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## **BACKGROUND MATERIAL**

**In Frequently Asked Questions (Q&A) Format  
updated as on 15.04.2014**

**On FEMA covering  
INVESTMENT OPPORTUNITIES, BANKING/ DEPOSITS ACCOUNTS,  
REAL ESTATE / IMMOVABLE PROPERTY, NON-REPATRIATION INVESTMENTS,  
REMITTANCES & OTHER FACILITIES IN INDIA FOR  
NON-RESIDENT INDIANS (NRIs)/ PERSONS OF INDIAN ORIGIN (PIOs)**

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**For  
SUB REGIONAL CONFERENCE  
OF  
NORTHERN INDIA REGIONAL COUNCIL  
OF  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

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**HOSTED BY  
CHANDIGARH BRANCH OF NIRC OF ICAI**

**AT HOTEL TAJ, CHANDIGARH**

**ON 18<sup>TH</sup> APRIL 2014**

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**INVESTMENT OPPORTUNITIES, BANKING/ DEPOSITS ACCOUNTS,  
REAL ESTATE / IMMOVABLE PROPERTY, NON-REPATRIATION INVESTMENTS,  
REMITTANCES & OTHER FACILITIES IN INDIA FOR  
NON-RESIDENT INDIANS (NRIS)/ PERSONS OF INDIAN ORIGIN (PIOs)**

**Chapter A: PERSON RESIDENT OUTSIDE INDIA & RESIDENTIAL STATUS**

**Q.1. Who is a “Person resident outside India” under FEMA?**

**Ans.** A “Person resident outside India” means a person who is not resident in India [Sec 2(w)].

A “Person resident in India” means—[Sec 2(v)]

- (i) a person residing in India for more than one hundred and eighty-two 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) 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 person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India.

**Q.2. How are NRIs and PIOs defined in different Regulations under FEMA?**

<b>Regulations</b>	<b>Definition of NRI</b>
FEM ( <b>Deposit</b> ) Regulations	NRI means a person resident outside India who is a citizen of India <b>or</b> is a person of Indian origin (PIO).
FEM ( <b>Transfer or Issue of Security by a Person Resident Outside India</b> ) Regulations	
FEM ( <b>Investment in Firm or Proprietary Concern in India</b> ) Regulations	
FEM ( <b>Borrowing and Lending In Rupees</b> ) Regulations	
FEM ( <b>Remittance of Assets</b> ) Regulations	NRI means a person resident outside India who is a citizen of India. <b>PIO is excluded.</b>
<b>Regulations</b>	<b>Definition of PIO</b>
FEM ( <b>Deposit</b> ) Regulations	PIO means a citizen of any country other than <u>Bangladesh</u> or <u>Pakistan</u> if <ul style="list-style-type: none"> <li>(a) he at any time held Indian passport or</li> <li>(b) he or either of his parents or any of his grandparents was a citizen of India or</li> <li>(c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b)</li> </ul>
FEM ( <b>Remittance of Assets</b> ) Regulations/ FEM ( <b>Transfer or Issue of Security by a Person Resident Outside India</b> ) Regulations	
FEM ( <b>Borrowing and Lending In Rupees</b> ) Regulations	

FEM ( <b>Investment in Firm or Proprietary Concern in India</b> ) Regulations	PIO means a citizen of any country other than <u>Bangladesh or Pakistan or Sri Lanka</u> , if (a) he at any time held Indian passport or (b) he or either of his parents or any of his grandparents was a citizen of India or (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b)
FEM ( <b>Acquisition and Transfer of Immovable Property In India</b> ) Regulations	PIO means an individual (not being a citizen of <u>Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan</u> ), who (a) at any time, held Indian passport or (b) who or either of whose parents or whose grandparents was a citizen of India (c) <del>the person is a spouse of an Indian citizen</del> ( <b>Spouse is excluded.</b> )

**Q.3. What is the definition of a close relative?**

**Ans. Close relative of an individual is as defined in Companies Act, 1956 as:**

Members of a Hindu undivided family	Husband and wife
Father (including step-father*)	Mother (including step-mother)
Son (including step-son)	Son's wife
Daughter (including step-daughter*)	Father's father*
Father's mother*	Mother's mother*
Mother's father*	Son's son*
Son's son's wife*	Son's daughter*
Son's daughter's husband*	Daughter's husband
Daughter's son*	Daughter's son's wife*
Daughter's daughter*	Daughter's daughter's husband*
Brother (including step-brothers)	Brother's wife*
Sister (including step-sister)	Sister's husband*
<p><b>* Deleted/inserted in section 2(77) in Companies Act, 2013.</b>  RBI is yet to come out with clarification as to which definition (Companies Act 1956 or Companies Act 2013) would henceforth apply.</p> <p><b>This definition is different from what is defined as 'RELATIVE' under the Income Tax Act, 1961:</b>  <b>Sec 2(41): Definition of Relative</b>  <b>Sec 13: Trust for charitable &amp; religious purposes</b>  <b>Sec 40A(2): Expenses/payments not deductible</b>  <b>Sec 56(2): Gifts</b>  <b>Sec 64(1): Clubbing of Income</b>  <b>Sec 80DD: Medical treatment of a dependant who is a person with disability</b>  <b>Sec 92A: Associated enterprise under transfer pricing</b></p>	

**Q.4. Who can apply for a PIO Card<sup>1</sup>?**

**Ans. Eligibility to apply for a PIO Card is as under:**

Any person:

- who at any time held an Indian Passport; or
- he/she or either of his/her parents or grandparents or great grandparents was born in an permanently resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any country as may be specified

<sup>1</sup> Source: PIO Scheme @ mha.nic.in

- 
- by Central Government from time to time; or
  - who is a spouse of a citizen of India or a Person of Indian Origin as mentioned above.

The scheme is broad-based, covers up to four generations and also the foreign spouse of a citizen of India or a PIO.

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**Q.5. What are the benefits to a PIO card Holder?**

- Ans.**
- No visa required for visiting India.
  - No separate “Student Visa” or “Employment Visa” required for admissions in Colleges/Institutions or for taking up employment respectively.
  - A PIO Card holder will be exempt from the requirement of registration if his stay on any single visit in India does not exceed 180 days.
  - In the event of continuous stay in India of the PIO Card holder exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned Foreigners Regional Registration Officer / Foreigners Registration Officer
  - Parity with non-resident Indians in respect of facilities available to the latter in economic, financial and educational field.
  - All PIOs including PIO Card holders shall enjoy parity with NRIs in respect of all facilities in the matter of acquisition, holding, transfer and disposal of immovable properties in India except in matters relating to the acquisition of agricultural/plantation properties. No parity shall be allowed in the sphere of political rights.
  - Facilities available to children of NRIs for getting admission to educational institutions in India including medical colleges, engineering colleges, Institute of Technology, Institute of Management, etc. under the general categories.
  - Facilities available under the various housing scheme of LIC, State Government and other Government Agencies.
  - Special counters at the immigration check posts for speedy clearance.

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**Q.6. What is the procedure to apply for a PIO Card?**

- Ans.** An application for issue/renewal of a PIO Card shall be made in the prescribed form and shall be accompanied by documentary evidence to show that the applicant is a person of Indian origin as defined.
- Prescribed application form can be obtained from the office of Indian Embassies abroad, Foreign Regional Registration Officer, Delhi/Mumbai/Kolkata/Chennai/Amritsar and also from the Ministry of Home Affairs, 26 Mansingh Road Jaisalmer House -110 011.

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**Q.7. What is the validity of a PIO Card?**

- Ans.** A PIO Card shall be valid for a period of fifteen years from the date of issue subject to the validity of the passport of the applicant.

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**Q.8. Who is eligible for an Overseas Citizenship of India (OCI)?<sup>2</sup>**

- Ans.**
- A foreign national, who was eligible to become a citizen of India on 26.01.1950 or was a citizen of India on or at any time after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947
  - Children (including minor) and grand children of above person
  - Citizens of Pakistan or Bangladesh are not eligible
  - Spouse of the eligible person can apply for OCI if he/she is eligible in his/her own capacity
  - PIO Cardholder can also apply for OCI provided he/she is otherwise eligible for grant of OCI like any other applicant

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<sup>2</sup> Source: FAQs on Overseas Citizenship of India @ mha.nic.in

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**Q.9. What are the benefits to an OCI?**

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- Ans.**
- Multiple entry multi-purpose lifelong visa for visiting India.
  - Exemption from registration with local police authority for any length of stay in India.
  - Parity with Non resident Indians (NRIs) in respect of economic, financial and educational fields except in relation to acquisition of agricultural or plantation properties.
  - No parity shall be allowed in the sphere of political rights.
  - Parity with NRIs in respect of pursuing the following professions in India, in pursuance of the provisions contained in the relevant Acts:
    - Doctors, dentists, nurses & pharmacists;
    - Advocates;
    - Architects;
    - Chartered accountants
  - Parity with NRIs to appear for the All India Pre-medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.

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**Q.10. What is the procedure to apply for an OCI?**

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- Ans.** A family consisting of spouses and upto two minor children can apply in the same form i.e. Form XIX, which can be filed online or downloaded from our website <http://mha.nic.in/ForeignDiv/ForeignHome.html>.

Part A of the application form should be filed online. Part B should be downloaded and printed on computer or by hand in Block letters.

Printed Part A and Part B of the application form has to be submitted to the Indian Mission/Post/Office along with all requisite documents.

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**Q.11. What is the validity of an OCI?**

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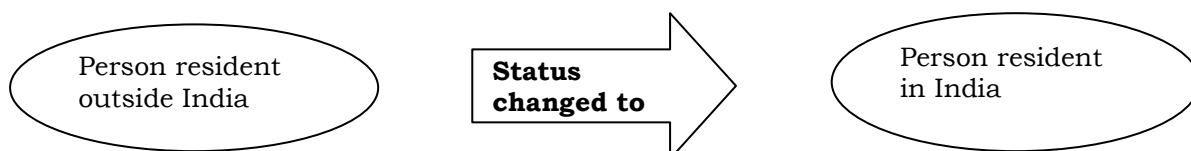
- Ans.** An OCI is entitled to lifelong visa with free travel to India.

