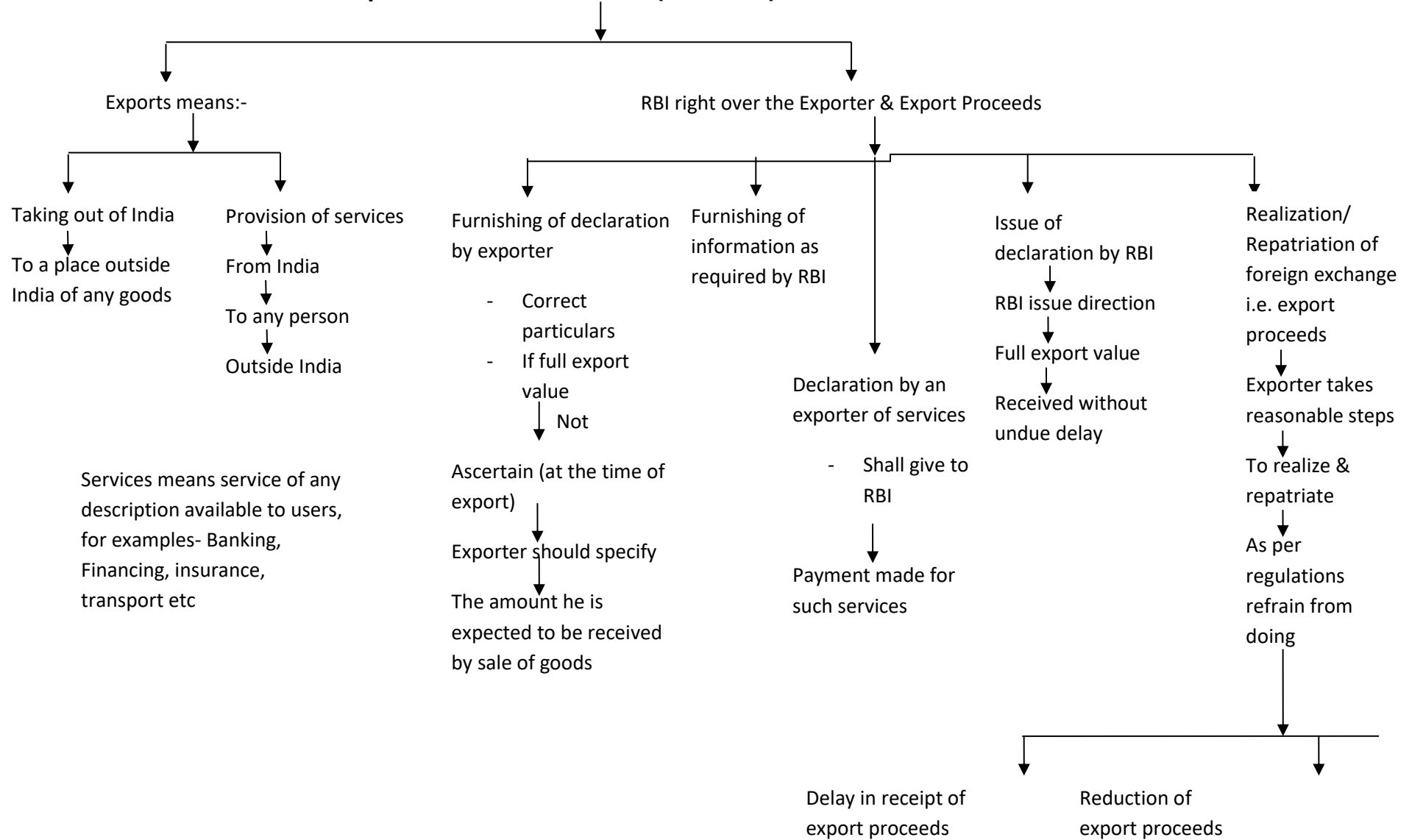
# Authorized person section-10



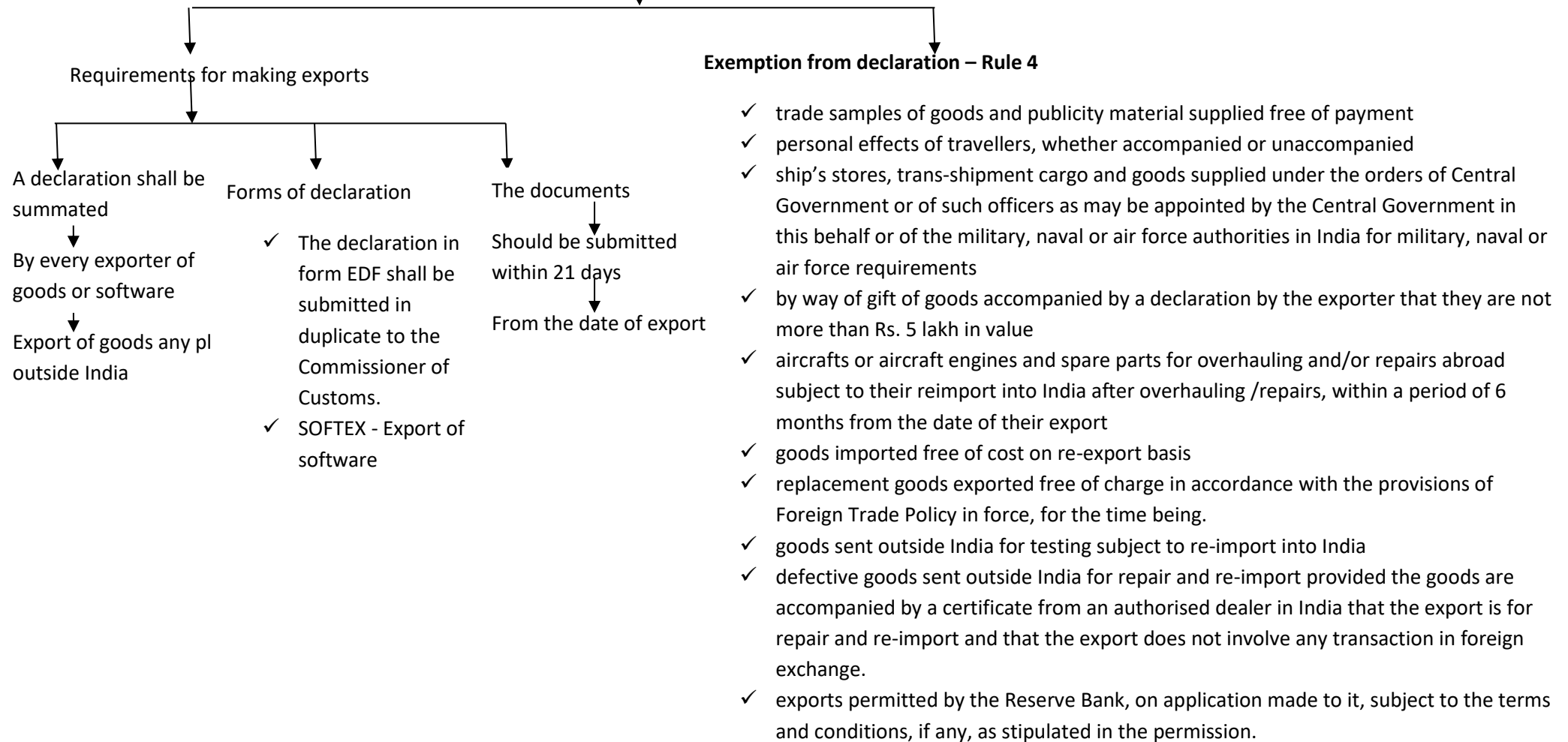
**Power to RBI to inspect Authorized Person (section 12)**



