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## Some Case Studies in FEMA

# Case Study 1:
# Facts of the case

- ABC Pvt. Ltd.is an Indian Company, which is in the business of buying, taking on lease and selling & giving on lease, CONTAINERS in India & Overseas.
- This business model has several variations.
- Here we shall examine 2 of the scenarios & their FEMA implications.

# Scenario 1

- ABC is buying containers from an overseas seller, taking delivery of the containers at an overseas location.
- ABC then sells the containers to an overseas buyer who then picks them up directly from the overseas depot/location.
- The buyer makes a Foreign Inward Remittance to ABC's bank account in India, for the sale proceeds.

# Scenario 1 ……..contd….

- But when it comes to payment by ABC to the overseas seller, ABC's bank refuses to make the Foreign Outward Remittance, because ABC is not able to produce normal import-related documentation.
- What FEMA-complaint solution can we offer ABC to break the *impasse* with its AD Bank?

# Solution…..Scenario 1

- This is the business model that fits perfectly into the contours of Merchanting Trade Transactions (MTTs) which are recognised and permitted under the FEMA Regulations on Imports.

  Sources for Guidelines on MTT:

- A. RBI's AP (DIR Series) Circular No. 20 dated 23 Jan 2020.
- B. Para C. 14 of RBI's FED Master Direction No. 17/2016-17 dated 01 Jan 2016, updated from time to time.

# Scenario 2

- In the above example, if ABC's customer is in India, & not abroad, can the customer pay ABC in INR?
- If not, what is the solution to the conundrum?

# Solution…..Scenario 2

- This scenario envisages the purchase by ABC of a container located overseas from a Person Resident Outside India ( PROI)
- ABC wants to sell this Container to a Person Resident in India (PRII )
- ABC pays FE and acquires an FE asset. This FE asset is sought to be sold to a PRII against payment in INR.
- Is this FEMA compliant?

# Solution…..Scenario 2……Contd

- No , it is not….. says S. 3 ( d) of FEMA.
- ***Dealing in foreign exchange, etc.—***
- *Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—*
- (a)…….
- (b)…….
- ( c )…….

# Solution…..Scenario 2……Contd

- (d) *enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any* ***asset outside India*** *by any person. Explanation.—For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.*

# Solution…..Scenario 2….contd….

- Explanation of S 3 (d)
- Eg. Joint purchases under LRS

# Solution…..Scenario 2… Contd…

- Tweak the modus operandi”, so as to convert this transaction also into an MTT.
- That will dispense with the need for an EDF or a BoE