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**Q.12. CHANGE OF RESIDENTIAL STATUS FROM RESIDENT OUTSIDE INDIA TO RESIDENT IN INDIA: Can such a person resident in India hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India?**

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**Ans.**



**As per section 6(4) of FEMA, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if:**

- such currency, security or property was **acquired, held or owned by such person when he was resident outside India**
- OR
- **inherited from a person who was resident outside India**

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**Q.13. What are the nature of transactions covered under Section 6(4)?**

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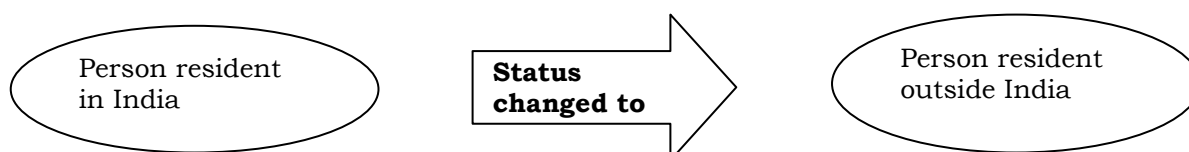
- Ans.** Section 6(4) of FEMA, 1999 covers the following transactions:
- (i) Foreign currency accounts opened and maintained by such a person **when he was resident outside India**;
  - (ii) Income earned through employment or business or vocation outside India taken up or commenced **while such person was resident outside India, or** from investments made **while such person was resident outside India, or** from gift or inheritance received **while such a person was resident outside India**;



- (iii) Foreign exchange including any income arising there from, and conversion or replacement or accrual to the same, held outside India **by a person resident in India acquired by way of inheritance from a person resident outside India.**
- (iv) A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received there for are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

**Q.14. CHANGE OF RESIDENTIAL STATUS FROM RESIDENT IN INDIA TO RESIDENT OUTSIDE INDIA: Can such a person resident outside India hold, own, transfer or invest in Indian currency, security or any immovable property situated in India?**

**Ans.**



**As per section 6(5) of FEMA**, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Any fresh investments in shares or expansion of the activities of the companies in which investment is made would be subject to the prevailing sectoral Foreign Investment cap and conditionalities. Further, sale proceeds of the assets would have to be deposited in the NRO Account and disposal thereof would be as per the applicable guidelines.

**Q.15. What are the different classes of capital account transactions of person resident outside India?**

**Ans.**

- (a) Investment in India by a person resident outside India, that is to say,
  - (i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
  - (ii) investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
- (b) Acquisition and transfer of immovable property in India by a person resident outside India.
- (c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
- (d) Import and export of currency/currency notes into/from India by a person resident outside India.
- (e) Deposits between a person resident in India and a person resident outside India.
- (f) Foreign currency accounts in India of a person resident outside India.
- (g) Remittance outside India of capital assets in India of a person resident outside India.

**Q.16. Are there any prohibitions on making Investments in India by an NRI?**

**Ans.**

**No person resident outside India shall make investment in India**, in any form, in any **company or partnership firm or proprietary concern** or any entity, whether incorporated or not, which is engaged or proposes to engage—

- (i) in the business of **chit fund**, or
- (ii) as **Nidhi Company**, or
- (iii) in **agricultural or plantation activities**, or
- (iv) in **real estate business, or construction of farm houses**, or

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(v) in trading in **Transferable Development Rights** (TDRs). Transferable Development Rights means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

'Real estate business' shall not include development of townships, construction of residential/commercial premises, roads or bridges.

**Q.17. Can an Authorised Dealer/ Authorised Bank accept deposits from an NRI?**

- Ans.** An authorised dealer in India may accept deposit:
- (i) Under the Non-resident (External) Account Scheme (**NRE account**) from a **non-resident Indian**;
  - (ii) Under the Foreign Currency (Non-resident) Account Banks Scheme, (**FCNR-B account**) from a **non-resident Indian**;
  - (iii) Under the Non-resident (Ordinary) Account Scheme, (**NRO account**) from **any person resident outside India**;

**NRI/PIO may also open:** Designated branch shall open a separate sub account of NRE/NRO account for the exclusive purpose of routing the transactions under PIS on behalf of an NRI. NRE(PIS) account for investment made by the NRI on repatriation basis and NRO(PIS) account for investment made on non-repatriation basis under the Scheme.

**“Savings deposit”** means a form of demand deposit which is a deposit account whether designated as “Savings Account”, “Savings Bank Account”, “Savings Deposit Account” or other account by whatever name called which is subject to the restrictions as to the number of withdrawals as also the amounts of withdrawals permitted by the bank during any specified period.

**“Term deposit”** means a deposit received by the bank for a fixed period and which is withdrawable only after the expiry of the said fixed period and shall also include deposits such as Recurring/Cumulative/Annuity/Reinvestment deposits, Cash Certificates, and so on.

**“Current Account”** means a form of demand deposit wherefrom withdrawals are allowed any number of times depending upon the balance in the account or up to a particular agreed amount and shall also be deemed to include other deposit accounts which are neither Savings Deposit nor Term Deposit.

**Summarised Features of various Deposit Schemes  
available for Non-Resident Indians (NRIs)**

<b>Particulars</b>	<b>Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B) Account]</b>	<b>Non-Resident (External) Rupee Account Scheme [NRE Account]</b>	<b>Non-Resident Ordinary Rupee Account Scheme [NRO Account]</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
<b>Who can open an account</b>	NRIs (individuals/ entities of Bangladesh/ Pakistan nationality / ownership require prior approval of RBI)	NRIs (individuals/ entities of Bangladesh/Pakistan nationality / ownership require prior approval of RBI)	Any person resident outside India (other than a person resident in Nepal and Bhutan). Individuals / entities of Pakistan nationality / ownership, entities of Bangladesh <sup>2</sup> ownership and erstwhile Overseas Corporate Bodies <sup>5</sup> require prior approval of the Reserve Bank.
<b>Joint account</b>	In the names of two or more non-resident individuals provided all the account holders are persons of Indian nationality or origin; Resident close relative (relative as defined in Section 6 of the Companies Act, 1956) on 'former or survivor' basis. The resident close relative shall be eligible to operate the account as a Power of Attorney holder in accordance with extant instructions during the life time of the NRI/ PIO account holder.	In the names of two or more non-resident individuals provided all the account holders are persons of Indian nationality or origin; Resident close relative (relative as defined in Section 6 of the Companies Act, 1956) on 'former or survivor' basis. The resident close relative shall be eligible to operate the account as a Power of Attorney holder in accordance with extant instructions during the life time of the NRI/ PIO account holder.	May be held jointly with residents
<b>Nomination</b>	Permitted	Permitted	Permitted
<b>Currency in which account is denominated</b>	Any permitted currency i.e. a foreign currency which is freely convertible	Indian Rupees Depositor is exposed to exchange risk.	Indian Rupees Depositor is exposed to exchange risk.
<b>Repatriability</b>	Repatriable	Repatriable	Not repatriable except for the following: i) current income ii) up to USD 1 (one) million per financial year (April-March), for any bonafide purpose, out of the balances in the account, e.g., sale proceeds of assets in India acquired by way of purchase/ inheritance / legacy inclusive of assets acquired out of settlement subject to certain conditions.
<b>Type of</b>	Term Deposit only	Savings, Current,	Savings, Current,

Account	Recurring Deposits not allowed		Recurring, Fixed Deposit	Recurring, Fixed Deposit						
Period for fixed deposits	For terms not less than 1 year and not more than 5 years.		At the discretion of the bank.	As applicable to resident accounts.						
Rate of Interest	<table><tr><td>Maturity period</td><td>Rate of Interest</td></tr><tr><td>1 year to less than 3 years</td><td>LIBOR/SWAP rates plus 200 basis points</td></tr><tr><td>3-5 years</td><td>LIBOR/SWAP rates plus 400 basis points</td></tr></table>		Maturity period	Rate of Interest	1 year to less than 3 years	LIBOR/SWAP rates plus 200 basis points	3-5 years	LIBOR/SWAP rates plus 400 basis points	Subject to cap as stipulated by the Department of Banking Operations and Development, Reserve Bank of India : Banks are free to determine the interest rates of saving's and term deposits of maturity of one year and above. Interest rates offered by banks on NRE deposits cannot be higher than those offered by them on comparable domestic rupee deposits. With effect from August 14, 2013, banks may offer interest rates on deposits of 3 years and above without any ceiling (valid up to November 30, 2013; subject to review)	Banks are free to determine their interest rates on savings deposits under Ordinary Non-Resident (NRO) Accounts. However, interest rates offered by banks on NRO deposits cannot be higher than those offered by them on comparable domestic rupee deposits.
			Maturity period	Rate of Interest						
			1 year to less than 3 years	LIBOR/SWAP rates plus 200 basis points						
	3-5 years	LIBOR/SWAP rates plus 400 basis points								
(As against LIBOR/SWAP rates plus 300 basis points for maturity period of 3-5 years effective from close of business on May 04, 2012). On floating rate deposits, interest shall be paid within the ceiling of SWAP rates for the respective currency/maturity plus 200/400 basis points. For floating rate deposits, the interest reset period shall be six months.										
Operations by Power of Attorney in favour of a resident by the non-resident account holder	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.		Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments in rupees, remittance of current income to the account holder outside India or remittance to the account holder himself through normal banking channels. Remittance is subject to the ceiling of USD 1 (one) million per financial year.						
Loans										
a. In India										
i) to the Account holder	Permitted <b>without any ceiling</b> subject to usual margin requirements.	Permitted <b>without any ceiling</b> subject to usual margin requirements	Permitted subject to the extant rules <sup>3</sup>							
ii) to Third Parties	Permitted <b>without any ceiling</b> subject to usual margin requirements.	Permitted <b>without any ceiling</b> subject to usual margin requirements.	Permitted, subject to conditions <sup>4</sup>							
b. Abroad										
i) to the Account holder	Permitted	Permitted	Not Permitted							