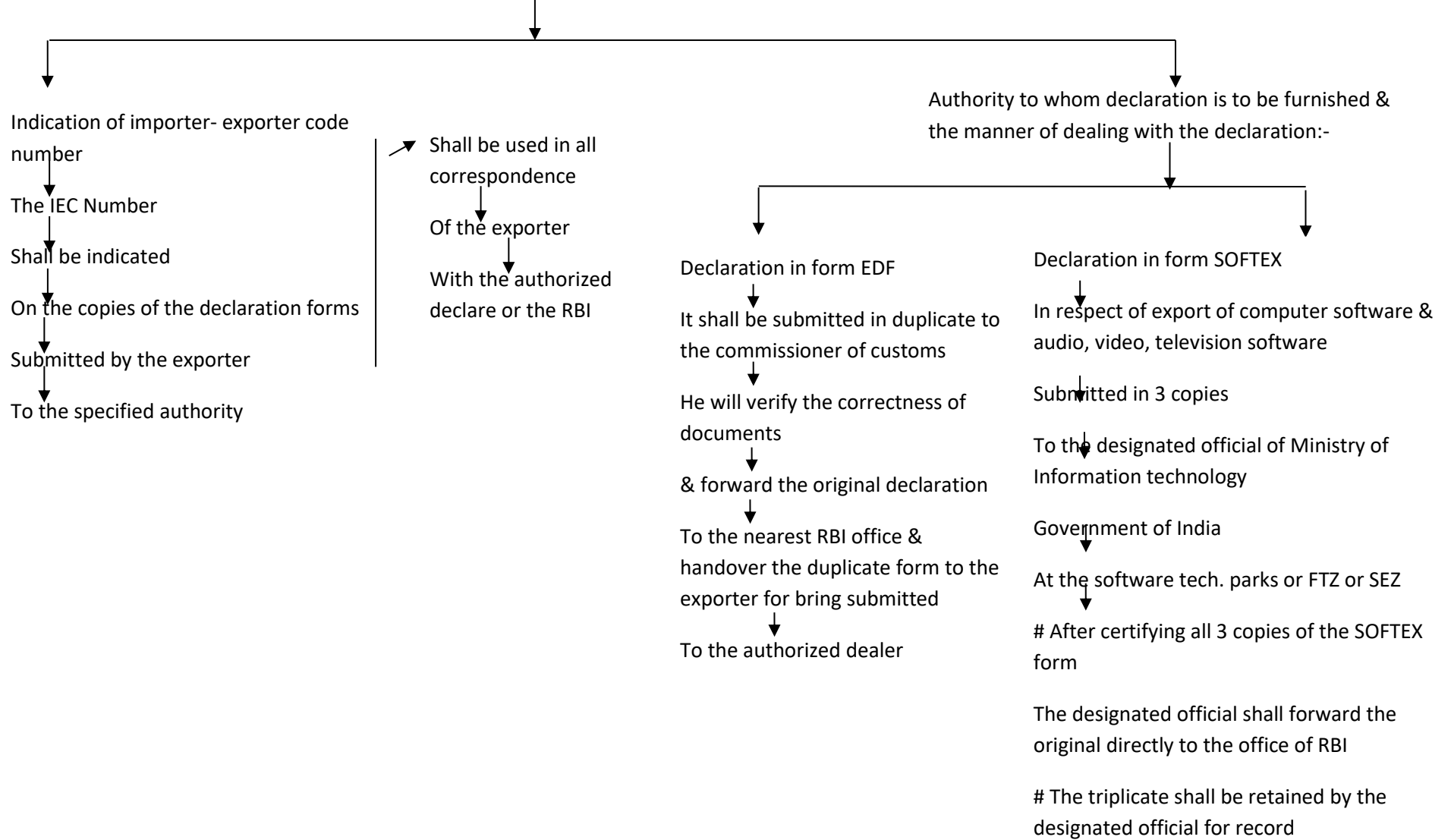
# Export of Goods & Services (Section 7) 1st chart



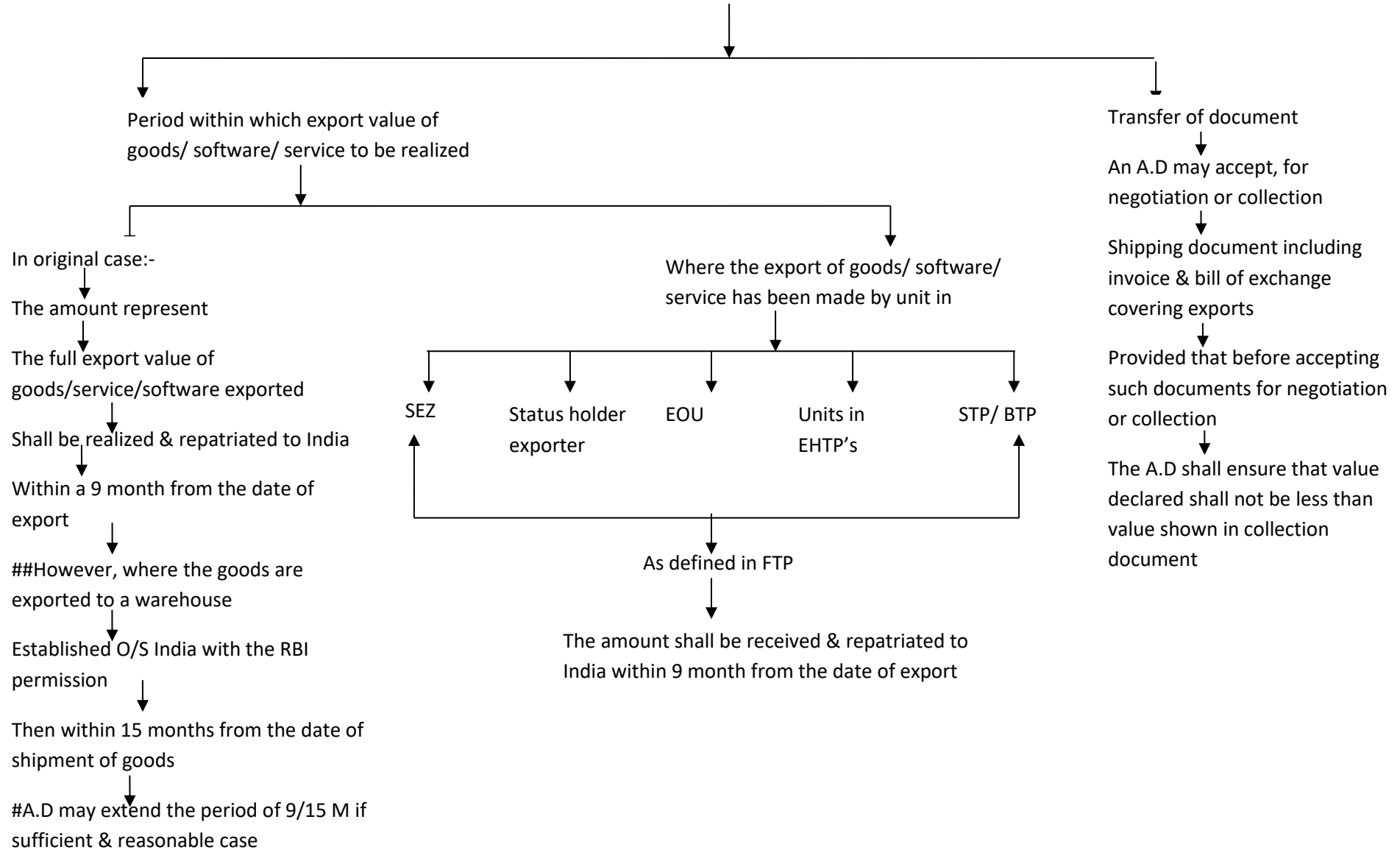
## Exports of Goods/Services (Chart-2)



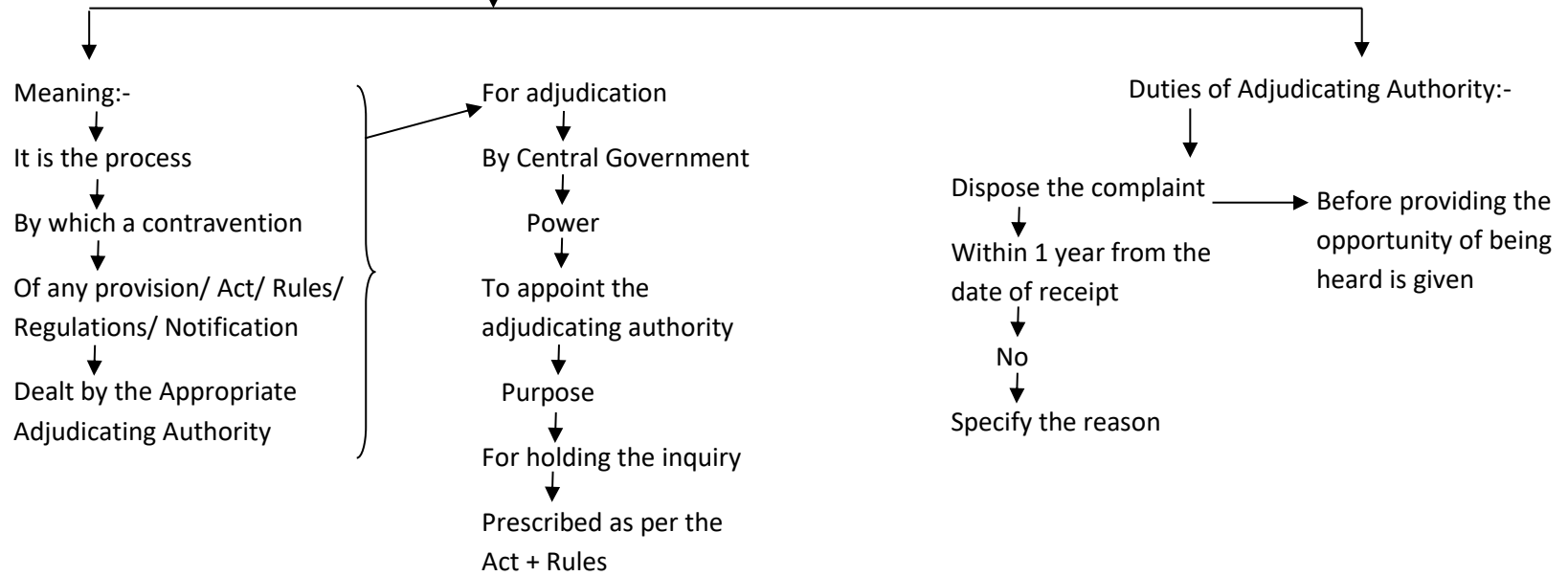
### Goods & Services (Chart-3)



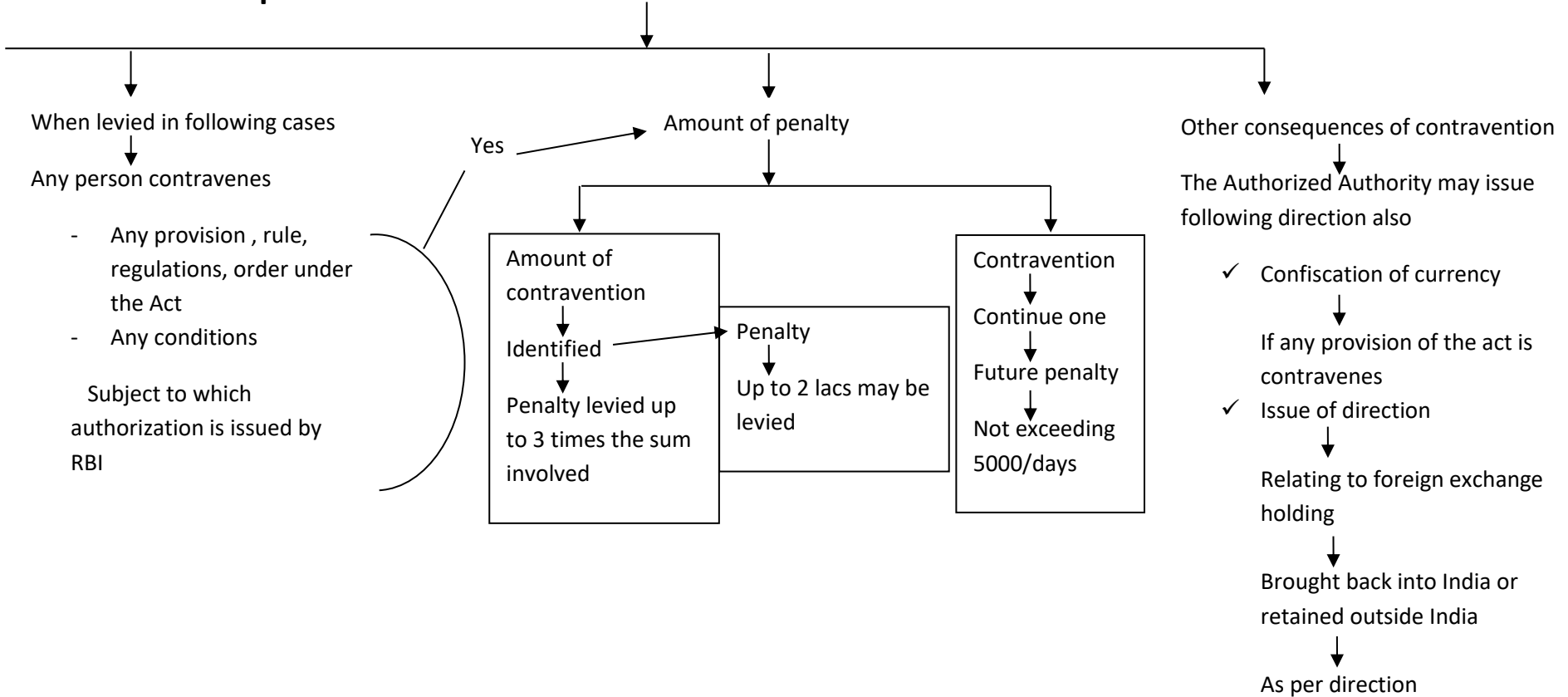
## Good & services (Chart -4)