<b>ii) to Third Parties</b>	Permitted	Permitted	Not Permitted
<b>c. Foreign Currency Loans in India</b>			
<b>i) to the Account holder</b>	Permitted <b>without any ceiling</b> subject to usual margin requirements.	Permitted <b>without any ceiling</b> subject to usual margin requirements.	Not Permitted
<b>ii) to Third Parties</b>	Permitted <b>without any ceiling</b> subject to usual margin requirements	Permitted <b>without any ceiling</b> subject to usual margin requirements	Not Permitted
<b>Purpose of Loan</b>			
<b>a. In India</b>			
<b>i) to the Account holder</b>	i) Personal purposes or for carrying on business activities* ii) Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms / companies iii) Acquisition of flat / house in India for his own residential use. (Please refer to para 9 of Schedule 2 to FEMA 5).	i) Personal purposes or for carrying on business activities.* ii) Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms / companies. iii) Acquisition of flat / house in India for his own residential use. (Please refer to para 6(a) of Schedule 1 to FEMA 5).	Personal requirement and / or business purpose.*
<b>ii) to Third Parties</b>	<b>Fund based and / or non-fund based</b> facilities for personal purposes or for carrying on business activities *. (Please refer to para 9 of Schedule 2 to FEMA 5).	<b>Fund based and / or non-fund based facilities</b> for personal purposes or for carrying on business activities *. (Please refer to para 6(b) of Sch. 1 to FEMA 5)	Personal requirement and / or business purpose *
<b>b. Abroad</b>			
<b>To the account holder and Third Parties</b>	<b>Fund based and / or non-fund based facilities for bonafide purposes.</b>	<b>Fund based and / or non-fund based facilities for bonafide purposes.</b>	Not permitted.
<p>* The loans cannot be utilised for the purpose of on-lending or for carrying on agriculture or plantation activities or for investment in real estate business.</p> <p><b>Note:</b></p> <p>a. When a person resident in India leaves India for Nepal and Bhutan for taking up employment or for carrying on business or vocation or for any other purpose indicating his intention to stay in Nepal and Bhutan for an uncertain period, his existing account will continue as a resident account. Such account should not be designated as Non-resident (Ordinary) Rupee Account.</p> <p>b. Authorised Dealers (ADs) may open and maintain NRE / FCNR (B) Accounts of persons resident in Nepal and Bhutan who are citizens of India or of Indian origin, provided the funds for opening these accounts are remitted in free foreign exchange. Interest earned in NRE / FCNR (B) accounts can be remitted only in Indian rupees to NRIs and PIO resident in Nepal and Bhutan.</p> <p>c. In terms of Regulation 4(4) of the Notification No.FEMA.5/2000-RB dated May 3, 2000, ADs may open and maintain Rupee accounts for a person resident in Nepal and Bhutan.</p> <p>d. The regulations relating to the various deposit schemes available to Non-Resident Indians have been notified vide Notification No.FEMA.5 dated 3rd May 2000, as amended from time to time. The relevant Notifications and A.P. (DIR Series) Circulars are available on our website [www.rbi.org.in → Sitemap → FEMA → Notifications / A.P.(DIR Series) Circulars]. The Master Circular on Non-Resident Ordinary Rupee (NRO) Account [www.rbi.org.in → Sitemap → Master Circulars] may also be referred to. The details of rate of interest on the various accounts, are available in the <b>“Master Circular on Interest Rates on Rupee Deposits held in Domestic, Ordinary Non-Resident (NRO) and Non-</b></p>			

**Resident (External) (NRE) Accounts” and “Master Circular of instructions relating to deposits held in FCNR (B) Accounts”** issued by our Department of Banking Operations and Development, available on our website [[www.rbi.org.in](http://www.rbi.org.in)→ Sitemap → Master Circulars].

e. AD Category – I banks and authorized banks may credit the proceeds of account payee cheques/ demand drafts / bankers' cheques, issued against encashment of foreign currency to the NRE account of the NRI account holder where the instruments issued to the NRE account holder are supported by encashment certificate issued by AD Category-I / Category-II.

f. AD Category – I banks and authorised banks may permit remittance of the maturity proceeds of FCNR (B) deposits to third parties outside India, provided the transaction is specifically authorised by the account holder and the Authorised Dealer is satisfied about the bonafides of the transaction.

<sup>1</sup> NRI means a person resident outside India who is a citizen of India or is a person of Indian origin [Regulation 2 (vi) of Notification FEMA 5/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Deposit) Regulations, 2000].

<sup>2</sup> In terms of A.P.(DIR Series) Circular No. 82 dated February 11, 2013 Authorised banks are permitted to open NRO account of individual/s of Bangladesh nationality without the approval of the Reserve Bank subject to conditions.

<sup>3</sup> Subject to usual norms as are applicable to resident accounts, for personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural / plantation activity or for investment in real estate business.

<sup>4</sup> Subject to conditions such as (i) the loans shall be utilised only for meeting borrower's personal requirements and/ or business purpose and not for carrying on agricultural/ plantation activities or real estate business, or for relending, (ii) Regulations relating to margin and rate of interest as stipulated by the Reserve Bank from time to time shall be complied with and (iii) The usual norms and considerations as applicable in the case of advances to trade/industry shall be applicable for such loans/ facilities.

<sup>5</sup> Overseas Corporate Body (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty per cent by Non-Resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by Non-resident Indians directly or indirectly but irrevocably, which was in existence as on September 16, 2003 and was eligible to undertake transactions pursuant to the general permission granted under Foreign Exchange Management Regulations

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**Q.18. Who is eligible to open an NRE account?**

**Ans.** NRI is permitted to open and maintain NRE Account.

**Q.19. Can NRE account be opened by the power of attorney holder in India?**

**Ans.** The account should be opened by the non-resident account holder himself and not by the holder of the power of attorney in India.

**Q.20. Whether any approval is required while opening of NRE accounts in the names of individuals/entities of Bangladesh/Pakistan nationality/ownership?**

**Ans.** Opening of NRE accounts in the names of individuals/entities of Bangladesh/Pakistan nationality/ownership requires approval of Reserve Bank.

**Q.21. What are the different types of NRE accounts?**

**Ans.** The accounts may be maintained in any form, e.g., **savings, current, recurring or fixed deposit account** etc. **The minimum maturity period for NRE deposits is one year, making the range of the maturity period for NRE term deposits from one to three years, in line with FCNR(B) deposits.** However, banks are allowed to accept NRE deposits above three years from their Asset-Liability point of view, provided the rate of interest on such long term deposits is not higher than that applicable to domestic deposits of comparable maturity.

**Q.22. Are NRE accounts maintained in Indian Rupees?**

**Ans.** Yes. NRE accounts are maintained in Indian Rupees. **Since this account is maintained in Rupees, the depositor is exposed to exchange risk.**

**Q.23. What are the Permitted Credits into this account?**

**Ans.**

- (a) Proceeds of remittances to India in any permitted currency.
- (b) Proceeds of personal cheques drawn by the account holder on his foreign currency account and of travellers cheques, bank drafts payable in any permitted currency including instruments expressed in Indian rupees for which reimbursement will be received in foreign currency, deposited by the account holder in person during his temporary visit to India, provided the authorised dealer/bank is satisfied that the account holder is still resident outside India, the travellers' cheques/drafts are standing/endorsed in the name of the account holder and in the case of travellers' cheques, they were issued outside India.
- (c) Proceeds of foreign currency/bank notes tendered by account holder during his temporary visit to India, provided (i) the amount was declared on a Currency Declaration Form (CDF), where applicable, and (ii) the notes are tendered to the authorised dealer in person by the account holder himself and the authorised dealer is satisfied that account holder is a person resident outside India.
- (d) **Transfers from other NRE/FCNR accounts.**
- (e) Interest accruing on the funds held in the account.
- (f) Interest on Government securities and dividend on units of mutual funds, provided the securities/units were purchased by debit to the account holder's NRE/FCNR account or out of inward remittance through normal banking channels.
- (g) Maturity proceeds of Government securities including National Plan/Savings Certificate as well as proceeds of Government securities and units of mutual funds sold on a recognised stock exchange in India and sale proceeds of units received from mutual funds, provided the securities/units were originally purchased by debit to the account holder's NRE/FCNR account or out of remittances received from outside India in free foreign exchange.
- (h) Refund of share/debenture subscriptions to new issues of Indian companies or portion thereof, if the amount of subscription was paid from the same account or from other NRE/FCNR account of the account holder or by remittance from outside India through normal banking channels.
- (i) Refund of application/earnest money/purchase consideration made by the house

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building agencies/seller on account of non-allotment of flat/plot/cancellation of bookings/deals for purchase of residential/commercial property, together with interest, if any (net of income-tax payable thereon), provided the original payment was made out of NRE/FCNR account of the account holder or remittance from outside India through normal banking channels and the authorised dealer is satisfied about the genuineness of the transaction.

- (j) Transfer funds **from NRO account to NRE account** within the overall ceiling of **USD one million per financial year** subject to payment of tax, as applicable (i.e. as applicable if funds were remitted abroad).
- (k) **Sale proceeds of FDI investments.**
- (l) Any other credit if covered under general or special permission granted by Reserve Bank.

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**Q.24. What are the Permitted Debits to this account?**

- Ans.**
- (a) **Local disbursements.**
  - (b) **Remittances outside India.**
  - (c) **Transfer to NRE/FCNR 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 the Reserve Bank.
  - (e) Any other transaction if covered under general or special permission granted by the Reserve Bank.

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**Q.25. What is the applicable Rate of interest?**

- Ans.** Rate of interest applicable to these accounts shall be in accordance with the directions/ instructions issued by the Reserve Bank from time to time.

Subject to cap as stipulated by the Department of Banking Operations and Development, Reserve Bank of India, banks are free to determine the interest rates of saving's and term deposits of maturity of one year and above.

**Interest rates offered by banks on NRE deposits cannot be higher than those offered by them on comparable domestic rupee deposits.**

With effect from August 14, 2013, banks may offer interest rates on deposits of 3 years and above without any ceiling.

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**Q.26. Are there any credit facilities permitted against security of funds held in the account and to whom?**

- Ans.**
- (a) **To Account holder –**
    - (i) **personal purposes or** for carrying on **business activities except** for the purpose of relending or carrying on **agricultural/plantation activities** or for investment in **real estate business**. The authorised dealer/bank should ensure that the advances are fully secured by the fixed deposits and regulations relating to normal margin, interest rate, etc., are complied with. Repayment shall be made either by adjustment of the deposit or by fresh inward remittances from outside India through normal banking channels. The loan can also be repaid out of local rupee resources in the NRO account of the borrower. The interest on such loans shall be in accordance with directives issued by Reserve Bank from time to time;
    - (ii) the purpose of making **direct investment in India on non-repatriation** basis by way of contribution to the capital of Indian firms/companies subject to compliance with the provisions of the Foreign Exchange Management (Transfer of Indian Security by a Person Resident outside India) Regulations, 2000 and Foreign Exchange Management (Investment in Proprietary or a Partnership Firm) Regulations, 2000;
    - (iii) the purpose of **acquisition of flat/house in India for his own residential**

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use subject to the provisions of the relevant Regulations made under the Act.

- (b) **To Third Parties** - Authorised dealers and authorised banks may grant any type of **fund based and/or non-fund based facilities to resident individuals/firms/companies in India** against the **collateral of fixed deposits held in NRE account** subject to the following conditions:
- (i) There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities.
  - (ii) Regulations relating to margin, interest rate, purpose of loan, etc., as stipulated by Reserve Bank from time to time should be complied with.
  - (iii) The loan should be utilised **for personal purposes or for carrying on business** activities other than **agricultural/plantation activities or real estate business**. The loan should not be utilised for **relending**.
  - (iv) The usual norms and considerations as applicable in the case of advances to trade/industry shall be applicable to such credit facilities.
- (c) **Loans outside India** - Authorised dealers may allow their branches/ correspondents outside India to grant any **type of fund based and/or non-fund based facilities to or in favour of non-resident depositor or to third parties** at the request of depositor for **bona fide** purpose against the security of funds held in the NRE accounts in India and also agree to remittance of the funds from India, if necessary, for liquidation of the outstanding.
- (d) The loans and facilities granted under this paragraph shall be subject to such directions as may be issued by the Reserve Bank from time to time.

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**Q.27. Are balances held in the NRE account freely repatriable?**

**Ans.** Yes. The balances held in the NRE account are freely repatriable.

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**Q.28. What is the impact of change of resident status of the NRE account holder?**

**Ans.** NRE accounts should be re-designated as resident accounts or the funds held in these accounts may be **transferred to the RFC accounts** (if the account holder is eligible for maintaining RFC account) at the option of the account holder **immediately upon the return of the account holder to India** for taking up employment or for carrying on business or vocation or for any other purpose indicating intention to stay in India for an uncertain period. **Where the account holder is only on a short visit to India, the account may continue to be treated as NRE account even during his stay in India.**

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**Q.29. If there is change of residential status from resident to non-resident, what would happen to balance lying in RFC (Domestic) account?**

**Ans.** Balance in RFC (Domestic) may be transferred to his NRE/FCNR(B) account at his option.

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**Q.30. How are funds lying in the NRE account of the deceased account holder repatriated?**

**Ans.** Authorised dealers/authorised banks may allow remittance of funds lying in the NRE account of the deceased account holder to his non-resident nominee.

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**Q.31. Can two or more non-resident individuals open Joint accounts? What happens if one of the joint holders becomes resident?**

**Ans.** Joint accounts in the names of two or more non-resident individuals may be opened provided all the account holders are persons of Indian nationality or origin. When one of the joint holders becomes resident, the authorised dealer may either delete his name and allow the account to continue as a NRE account or redesignate the account as a resident account, at the option of the account holders.

<b>Q.32.</b>	<b>Can an NRI open an NRE account during his temporary visit to India?</b>
<b>Ans.</b>	An account may be opened in the name of an eligible NRI during his temporary visit to India against tender of foreign currency travellers cheques or foreign currency notes and coins tendered, provided the authorised dealer is satisfied that the person has not ceased to be a non-resident.
<b>Q.33.</b>	<b>Can a non-resident jointly open an NRE A/c with a resident?</b>
<b>Ans.</b>	Opening of these accounts by a non-resident jointly with a resident is not permissible. However, NRI is permitted to open NRE / FCNR(B) account with their resident close relative (relative as defined in Section 6 of the Companies Act, 1956) on 'former or survivor' basis. The resident close relative shall be eligible to operate the account as a Power of Attorney holder in accordance with extant instructions during the life time of the NRI/ PIO account holder.
<b>Q.34.</b>	<b>What types of operations are allowed on an NRE account by a Resident Power of Attorney holder? Who is eligible to operate the account as PoA holder?</b>
<b>Ans.</b>	Authorised dealers/authorised banks may allow operations on an NRE account in terms of Power of Attorney or other authority granted in favour of a resident by the non-resident account holder, provided such operations are restricted to withdrawals for local payments or remittance to the account holder himself through normal banking channels. In cases where the account holder or a bank designated by him is eligible to make investments in India, the Power of Attorney holder may be permitted by the authorized dealers/banks to operate the account to facilitate such investment. The resident Power of Attorney holder shall not, however, be allowed to repatriate outside India funds held in the account under any circumstances other than to the account holder himself, nor to make payment by way of gift to a resident on behalf of the account holder or to transfer funds from the account to another NRE account. <b>The resident close relative shall be eligible to operate account as PoA holder during life time of NRI.</b>
<b>Q.35.</b>	<b>What kind of extra care must be taken by AD while issuing cheque books to NRE account holders?</b>
<b>Ans.</b>	For easy identification and quicker processing of cheques drawn on NRE accounts, authorised dealers/banks shall issue cheque books containing a special series of cheques to their constituents holding NRE accounts.
<b>Q.36.</b>	<b>What are the provisions regarding over drawings?</b>
<b>Ans.</b>	Authorised dealers/authorised banks may at their discretion/commercial judgment allow for a period of not more than two weeks, over drawings in NRE savings bank accounts, upto a limit of Rs. 50,000 subject to the condition that such over drawings together with the interest payable thereon are cleared/repaid within the said period of two weeks, out of inward remittances through normal banking channels or by transfer of funds from other NRE/FCNR accounts.
<b>Q.37.</b>	<b>What is the procedure followed by Resident Nominee for remittance of funds outside India to meet the liabilities of the deceased account holder?</b>
<b>Ans.</b>	Application from a resident nominee for remittance of funds outside India for meeting the liabilities, if any, of the deceased account holder or for similar other purposes, should be forwarded to the Reserve Bank for consideration.
<b>Q.38.</b>	<b>Whether interest on NRE accounts chargeable to Income Tax? Is NRE A/c an eligible asset under Wealth Tax Act?</b>
<b>Ans.</b>	Income from interest on balances standing to the credit of NRE Accounts is exempt from income-tax. Likewise balances held in such accounts are exempt from wealth-tax.
<b>Q.39.</b>	<b>Whether transactions in NRE accounts need to be reported to RBI?</b>
<b>Ans.</b>	The transactions in these accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

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## Chapter B.2: FCNR (B) ACCOUNT

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**Q.40. Who is eligible to open FCNR(B) accounts?**

**Ans.** NRI is eligible to open and maintain FCNR(B) accounts with an authorised dealer.

**Q.41. Whether any approval required to open FCNR accounts in the names of individuals/entities of Bangladesh/Pakistan nationality/ownership?**

**Ans.** Opening of FCNR(B) accounts in the names of NRIs of Bangladesh/Pakistan nationality/ownership requires approval of Reserve Bank.

**Q.42. How can FCNR(B) accounts be opened?**

**Ans.** These accounts may be opened with funds remitted from outside India through normal banking channels or funds received in rupees by debit to the account of a non-resident bank maintained with an authorised dealer in India or funds which are of repatriable nature in terms of the regulations made by the Reserve Bank. Accounts may also be opened by transfer of funds from existing NRE/FCNR accounts.

**Q.43. Is it necessary to open FCNR(B) accounts in the Designated Currency?**

**Ans.** Remittances from outside India for opening of or crediting to these accounts should be made in the designated currency in which the account is desired to be opened/maintained. Without prejudice to this, if the remittance is received in a currency other than the designated currency (including funds received in rupees by debit to the account of the non-resident bank), it should be converted into the latter currency by the authorised dealer at the risk and cost of the remitter and account should be opened/credited in only the designated currency.

**Q.44. How can a depositor with any convertible currency other than designated currency deposit in these accounts?**

**Ans.** In case the depositor with any convertible currency other than designated currency desires to place a deposit in these accounts, authorised dealers may undertake with the depositor a fully covered swap in that currency against the desired designated currency. Such a swap may also be done between two designated currencies.

**Q.45. What are Designated currencies?**

**Ans.** Deposit of funds in the accounts may be accepted in such permissible currencies as may be designated by the Reserve Bank from time to time.

**Q.46. What are the different types of FCNR accounts?**

**Ans.** These accounts may be opened only in the form of **term deposit** with maturity of such period as may be specified by the Reserve Bank from time to time for terms **not less than 1 year and not more than 5 years**. Repatriation of funds in foreign currencies is permitted. **Recurring Deposits should not be accepted** under the FCNR(B) Scheme. Transfer of funds from existing NRE accounts to FCNR(B) accounts and vice versa, of the same account holder, is permissible without the prior approval of Reserve Bank of India.

**Q.47. What is the applicable Rate of interest?**

**Ans.** The rate of interest on funds held in these deposit accounts will be in accordance with the directives issued by the Reserve Bank from time to time.

With effect from the close of business in India as on August 14, 2013, interest on FCNR(B) Deposits shall be paid within the ceiling rate as under:

Maturity period	Rate of Interest
1 year to less than 3 years	LIBOR/SWAP rates plus 200 basis points
3-5 years	LIBOR/SWAP rates plus 400 basis points

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On floating rate deposits, interest shall be paid within the ceiling of SWAP rates for the respective currency/maturity plus 200/400 basis points. For floating rate deposits, the interest reset period shall be six months.