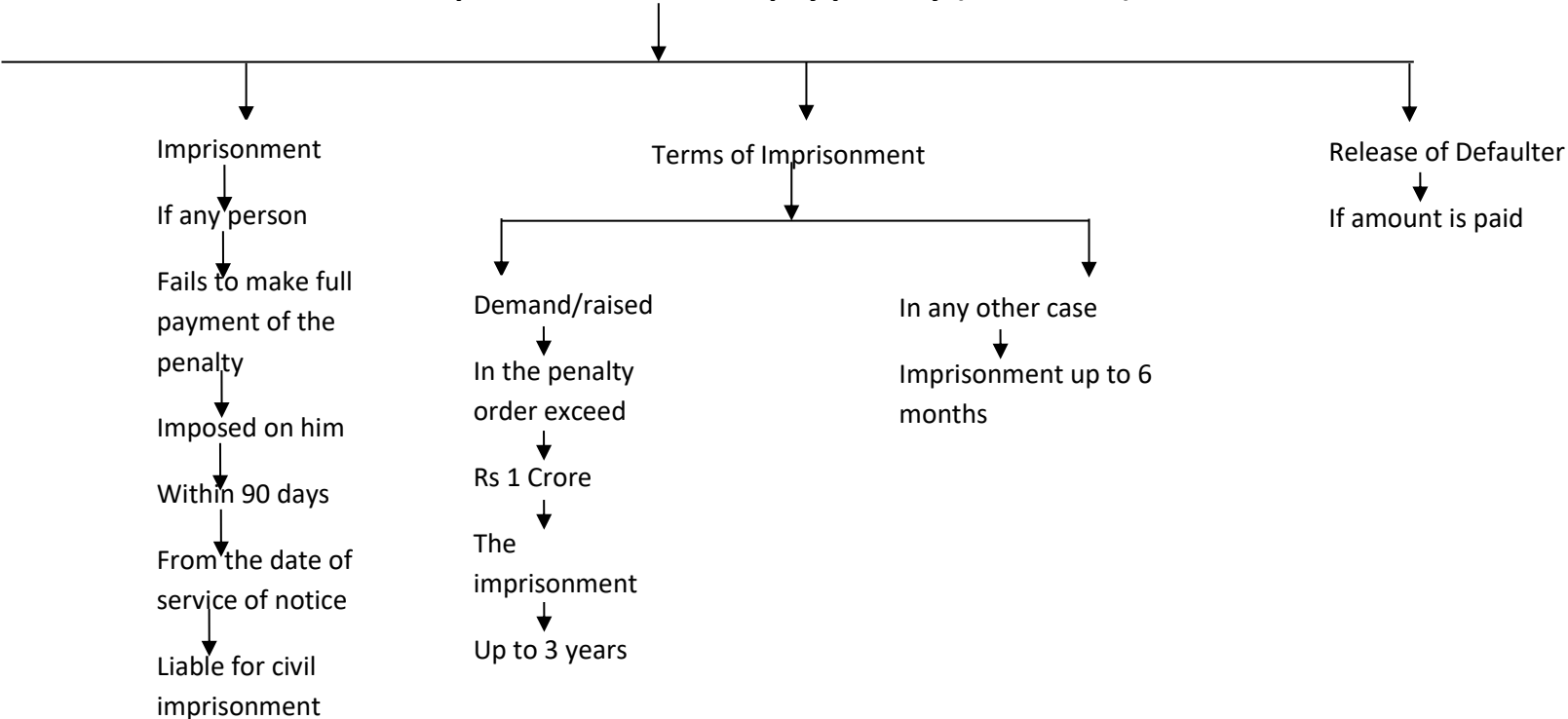
## Adjudication – Sec 16



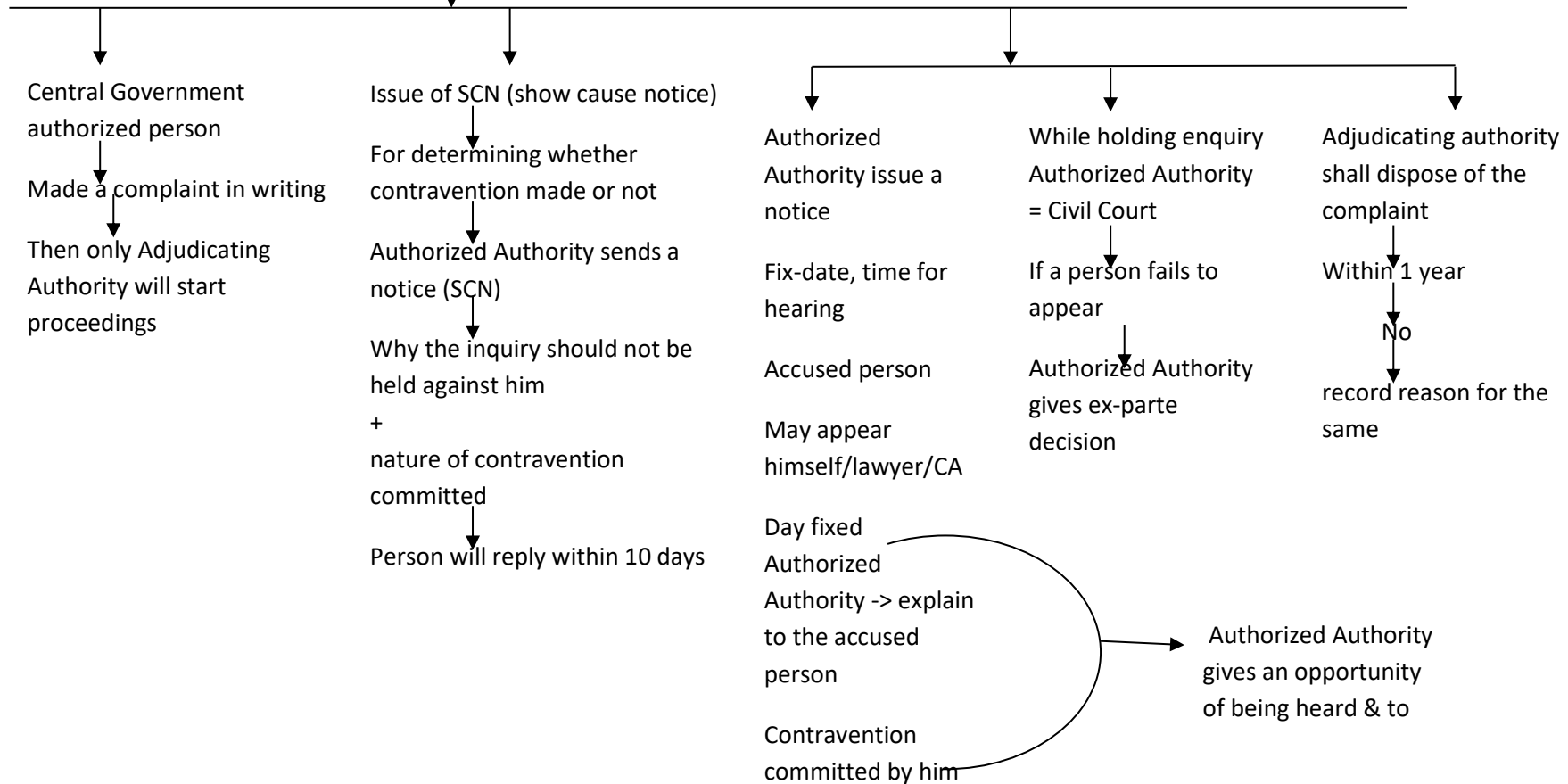
# Penalties provided under FEMA for contravention of Provision of Act