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**Q.48. What are the Permissible Debits/Credits to these accounts?**

**Ans.** All debits/credits permissible in respect of **NRE accounts** as specified shall be permissible in respect of these accounts also.

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**Q.49. What is the applicable Rate for conversion of rupees into designated currencies and vice versa?**

**Ans.** (i) Remittances received in Indian rupees for opening these accounts shall be converted by the authorised dealer into the designated foreign currency at the clean T.T. selling rate for that currency ruling on the date of conversion.  
(ii) For the purpose of payment in rupees, funds held in these accounts shall be converted into rupees at the authorised dealer's clean T.T. buying rate for the concerned currency ruling on the date of withdrawal.

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**Q.50. Whether any inland commission charged to facilitate Inland Movement of Funds? Can an AD receiving foreign currency remittances in these accounts pass on the foreign currency to another AD?**

**Ans.** Any inland movement of funds for the purpose of opening these accounts as well as for repatriation outside India of balances held in these accounts will be free of inland exchange or commission for the non-resident depositors. The Authorised Dealer receiving foreign currency remittances in these accounts will also, on request, pass on the foreign currency to another authorised dealer if the account has to be opened with the latter, at no extra cost to the remitter.

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**Q.51. What are the provisions regarding payment of interest?**

**Ans.** (i) **Interest** on balances held in these accounts may be paid **half-yearly or on an annual basis** as desired by the depositor.  
(ii) Interest may be credited to a new FCNR(B) account or an existing/new NRE/NRO account in the name of the account holder, at his option.

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**Q.52. Are there any credit facilities permitted against security of funds held in the account and to whom?**

**Ans.** (1) The terms and conditions **as applicable to NRE deposits** in respect of loans and overdrafts in India to depositor and to third parties as also loans outside India against security of deposits, shall apply mutatis mutandis to FCNR(B) deposits.  
(2) The margin requirement shall be notionally calculated on the rupee equivalent of the deposits.

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**Q.53. What is the impact of change of resident status of the FCNR(B) account holder?**

**Ans.** When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. However, except the provisions relating to rate of interest and reserve requirements as applicable to FCNR(B) deposits, for all other purposes such deposits shall be treated as resident deposits from the date of return of the account holder to India. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.

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**Q.54. What are the terms & conditions in respect of Joint account, repatriation of balances, etc.**

**Ans.** Terms and conditions as applicable to NRE accounts in respect of joint accounts, repatriation of funds, opening accounts during temporary visit, operation by power of attorney, loans/overdrafts against security of funds held in accounts, shall apply mutatis mutandis to FCNR(B) accounts.

**Q.55. Can AD permit remittance of the maturity proceeds of FCNR(B) deposits to third parties outside India?**

**Ans.** Authorised dealer may permit remittance of the maturity proceeds of FCNR(B) deposits to third parties outside India, provided the transaction is specifically authorised by the account holder and the authorised dealer is satisfied about the bona fides of the transactions.

**Q.56. Whether transactions in FCNR accounts need to be reported to RBI?**

**Ans.** The transactions in these accounts shall be reported to Reserve Bank in accordance with the directions issued by it from time to time.

**Q.57. Whether any kind of exchange rate guarantee provided by RBI to AD?**

**Ans.** Reserve Bank will not provide exchange rate guarantee to authorised dealers for deposits of any maturity in these accounts.

**Q.58. Is lending of resources under these accounts subject to any interest rate stipulations?**

**Ans.** Lending of resources mobilised by authorised dealers under these accounts are not subject to any interest rate stipulations.

**Q.59. What are the guidelines for premature withdrawal of deposits?**

**Ans.** Banks on request from the depositor should permit premature withdrawal of deposits under the FCNR(B) Scheme. Banks are free to levy penalty for such premature withdrawal at their discretion. Banks may also, at their discretion, levy penalty to recover the swap cost in the case of premature withdrawal of FCNR(B) deposits. Where premature withdrawal of FCNR(B) deposits take place before completion of the minimum stipulated period of one year, in which case no interest is payable, banks may at their discretion levy penalty to cover the swap cost. However, the components of penalty should be clearly brought to the notice of the depositors at the time of acceptance of the deposits. If the depositors are not informed of the penalty provisions at the time of acceptance of deposits, the exchange loss arising out of premature withdrawal will have to be borne by the banks.

**Conversion of FCNR(B) deposits into NRE deposits or vice-versa before maturity should be subject to the penal provision relating to premature withdrawal.**

### **Chapter B.3: NRO ACCOUNT**

**Q.60. Who is eligible to open an NRO account?**

**Ans.** **Any person resident outside India** (including NRI) may open NRO account with an authorised dealer or an authorised bank for the purpose of putting through **bona fide transactions** in rupees not involving any violation of the provisions of the Act, rules and regulations made there under.

**Q.61. Can an NRO account holder give foreign exchange from such account to a resident in India against reimbursement in Rupees?**

**Ans.** The operations on the accounts should not result in the account holder making available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner.

**Q.62. Whether any kind of undertaking required to be furnished by NRO A/c holder to AD with regard to investments/disinvestments?**

**Ans.** At the time of opening of the account, the account holder should furnish an undertaking to the authorised dealer/authorised bank with whom the account is maintained that in cases of debits to the account for the purpose of investment in India and credits representing sale proceeds of investments, he will ensure that such investments/disinvestments will be in accordance with the regulations made by Reserve Bank in this regard.

**Q.63. Whether any approval required to open NRO accounts in the names of individuals/entities of Bangladesh/Pakistan nationality/ownership?**

**Ans.** Opening of accounts by individuals/entities of Pakistan nationality/ ownership requires approval of Reserve Bank.

Opening of NRO accounts by individuals of Bangladesh Nationality does not require approval of Reserve Bank any more. Authorised banks would be permitted to open NRO account of individual/s of Bangladesh nationality without the approval of the Reserve Bank subject to the following conditions:

- (i) The bank concerned should satisfy itself that the individual is holding valid visa and valid residential permit issued by Foreigner Registration Office (FRO)/Foreigner Regional Registration Office (FRRO) concerned;
- (ii) The Authorised bank should put in place a system of quarterly reporting whereby each branch of the Authorised bank shall maintain a record of the bank accounts opened by individual/s of Bangladesh nationality and details of such account shall be forwarded to their Head Office. The Head Office of the bank shall furnish details of such accounts on quarterly basis to the Under Secretary (Foreigners), Ministry of Home Affairs, NDCC-II Building, Jai Singh Road, New Delhi- 110 001.
- (iii) The report shall contain details of Name/s of the Individual/s, Date of arrival in India, Passport No. and Place/Country of issue, Residential permit reference and date and place of issue, Name of the FRO/ FRRO concerned and the Complete address and contact number of the branch where the bank account is being maintained.

Opening of accounts by entities of Bangladesh ownership shall continue to require approval of Reserve Bank.

**Q.64. Can Post offices in India maintain savings bank accounts in the names of persons resident outside India? What are the terms & conditions?**

**Ans.** Post offices in India may maintain savings bank accounts in the names of persons resident outside India and allow operations on these accounts subject to the same terms and conditions as are applicable to NRO accounts maintained with an authorised dealer/authorised bank.

**Q.65. What are the different types of NRO accounts?**

**Ans.** NRO accounts may be opened/ maintained in the form of **current, savings, recurring or fixed deposit accounts**. The requirements laid down in the directives issued by Reserve Bank in regard to resident account shall apply to NRO accounts. **The minimum tenor of domestic/ NRO term deposits is seven days.**

**Q.66. Is NRO account denominated in Indian Rupees?**

**Ans.** Yes. NRO account should be denominated in Indian Rupees. **NRO accounts being Rupee accounts, the exchange rate risk on such deposits is borne by the depositors themselves.**

**Q.67. What rate of interest can be offered on NRO accounts/deposits?**

**Ans.** Interest rates offered by banks on NRO deposits cannot be higher than those offered by them on comparable domestic rupee deposits. Rates of Interest on Deposits held in Domestic/Ordinary Non-Resident (NRO) Accounts: (i) Current: Nil; (ii) Savings: Free; (iii) Term Deposits (minimum period 7 days): Free.

**Q.68. What are the Permissible Credits/Debits to these accounts?**

**Ans.** (A) Credits

- (i) Proceeds of remittances from outside India through normal banking channels received in foreign currency which is freely convertible.
- (ii) Any foreign currency, which is freely convertible, tendered by the account holder during his temporary visit to India. Foreign currency exceeding USD 5000 or its equivalent in the form of cash should be supported by currency declaration form. Rupee funds should be supported by encashment



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- certificate, if they represent funds brought from outside India.
- (iii) Transfers from rupee accounts of non-resident banks.
  - (iv) **Legitimate dues in India of the account holder.** This includes current income like rent, dividend, pension, interest, etc.
  - (v) **Sale proceeds of assets including immovable property acquired out of rupee/foreign currency funds or by way of legacy/inheritance.**
  - (vi) **Resident individual may make a rupee gift to a NRI/PIO** who is a **close relative** of the resident individual [close relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer. The amount shall be credited to the Non-Resident (Ordinary) Rupee Account (NRO) a/c of the NRI / PIO and credit of such gift amount may be treated as an eligible credit to NRO a/c. The gift amount would be within the overall limit of US\$ 75,000 per financial year as permitted under the **Liberalised Remittance Scheme (LRS)** for a resident individual.
  - (vii) **Resident individual to lend to a Non resident Indian (NRI)/ Person of Indian Origin (PIO) close relative** [means relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer, subject to conditions within the overall limit under the **Liberalised Remittance Scheme** of US\$ 75,000 per financial year available for a resident individual. The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c;
- (B) Debits
- (i) All local payments in rupees including payments for investments in India subject to compliance with the relevant regulations made by the Reserve Bank.
  - (ii) Remittance outside India of current income like rent, dividend, pension, interest, etc. in India of the account holder.
  - (iii) Remittance up to USD one million, per financial year (April- March), for all bonafide purposes, to the satisfaction of the Authorised Dealer bank.
  - (iv) Transfer to NRE account of NRI within the overall ceiling of USD one million per financial year subject to payment of tax, as applicable.

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**Q.69. What are the provisions regarding Remittance of funds held in NRO accounts?**

**Ans.** Balances in NRO accounts are not eligible for remittance outside India without the approval of Reserve Bank. Funds received by way of remittances from outside India in foreign exchange which have not lost their identity as remittable funds will only be considered by Reserve Bank for remittance outside India. Where an account (current/savings) is opened by a foreign tourist visiting India, with funds remitted from outside India in a specified manner or by sale of foreign exchange brought by him to India, authorised dealers may convert the balance in the account at the time of departure of the tourist from India to foreign currency for payment to the account holder provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

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**Q.70. Are there any credit facilities permitted against security of funds held in the account and to whom?**

**Ans.** (A) **To Account holders**

- (i) Loans to non-resident account holders may be granted in rupees against the security of fixed deposits subject to usual norms as are applicable to resident accounts, for **personal purposes** or for carrying on **business activities except** for the purpose of **relending** or carrying on **agricultural/plantation** activity or for investment in **real estate business**.
- (ii) Authorised dealer/bank may permit overdraft in the account of the account holder subject to his commercial judgment and compliance with the interest rate etc. directives.

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- B. **To Third Parties - Loans/overdrafts to resident** individuals/firms/ companies in India may be granted against the security of deposits held in NRO accounts, subject to the following terms and conditions:
- (i) The loans shall be utilised only for meeting borrower's **personal requirements** and/or **business purpose** and not for carrying on **agricultural/plantation** activities or **real estate business or for relending**.
  - (ii) Regulations relating to margin and rate of interest as stipulated by Reserve Bank from time to time shall be complied with
  - (iii) The usual norms and considerations as applicable in the case of advances to trade/industry shall be applicable for such loans/facilities.

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**Q.71. What is the treatment of Loans/Overdrafts in the event of change in the resident status of the borrower?**

**Ans.** In case of person who had availed of loan or overdraft facilities while resident in India and who subsequently becomes a person resident outside India, the authorised dealer may at their discretion and commercial judgment allow continuance of the loan/overdraft facilities. In such cases, payment of interests and repayment of loan may be made by inward remittance or out of legitimate resources in India of the person concerned.

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**Q.72. Can NRO accounts be jointly held with residents and/ or with non-residents?**

**Ans.** The accounts may be held jointly with residents and/ or with non-residents.

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**Q.73. What types of operations are allowed on an NRO account by a Resident Power of Attorney holder?**

**Ans.** Authorised dealers/authorized banks may allow operations on an NRO account in terms of a Power of Attorney, provided such operations are restricted to:

- (i) all local payments in rupees including payments for eligible investments subject to compliance with relevant regulations made by the Reserve Bank; and
- (ii) remittance outside India of current income in India of the non-resident individual account holder, net of applicable taxes.

The resident Power of Attorney-holder shall not repatriate outside India funds held in the account under any circumstances other than to the non-resident individual account-holder himself nor shall make payment by way of gift to a resident on behalf of the non-resident account holder or transfer funds from the account to another NRO account. Any remittance outside India shall be within the ceiling as may be prescribed by the bank from time to time and subject to tax compliance.

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**Q.74. What is the impact of change of resident status of the NRO account holder?**

- Ans.**
- (a) **From Resident to Non-resident** - When a person resident in India leaves India for a country (other than Nepal or Bhutan) for taking up employment, or for carrying on business or vocation outside India or for any other purpose indicating his intention to stay outside India for an uncertain period, his existing account should be designated as a Non-Resident (Ordinary) Account.
  - (b) **From Non-Resident to Resident** - NRO accounts may be re-designated as resident rupee accounts on the return to the account holder to India for taking up employment, or for carrying on business or vocation or for any other purpose indicating his intention to stay in India for an uncertain period. Where the account holder is only on a temporary visit to India, the account should continue to be treated as non-resident during such visit.

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**Q.75. How is the payment of funds made to Non-Resident Nominee from NRO account of a deceased account holder?**

**Ans.** The amount due/payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO account of the nominee with an authorised dealer/authorised bank in India.

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**Q.76. What kinds of transactions in NRO accounts need to be reported to RBI?**

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- Ans.** (i) The transaction in the account which may appear to represent reimbursement in rupees against foreign exchange made available to a person resident in India other than authorised dealer, as well as any other transaction of suspicious nature, should be reported to Reserve Bank.
- (ii) The transaction in these accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

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**Q.77. Can foreign nationals of non-Indian origin visiting India open an NRO account?**

**Ans.** NRO (current/savings) account can also be opened by a foreign national of non-Indian origin visiting India, with funds remitted from outside India through banking channel or by sale of foreign exchange brought by him to India.

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**Q.78. What is the definition of a 'Non-Resident Indian' for the purpose of Deposit Regulations (FEMA 5)?**

**Ans.** "Non-resident Indian (NRI)" means a **person resident outside India who is a citizen of India or is a person of Indian origin.**

**Q.79. What is the definition of a 'Person of Indian Origin' for the purpose of Deposit Regulations (FEMA 5)?**

**Ans.** "**Person of Indian Origin**" means a citizen of any country **other than Bangladesh or Pakistan**, if

- (a) he at any time held Indian passport; or
- (b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b).

**Q.80. Can a person resident in India accept/make deposits from/with an NRI?**

**Ans.** No person resident in India shall accept any deposit from, or make any deposit with, a person resident outside India unless permitted by general or specific permission.

**Q.81. Can a company or body corporate accept deposits from an NRI?**

**Ans.** A company registered under the Companies Act, 1956, or a body corporate created under an Act of Parliament or State Legislature **shall not accept deposits on repatriation basis from a non-resident Indian** unless permitted by general or specific permission.

**Q.82. On what conditions an Indian company can accept deposits by issue of Commercial Paper to an NRI?**

**Ans.** Deposits accepted by an Indian company by **issue of Commercial Paper to a Non-Resident Indian** shall be subject to the following conditions, namely:

- (a) the issue is in due compliance with the Non-Banking Companies (Acceptance of Deposits through Commercial Paper) Directions, 1989 issued by the Reserve Bank as also any other law, rule, directions, orders issued by the Government or any other regulatory authority, in regard to **acceptance of deposits by issue of Commercial Paper**;
- (b) payment for issue of Commercial Paper is received by the issuing company by inward remittance from outside India through normal banking channels or out of funds held in a deposit account maintained by a Non-Resident Indian in accordance with the Regulations made by Reserve Bank in that regard;
- (c) the amount invested in Commercial Paper shall **not be eligible for repatriation** outside India; and
- (d) the Commercial Paper shall not be transferable.

**Q.83. What were the conditions under which an Indian company, including an NBFC, could accept deposits on repatriation basis from NRIs/PIO resident outside India up to 24/04/2004?**

**Ans.** Acceptance of deposit on repatriation basis **was permitted up to 24.04.2004**. However, **company incorporated in India (including a non-banking finance company** registered with the Reserve Bank) may renew deposits accepted **up to 24.04.2004 from NRIs, on repatriation basis** subject to the following conditions:

- (i) The deposits are received **under a public deposit scheme**.
- (ii) If the deposit accepting company is a non-banking finance company, it should be registered with the Reserve Bank and should have obtained the required credit rating as stipulated under the guidelines issued by Reserve Bank for such companies.
- (iii) The amount representing the deposit is received by inward remittance from outside India through normal banking channels or by debit to the Non-Resident (External) Account or Foreign Currency (Non-Resident) (Bank) Account

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- maintained with an authorised dealer/authorised bank in India.
- (iv) If the deposit accepting company is a non-banking finance company the rate of interest payable on deposits shall be in conformity with the guidelines/directions issued by Reserve Bank for such companies. In other cases the rate of interest payable on deposits shall not exceed the ceiling rate prescribed from time to time under the Companies (Acceptance of Deposit) Rules, 1975.
  - (v) The maturity period of deposits shall not exceed 3 years.
  - (vi) The company accepting the deposit shall comply with the provisions of any other law, rules, regulations, orders issued by the Government of India or any other competent authority, as are applicable to it in regard to acceptance of deposits.
  - (vii) The amount of aggregate deposits accepted by the company shall not exceed 35% of its net owned funds.
  - (viii) The payment of interest net of taxes may be made by the company to the depositor by remittance through an authorised dealer or by credit to the depositor's NRE/FCNR(B)/NRO account as desired by him.
  - (ix) The amount of deposits so collected shall not be utilised by the company for re-lending (not applicable to a Non-Banking Finance Company) or for undertaking agricultural/plantation activities or real estate business or for investing in any other concern, firm or a company engaged in or proposing to engage in agricultural/plantation activities or real estate business.
  - (x) The repayment of the deposit may be made by the company to the depositor by remittance from India through an authorised dealer or by credit to the depositor's NRE/FCNR(B) account maintained with an authorised dealer in India, provided the depositor continues to be a non-resident at the time of repayment. While applying to the authorised dealer for remittance of maturity proceeds of deposit or credit thereof to NRE/FCNR(B) account, the company should certify that the amount of deposit was received either by inward remittance from outside India through normal banking channels or by debit to the depositor's NRE/FCNR(B) account, as the case may be.
  - (xi) The amount representing repayment of deposit may also be credited to the depositor's NRO account, at the depositor's option.

**Q.84. What are the conditions under which an Indian proprietorship concern/firm or company (including non-banking finance company registered with Reserve Bank) can accept deposits on non-repatriation basis from NRIs/PIO resident outside India?**

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**Ans. A proprietorship concern or a firm in India, may accept deposits on non-repatriation basis from NRIs, and a company incorporated in India (including a non-banking finance company registered with Reserve Bank) may accept deposits on non-repatriation basis from NRIs subject to the following conditions :**

- (i) In the case of a company, the **deposits may be accepted either under private arrangement, or under a public deposit scheme.**
- (ii) If the deposit accepting company is a non-banking finance company, it should be registered with the Reserve Bank and should have obtained the required credit rating as stipulated under the guidelines issued by Reserve Bank for such companies.
- (iii) The **maturity period of deposit shall not exceed 3 years.**
- (iv) If the deposit accepting company is a non-banking finance company the rate of interest payable on deposits shall be in conformity with the guidelines/directions issued by Reserve Bank for such companies. In other cases the rate of interest payable on deposits shall not exceed the ceiling rate prescribed from time to time under the Companies (Acceptance of Deposit) Rules, 1975.
- (v) **The amount of deposit shall be received by debit to NRO account only, provided that the amount of the deposit shall not represent inward remittances or transfer of funds from NRE/FCNR(B) accounts into the NRO account.**
- (vi) The proprietorship concern/firm/company accepting the deposit should comply with the provisions of any other law, rules, regulations or orders made by Government or any other competent authority, as are applicable to it in regard to

acceptance of deposits.