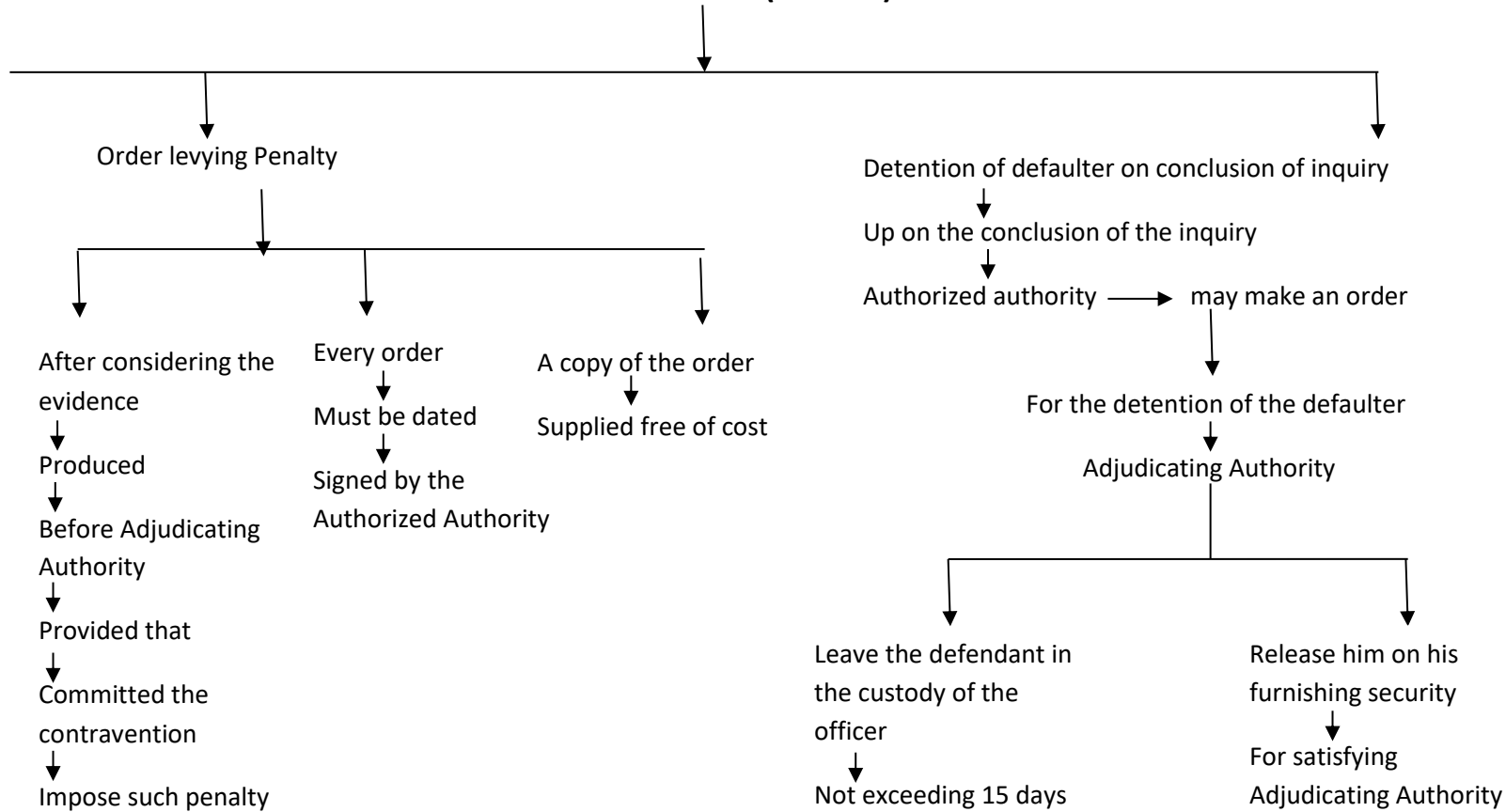
**Consequences of Failure to pay penalty (section-14)**



**Provision in respect of enforcement of the Adjudicating Authority**  
**Section 14 & 16** FEMA(Adjudication Proceedings & Appeals Rules, 2000)  
**(1<sup>st</sup> Chart)**



## Enforcement (Chart-2)



**Special Director → Appeals ← Appeals to → the Appellate Tribunal 2<sup>nd</sup> Appellant authority**

Special Director (Appeals)

The Central Government shall appoint

1 or more (Special director)

Appeals

To hear appeals

Against the order of the Authorized authority

The Central Government → shall

Specify the jurisdiction of special director (Appeal)

Any person

Aggrieved

By an order

Made by adjudicating authority

May prefer

An appeal

To the special director (Appeals)

When can appeal be filled

If the, adjudicating authority is

Order of special director (Appeal)

- Special director (Appeal)-> may pass such order-> may confirm, set aside
- Opportunity of being heard
- Send a copy of every order

To the parties

The appeal shall be filled 45 days from the date of order of the adjudicating authority

If sufficient cause shown

Special director

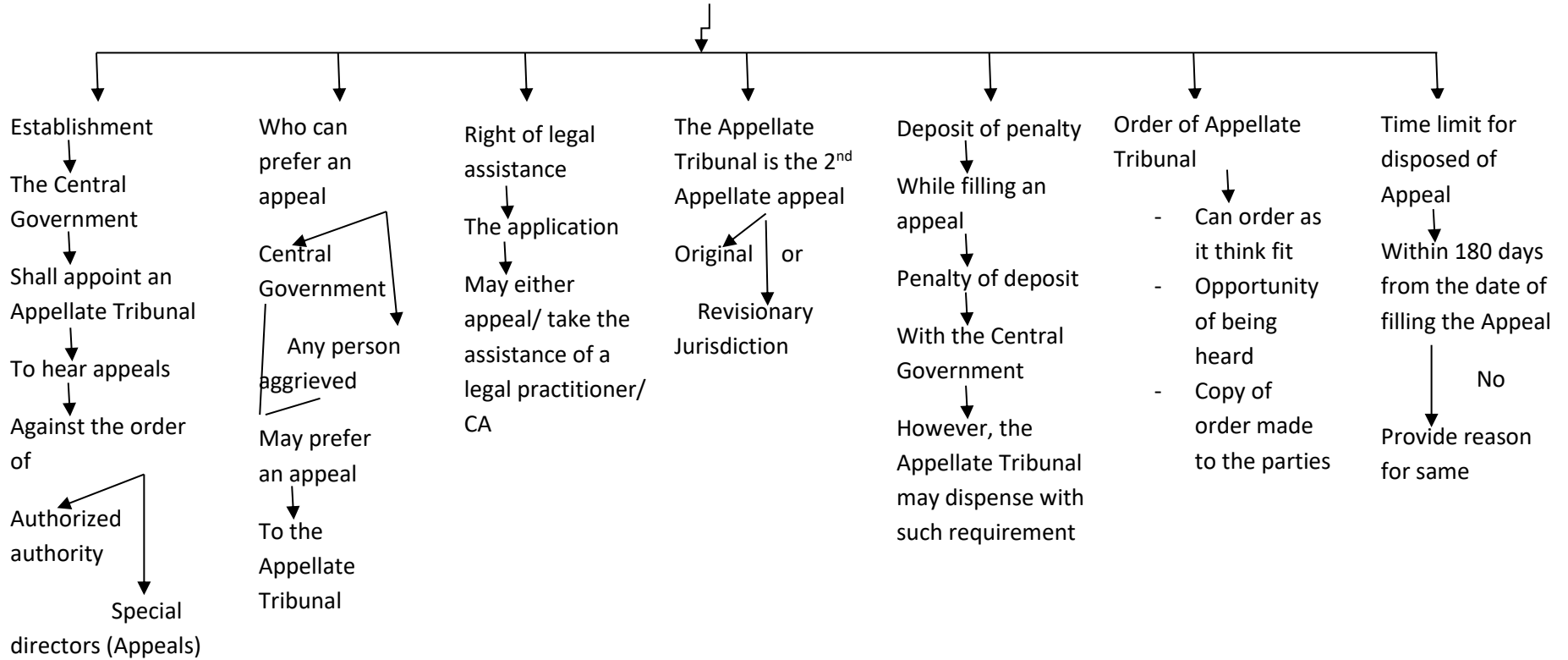
Can extend the time

# No time limit has been disposed off for an appeal

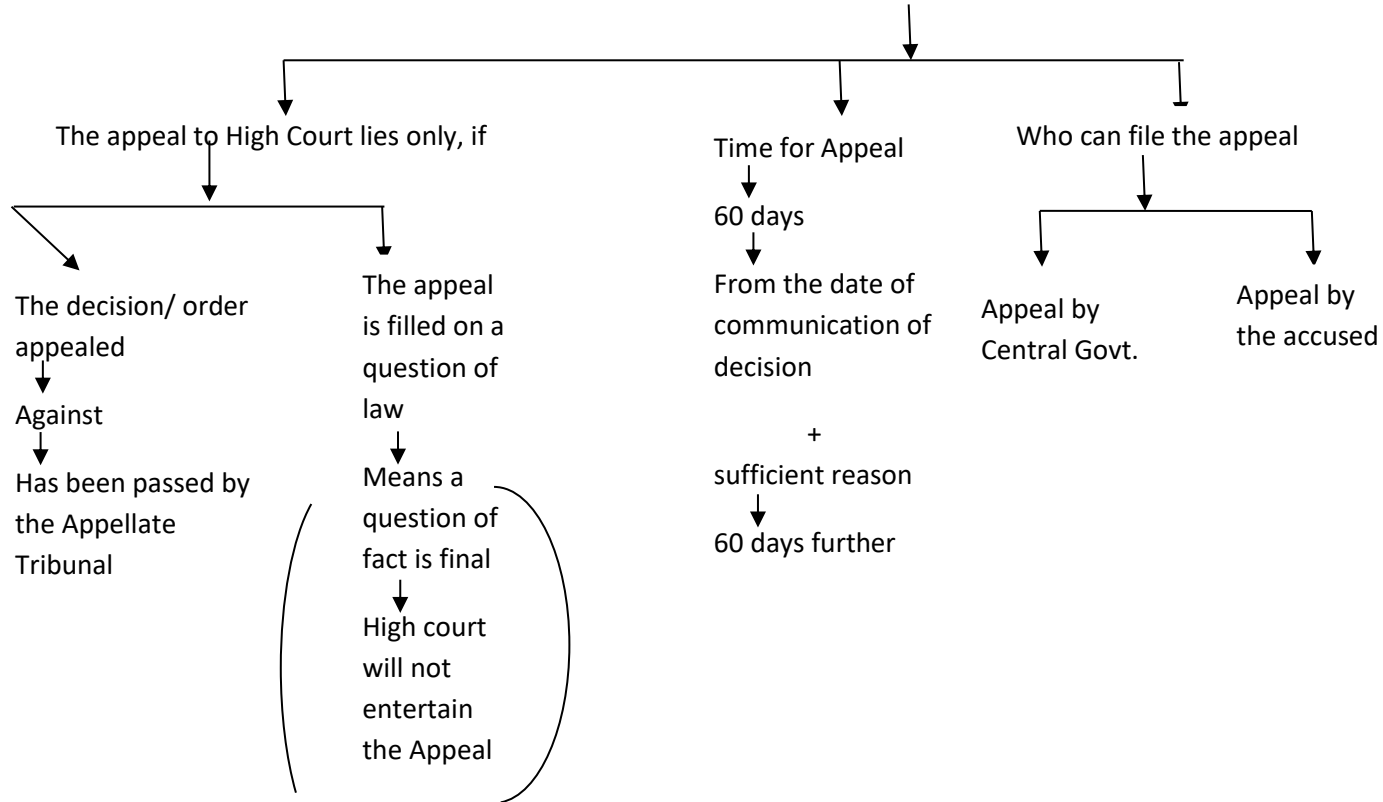
An assistant director of enforcement

A deputy director of enforcement

## Appeal with the Appellate Tribunal (Section 19)



## Appeal to High Court

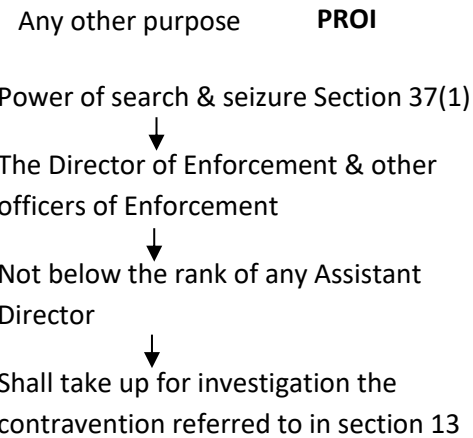
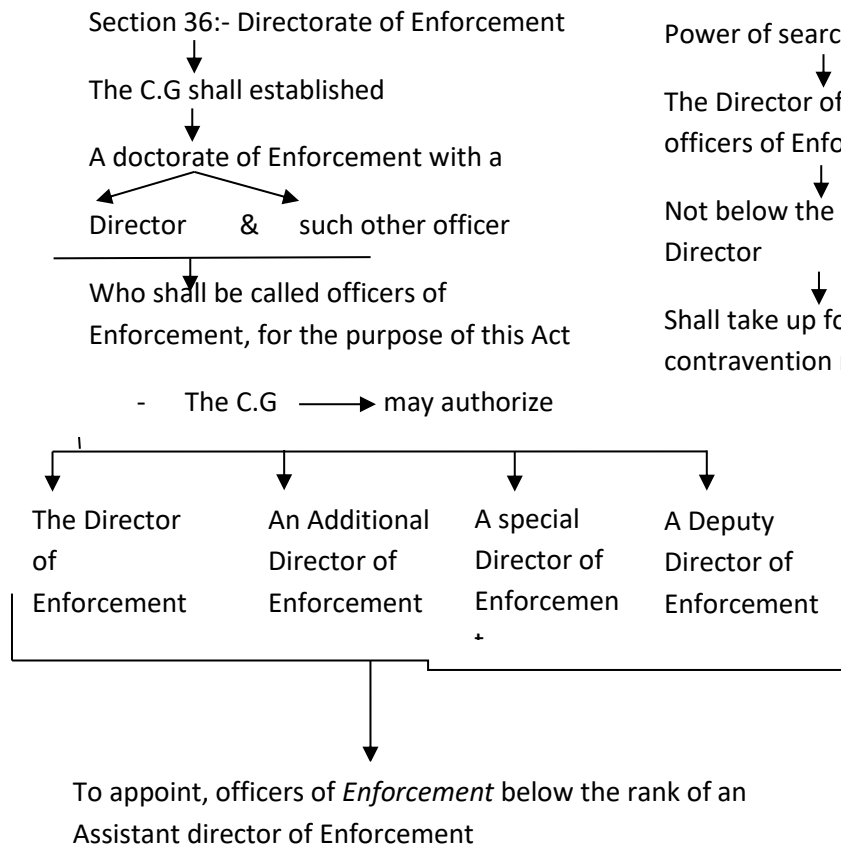


## Appeal to Supreme Court

Under FEMA, No provision for appeal to Supreme Court from the order of High Court

But Article 136(1)