(vii) The proprietorship concern, firm or company accepting the deposit shall **not utilise** the amount of deposits for relending (not applicable to a Non-Banking Finance Company) or for undertaking **agricultural/plantation activities or real estate business** or for investing in any other concern or firm or company engaged in or proposing to engage in agricultural/plantation activities or real estate business.

(viii) The amount of deposits accepted **shall not be allowed to be repatriated outside India.**

**Q.85. Can the amount of deposit on non-repatriation be received by debit to NRE/FCNR(B) accounts, out of transfer of funds from NRE/FCNR(B) accounts into NRO account of NRI/PIO?**

**Ans.** No.

**Q.86. Can AD open an account expressed in foreign currency in the name of a person resident outside India for the purpose of adjustment of value of goods imported into India against the value of goods exported from India?**

**Ans.** With the prior approval of Reserve Bank, an authorised dealer may open an account expressed in foreign currency in the name of a person resident outside India for the purpose of adjustment of value of goods imported into India against the value of goods exported from India in terms of an arrangement voluntarily entered into by such person with a person resident in India.

#### Summary Provisions of Deposit Regulations

Deposits from	Acceptance by	Permitted	Other conditions
NRI/ PIO	A company incorporated in India	On repatriation or non-repatriation basis by way of investment in Non-convertible Debentures under public offer	Redemption of such NCDs is not less than three years  Borrowing company files with RBI, not later than 30 days from date of receipt of remittance for investment in NCDs, full details of the remittances received.
NRI	Company registered under the Companies Act, 1956, or a body corporate created under an Act of Parliament or State Legislature	Not permitted	On repatriation basis
NRI	Indian Company	Yes	By issue of commercial paper in due compliance with the Non-Banking Companies (Acceptance of Deposits through Commercial Paper) Directions, 1989  On non-repatriation basis  Commercial <b>Paper shall not be transferable</b>
NRI/PIO resident outside India	Proprietorship concern / firm in India, and Company incorporated in	Yes	Deposits under private arrangement / public deposit scheme  On non-repatriation basis

	India (including a non-banking finance company registered with Reserve Bank)		<p><b>Maturity period of deposit shall not exceed 3 years</b></p> <p><b><u>Amount of deposit shall be received by debit to NRO account only, provided that the amount of the deposit shall not represent inward remittances or transfer of funds from NRE/FCNR(B) accounts into the NRO account</u></b></p>
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**Q.87. What is the definition of a 'Non-Resident Indian' for purposes of Borrowing and Lending In Rupees Regulations (FEMA 4)?**

**Ans.** "Non-resident Indian (NRI)" means a **person resident outside India who is a citizen of India or is a person of Indian origin.**

**Q.88. What is the definition of a 'Person of Indian Origin' for purposes of Borrowing and Lending In Rupees Regulations (FEMA 4)?**

**Ans.** "**Person of Indian Origin**" means a citizen of any country **other than Bangladesh or Pakistan**, if

- (a) he at any time held Indian passport; or
- (b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b).

**Q.89. Can resident individuals lend in Rupees to their non-resident NRIs/PIOs close relative (as defined in Section 6 of the Companies Act, 1956) for any personal purpose or business activities other than agricultural/plantation activities or real estate or relending business?**

**Ans.** Yes. **A resident individual** is permitted to **lend to a Non resident Indian (NRI)/ Person of Indian Origin (PIO) close relative** [as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer, subject to the following conditions:

- (i) The loan is **free of interest** and the **minimum maturity of the loan is one year**;
- (ii) The loan amount should be within the **overall limit under the Liberalised Remittance Scheme** of US\$ 75,000 per financial year available for a resident individual. It would be the responsibility of the lender to ensure that the amount of loan is within the Liberalised Remittance Scheme limit of US\$ 75,000 during the financial year;
- (iii) The loan shall be utilised for meeting the **borrower's personal requirements** or for his own **business purposes in India**;
- (iv) The loan shall **not** be utilised, either singly or in association with other person, for any of the activities in **which investment by persons resident outside India is prohibited**, namely;
  - (a) The business of chit fund, or
  - (b) Nidhi Company, or
  - (c) Agricultural or plantation activities or in real estate business, or construction of farm houses, or
  - (d) Trading in Transferable Development Rights (TDRs).

Explanation: For the purpose of item (c) above, real estate business shall not include development of townships, construction of residential / commercial premises, roads or bridges.

- (v) The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO account;
- (vi) The loan amount shall not be remitted outside India; and
- (vii) Repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO) / Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account of the borrower or **out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.**

**Q.90. Whether use of Credit Card in India by a person resident outside India deemed as borrowing or lending in rupees?**

**Ans.** Use of **Credit Card in India by a person resident outside India** shall not be deemed as borrowing or lending in rupees.

**Q.91. Can a person resident in India, not being a company incorporated in India, borrow in rupees from a non-resident Indian or a person of Indian origin resident outside India?**

**Ans. A person resident in India**, not being a company incorporated in India, **may borrow in rupees on non-repatriation basis** from a **non-resident Indian or a person of Indian origin** resident outside India, subject to the following conditions:

- (i) the amount of loan shall be received by way of inward remittance from outside India or out of Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR) account of the lender maintained with an authorised dealer or an authorised bank in India;
- (ii) the **period of loan shall not exceed three years**;
- (iii) the rate of **interest on the loan shall not exceed two percentage points over the Bank rate prevailing on the date of availment of loan**;
- (iv) payment of interest and repayment of loan shall be made by credit to the lender's Non-resident Ordinary (NRO) account; and
- (v) **the amount borrowed shall not be allowed to be repatriated outside India.**

**Q.92. Can a company incorporated in India borrow in rupees from a non-resident Indian or a person of Indian origin resident outside India by way of investment in Non-convertible Debentures?**

**Ans. A company incorporated in India** may borrow in rupees on **repatriation or non-repatriation basis**, from a **non-resident Indian or a person of Indian origin resident outside India** by way of investment in **Non-convertible Debentures** (NCDs) subject to the following conditions:

- (i) the issue of NCDs is made by **public offer**;
- (ii) the rate of interest on such NCDs does not exceed the prime lending rate of the State Bank of India as on the date on which the resolution approving the issue is passed in the borrowing company's General Body Meeting, plus 300 basis points;
- (iii) the period for **redemption of such NCDs is not less than three years**;
- (iv) the borrowing company does not and shall not carry on agricultural/plantation/real estate business/Trading in Transferable Development Rights (TDRs) or does not and shall not act as Nidhi or Chit Fund company;
- (v) the borrowing company files with the nearest office of the Reserve Bank, not later than 30 days from the date—

- (A) of receipt of remittance for investment in NCDs, full details of the remittances received, namely; (a) a list containing names and addresses of **Non-resident Indians (NRIs)** who have remitted funds for investment in NCDs on repatriation and/or non-repatriation basis, (b) amount and date of receipt of remittance and its rupee equivalent; and (c) names and addresses of authorised dealers through whom the remittance has been received;
- (B) of issue of NCDs, full details of the investment, namely; (a) a list containing names and addresses of NRIs and number of NCDs issued to each of them on repatriation and/or non-repatriation basis and (b) a certificate from the Company Secretary of the borrowing company that all provisions of the Act, rules and regulations in regard to issue of NCDs have been duly complied with.

**Q.93. What are the additional conditions need to be fulfilled in case of borrowing by issue of NCDs on repatriation basis?**

**Ans.** The borrowing by issue of non-convertible debentures on repatriation basis shall be subject to the following additional conditions, namely :

- (a) the percentage of NCDs issued to NRIs to the total paid-up value of each series of NCDs issued shall not exceed the ceiling prescribed for issue of equity shares/convertible debentures for foreign direct investment in India as specified by the Reserve Bank from time to time, under the relevant regulations, and
- (b) the amount of investment is received by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Foreign Currency Non-resident (FCNR) account

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maintained with an authorised dealer or an authorised bank in India.

**Q.94. What are the additional conditions need to be fulfilled in case of borrowing by issue of NCDs on non- repatriation basis?**

**Ans.** The borrowing by issue of NCDs on non-repatriation basis shall be subject to the following additional conditions, namely:

- (a) the amount of investment is received either by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR) account maintained with an authorised dealer or an authorised bank in India,
- (b) where the investment is made out of funds held in Non-resident Special Rupee (NRSR) account, the interest on such Non-convertible Debentures (NCDs) shall also not be repatriable outside India, and the maturity proceeds and interest on such debentures are credited only to the Non-resident Special Rupee (NRSR) account of the investor.

**Q.95. Whether borrowings to eligible borrowers by way of issue of preference shares and convertible debentures to a person resident outside India are considered as debt?**

**Ans.** The borrowing by way of issue of preference shares on or after 30th day of April, 2007 other than those which are fully and mandatorily convertible into equity within a specified time and issue of convertible debentures on or after 7th day of June, 2007, other than those which are fully and mandatorily convertible into equity within a specified time, to a person resident outside India, shall be considered as debt and shall accordingly conform to Regulation 6 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA 3/2000-RB, dated 3rd May, 2000) including the limits to such borrowings as specified in the said regulations.