A person can apply to Supreme Court



Presentation as to documents in certain cases section 39:-

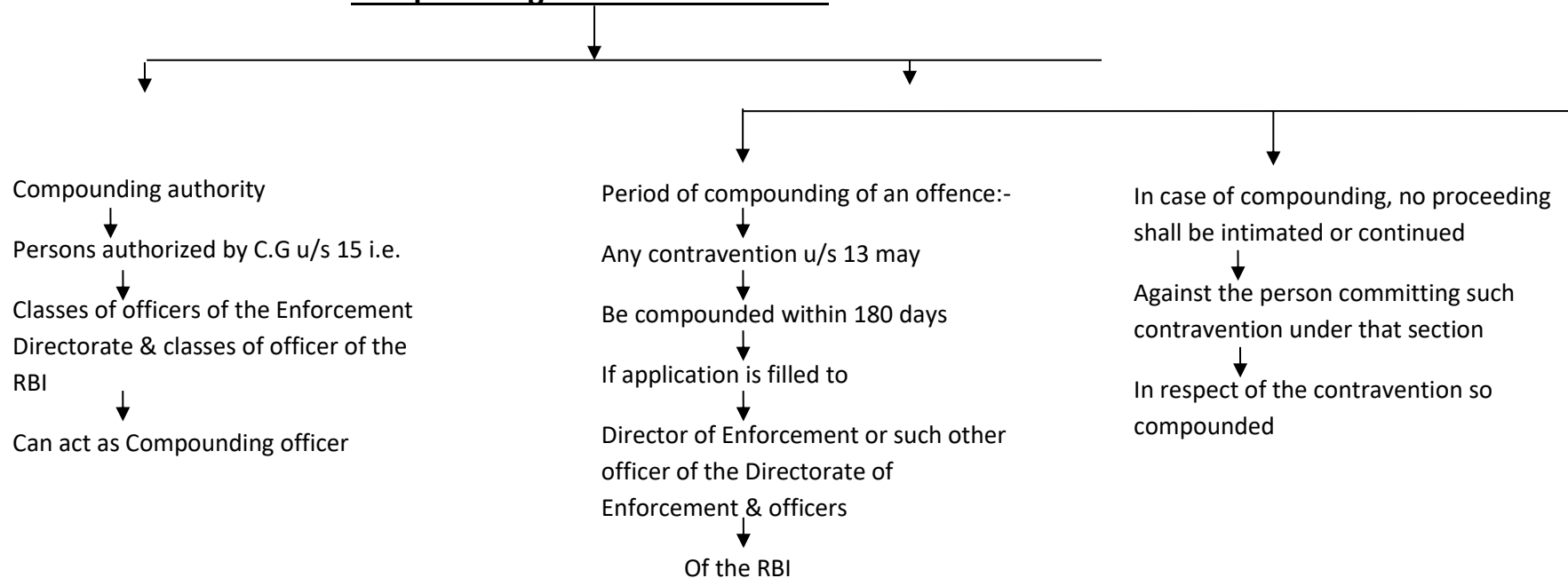
Where any document

- a) Is produced or furnished by any person or has been seized from the custody or control of any person
- b) Has been received from any place O/S India in the course of Investigation of any contravention under this Act

Such documents is tendered in any proceedings under this Act in evidence

- ✓ Presume that the signature below belongs to particular person
- ✓ Admit the document as evidence irrespective of this fact that it is unstamped

## Compounding of Offences – Sec 15



# IMPORT OF GOODS AND SERVICES:

## 1. Introduction:

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graph TD; A[1. Introduction:] --> B[Import of goods and services into India is allowed as per Section 5 of FEMA, 1999 read with FEM (Current Account Transaction) Rules, 2000. Import Trade is regulated by DGFT (Directorate General of Foreign Trade) under the Ministry of Commerce and Industry, Department of Commerce, Government of India.]; A --> C[Authorised Dealer Category-1 Banks should ensure that imports into India are in conformity with FTP in force and FEM (Current Account Transactions) Rules, 2000 and directions issued by RBI order FEMA, 1999 from time to time.];
```

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Authorised Dealer Category-1 Banks should ensure that imports into India are in conformity with FTP in force and FEM (Current Account Transactions) Rules, 2000 and directions issued by RBI order FEMA, 1999 from time to time.

## 2. General Guidelines for Imports:

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graph TD; A[2. General Guidelines for Imports:] --> B[1. General: Rules and Regulations are to be followed by Authorised dealer (AD), while overtaking import payment transactions on behalf of clients. AD must particularly adhere to KYC guidelines issued by RBI.]; A --> C[2. Remittances for Import Payments: AD may allow remittances for making payments for Imports, after ensuring that all requisite details are made available by importer and remittances is for bonafide trade transactions as per law.];
```

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2. Remittances for Import Payments: AD may allow remittances for making payments for Imports, after ensuring that all requisite details are made available by importer and remittances is for bonafide trade transactions as per law.

### 3. Obligation of Purchaser of Foreign Exchange:

(i) It should be utilised for the purpose mentioned in declaration made by him to AD or for any other purpose which is permissible under the Act/Rules/ Regulations.

(ii) AD should ensure that importer furnishes evidence of import as in IDPMS (Import Data Processing and Monitoring system), Postal Appraisal Form or Customs Assessment Certificate etc. and satisfy himself that goods equivalent to the value of remittance have been imported.

AD should ensure that all import remittances outstanding on the notified date of IDPMS are uploaded in IDPMS.

(iii) A PRI may make payment for import of goods in forex through:

- an international card held by him/in rupees from international credit card/ debit card through the credit/debit card servicing bank in India against the charge slip signed by the imported, or

- As prescribed by RBI from time to time; provided that the import is in conformity with FTP.

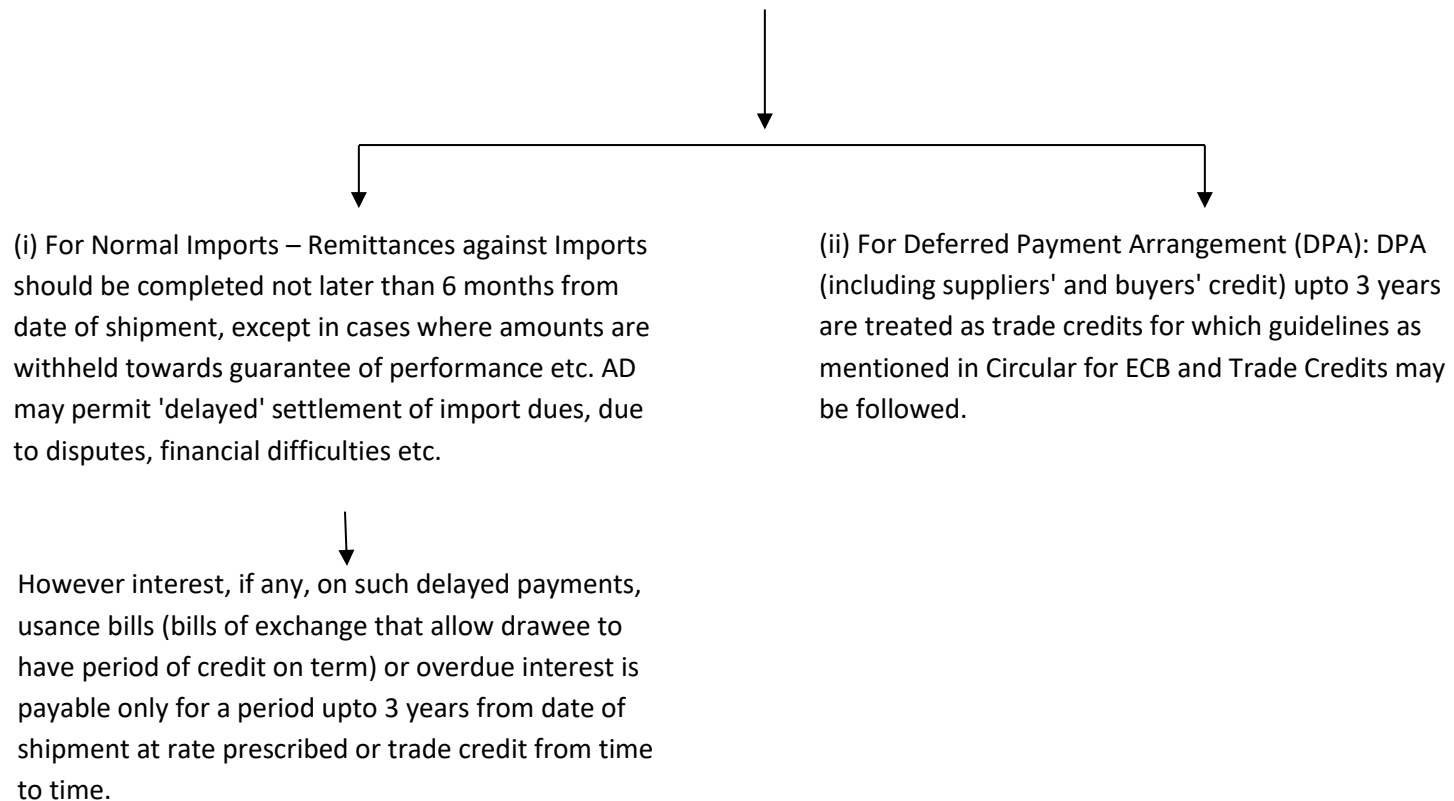
(iv) A PRI may also make payment as under:

(a) In Rupees, for meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of PROI, who is on a visit to India;

(b) By means of Crossed Cheque or Draft, as consideration for purchase of gold/silver imported

(c) A company or Resident in India, may make payment in rupees, to its non-whole time director, who is resident outside India and is on a visit to India for company's work and is entitled to payment of sitting fees/commission/remuneration/travel expenses to and from and within India, as per company's MOA/AOA/ Agreement/ SHS resolution/ Board's resolution.

#### 4. Time limit for Settlement of Import Payments:



## 5. Extension of Time:

(i) Limit of Extension: AD can consider granting extension of time for settlement of import dues upto a period of 6 months at a time (maximum upto a period of 3 years) irrespective of the invoice value for delays on account of disputes about quantity or quality or non-fulfilment of terms of contract; financial difficulties and cases where importer has filed suit against seller.

In cases, where 'sector' specific guidelines have been issued by RBI for extension of time (i.e. rough, cut and polished diamonds), the same will be applicable.

(ii) Circumstances: While granting extension of time, AD must ensure that:

(a) Import transactions covered by invoices are not under investigation by ED/CBI/etc.

(b) While considering extension beyond 1 year from date of remittance, the total outstanding of importer does not exceed 1 million USD or 10% of average import remittances during 2 preceding FY, whichever is lower &

(c) where extension of time has been granted by AD, the date upto which extension has been granted may be indicated in 'Remarks' column.

### Note:

- Cases not covered by above instructions/beyond the above limits, may be referred to concerned Regional Office of RBI
- The above extension period shall be reported in IDPMS as per message "Bill of Entry Extension" and the date upto which extension is granted will be indicated in "Extension Date" column.

## 6. Import of Foreign Exchange/Indian Rupees:

Except as otherwise provided in Regulations, no person shall without general/ special permission of RBI, import/bring in India, any Foreign Currency. It is governed by FEMA, 1999 and FEM Regulations 2000.

- RBI may allow a person to bring into India, currency notes of Government of India/RBI, subject to RBI's terms and conditions.

## 7. Import of Foreign Exchange into India: A person may:

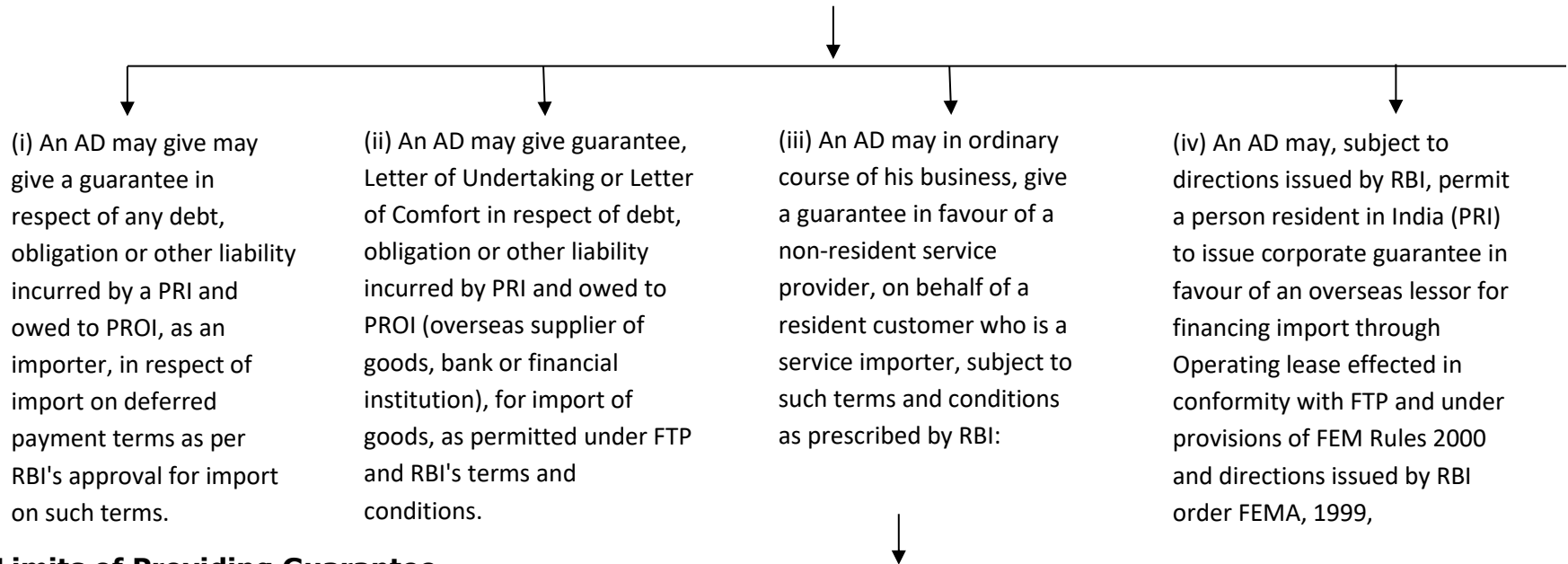
- Send into India, without limit, fore in any form (other than currency notes, bank notes and travellers cheque) Bring into India from any place outside India, without limit, fore (other than unissued notes), subject to condition that such person makes a declaration to Custom Authorities, on arrival in India, at Airport in Currency Declaration Form (CDF)

Provided that, it shall not be necessary to make such declaration if aggregate value of Fore in form of currency notes, bank notes or travellers cheque, brought in by such person at any time does not exceed USD 10,000 or equivalent and/or the aggregate value of foreign currency notes (Cash Portion] alone brought in by such person at any one time does not exceed USD 5,000 or its equivalent.

### 8. Import of Indian Currency and Currency Notes:

- Any PRI who had gone out of India on a temporary visit, may bring into India, at the time of his return from any place outside India (except Nepal and Bhutan), currency notes of Gol and RBI notes upto an amount not exceeding Rs.25,000 A person may bring into India from Nepal or Bhutan, currency notes of GOI and RBI for any amount in denominations upto Rs.100/-

### 9. Issue of Guarantee by an AD:



### Limits of Providing Guarantee

Service Importer (SI)	Amount of Guarantee
When a SI is other than a public sector company or Dept./Undertaking of GOI/State Govt.	No Guarantee for an amount exceeding USD 5,00,000 or its equivalent shall be issued
Where the SI is public sector company or No Dept/undertaking of Gol/State Govt.	No Guarantee for an amount exceeding USD 1,00,000 or its equivalent shall be issued without prior approval of MoF, Gol.