**Q.96. Are there any restrictions on the usage of borrowed funds?**

**Ans.** No person resident in India who has borrowed in rupees from a person resident outside India

- (1) shall use such borrowed funds for any purpose except in his own business other than—
  - (i) the business of chit fund, or
  - (ii) as Nidhi Company, or
  - (iii) agricultural or plantation activities or real estate business (not include development of townships, construction of residential/commercial premises, roads or bridges); or construction of farm houses, or
  - (iv) trading in Transferable Development Rights (TDRs),
- (2) shall use such borrowed funds for any investment, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not, or for relending.

It has now been decided to **permit** such resident entities / companies in India, authorised by the Government of India, **to issue tax-free, secured, redeemable, non-convertible bonds in Rupees to persons resident outside India** to use such borrowed funds for the following purposes:

- (a) for on lending / re-lending to the infrastructure sector; and
- (b) for keeping in fixed deposits with banks in India pending utilization by them for permissible end-uses.

**Q.97. Can an AD grant loans in rupees to NRIs? What are the conditions?**

**Ans.** An authorised dealer in India may grant loan to a NRI,

- (A) **Against the security of shares or other securities held in the name of the borrower**, or

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- (B) Against the **security of immovable property (other than agricultural or plantation property or farm house)**, held by him in accordance with the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000:

**Provided** that—

- (a) The loan shall be utilised for meeting the borrower's personal requirements or for his own business purposes;
  - (b) The loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited, namely:
    - (i) the business of chit fund, or
    - (ii) Nidhi Company, or
    - (iii) agricultural or plantation activities or in real estate business, or construction of farm houses, or
    - (iv) trading in Transferable Development Rights (TDRs).
  - (c) The Reserve Bank's directives on advances against shares/ securities/ immovable property shall be duly complied with;
  - (d) The loan amount shall not be credited to Non-resident External (NRE)/ Foreign Currency Non-resident (FCNR) account of the borrower;
  - (e) The loan amount shall not be remitted outside India;
  - (f) Repayment of loan shall be made from out of remittances from outside India through normal banking channels or by debit to the Non-resident Ordinary (NRO)/ Non-resident External (NRE)/ Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted,
- (C) For any purpose as per the loan policy laid down by the Board of Directors of the Authorised Dealer.

**Provided** that—

- (a) the loan shall not be utilised either singly or in association with other person for—
  - (i) the business of chit fund, or
  - (ii) Nidhi company, or
  - (iii) agricultural or plantation activities or in real estate business or construction of farm houses, or
  - (iv) trading in Transferable Development Rights (TDRs), or
  - (v) investment in capital market including margin trading and derivatives;
- (b) the Reserve Bank's directives on such advances shall be duly complied with;
- (c) the loan amount shall not be credited to NRE/FCNR(B) accounts;
- (d) the loan amount shall not be remitted outside India;
- (e) repayment of loan shall be made from out of remittances from outside India through normal banking channels or by debit to NRE/FCNR(B)/NRO accounts,]

**Q.98. Can the loans in Rupees to non-residents Indian against the security of shares or other securities and immovable property (other than agricultural or plantation property or farm house) by an authorised dealer in India be repaid by any close relative of the borrower in India?**

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**Ans.** Yes, by resident close relative (relative as defined in Section 6 of the Companies Act, 1956), of the Non-Resident Indian by crediting the borrower's loan account through the bank account of such relative.

**Q.99. On what conditions an AD in India can grant Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under the ESOP Scheme?**

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**Ans.** An Authorised Dealer in India may grant Rupee loans to NRI employees of Indian

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companies for acquiring shares of the companies under the Employees Stock Option Plan (**ESOP**) Scheme subject to the following conditions:

- (i) The ESOP Scheme should be as per the policy approved by the bank's Board.
- (ii) The **loan amount** should **not exceed 90% of the purchase price of the shares or Rupees 20 lakhs per NRI employee**, whichever is lower.
- (iii) The rate of interest and margin on such loans may be decided by the banks, subject to directives issued by the Reserve Bank from time to time.
- (iv) The amount shall be paid directly to the company and should not be credited to the borrowers' non-resident accounts in India.
- (v) The loan amount would have to be repaid by the borrower by way of inward remittances or by debit to his/her NRO/NRE/FCNR(B) account.
- (vi) The loans will be included for reckoning capital market exposures and the bank will ensure compliance with prudential limits, prescribed by the Reserve Bank from time to time, for such exposure to capital market.]

**Q.100. Can the Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under the ESOP Scheme be repaid by any close relative of the borrower in India?**

**Ans.** Yes, by resident close relative (relative as defined in Section 6 of the Companies Act, 1956), of the Non-Resident Indian by crediting the borrower's loan account through the bank account of such relative.

**Q.101. On what conditions a housing loan in rupees can be granted to an NRI or PIO resident outside India from an authorised dealer or a housing finance institution?**

**Ans.** **An authorised dealer or a housing finance institution** in India approved by the National Housing Bank may provide housing loan **to a Non-resident Indian or a person of Indian origin resident outside India**, for **acquisition of a residential accommodation in India**, subject to the following conditions, namely :

- (a) the quantum of loans, margin money and the period of repayment shall be at par with those applicable to housing finance provided to a person resident in India;
- (b) the loan amount shall not be credited to Non-resident External (NRE)/Foreign Currency Non-resident (FCNR) account of the borrower;
- (c) the loan shall be **fully secured by equitable mortgage of the property proposed to be acquired, and if necessary, also by lien on the borrower's other assets in India;**
- (d) the instalment of loan, interest and other charges, if any, shall be paid by the borrower by remittances from outside India through normal banking channels or out of funds in his Non-resident External (NRE)/Foreign Currency Non-resident (FCNR)/ Non-resident Ordinary (NRO) account in India, or out of rental income derived from renting out the property acquired by utilisation of the loan **or by any relative of the borrower in India by crediting the borrower's loan account through the bank account of such relative.**
- (e) the rate of interest on the loan shall conform to the directives issued by the Reserve Bank or, as the case may be, by the National Housing Bank.

**Q.102. Can the housing loan so provided for acquisition of a residential accommodation in India be repaid by any close relative of the borrower in India?**

**Ans.** Yes, by crediting the borrower's loan account through the bank account of such close relative (relative as defined in section 6 of the Companies Act, 1956).

**Q.103. On what conditions Rupee loans can be granted to NRI/PIO employees of Indian body corporate?**

**Ans.** **A body corporate registered or incorporated in India may grant rupee loan to its employees who is a non-resident Indian or a Person of Indian Origin**, subject to the following conditions, namely :

- (i) the loan shall be granted **only for personal purposes** including **purchase of housing property in India;**
- (ii) the loan shall be granted in accordance with the **lender's Staff Welfare**

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- Scheme/Staff Housing Loan Scheme** and other terms and conditions applicable to its Staff resident in India;
- (iii) the lender shall ensure that the loan amount is **not used for the prohibited purposes**;
  - (iv) the lender shall credit the loan amount to the borrower's NRO Account in India or shall ensure credit to such account by specific indication on the payment instrument;
  - (v) it shall be a term of the loan agreement that the repayment of loan shall be made by way of remittance from outside India or from NRE/NRO/FCNR Account of the borrower; and the lender shall not accept repayment made from any other source.]

**Q.104. On what conditions AD can allow continuance of loan/ overdraft granted to a person resident in India who subsequently becomes a person resident outside India?**

**Ans.** An authorised dealer or, as the case may be, an authorised bank, may allow continuance of loan/ overdraft granted to a person resident in India **who subsequently becomes a person resident outside India**, subject to following terms and conditions :

- (a) the authorised dealer or the authorised bank is satisfied, according to his/its commercial judgment, about the reasons to continue the loan or overdraft;
- (b) the period of loan or overdraft shall not exceed the period originally fixed at the time of granting the loan or overdraft;
- (c) so long as the borrower continues to remain a person resident outside India, the repayment shall be made either by inward remittance from outside India through normal banking channels or from the funds held in Non-resident External (NRE)/Foreign Currency Non-resident (FCNR)/ Non-resident Ordinary (NRO) account of the borrower.

**Q.105. What is the impact of change in the residential status of the lender?**

**Ans.** In case a **rupee loan was granted by a person resident in India to another person resident in India and the lender subsequently becomes a non-resident**, the repayment of the loan by the resident borrower should be made by credit to the Non-resident Ordinary (NRO) account of the lender maintained with a bank in India, at the option of the lender.

**Q.106. Can an overdraft in rupee account be maintained with AD in India by a bank outside India?**

**Ans.** An authorised dealer may permit a temporary overdraft for value **not exceeding rupees five hundred lakhs**, in rupee accounts maintained with him by his overseas branch or correspondent or Head Office outside India, subject to such terms and conditions as the Reserve Bank may direct from time to time.  
Explanation: For the purpose of calculating the ceiling of rupees five hundred lakhs under this Regulation, the aggregate amount of overdrafts permitted by the authorised dealer to all his branches, correspondents and Head Office outside India outstanding in the books of all his branches in India, shall be taken into account.

**Q.107. What are the provisions for Non-resident guarantee for fund based & non-fund based facilities entered between two resident entities?**

**Ans.** **Borrowing and lending of Indian Rupees** between two persons resident in India does not attract the provisions of the Foreign Exchange Management Act, 1999. In case where a Rupee loan is granted against the **guarantee provided by a person resident outside India**, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The Reserve Bank vide Notification No. FEMA 29/2000-RB dated September 26, 2000 has granted **general permission to a person resident in India, being a principal debtor, to make payment to a person resident outside India, who has met the liability under a guarantee**. Provided that the amount payable by way of reimbursement by the resident principal debtor shall not exceed

the rupee equivalent of the amount paid by the non-resident guarantor under the guarantee. Provided further that where the payment of the amount is made by the guarantor out of funds held in NRNR/NRO account/s maintained with an authorised dealer in India, the amount paid by way of reimbursement shall not be remitted outside India or credited to NRE/FCNR account of the non-resident.

It has been decided vide Circular No. 20 dated August 29, 2012 to **extend the facility** of non-resident guarantee under the general permission for **non-fund based facilities** (such as Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) ) entered into between two persons resident in India. The method of discharge of liability by the non-resident guarantor under the guarantee and the subsequent repayment of the liability by the principal debtor would continue, as hitherto, as detailed in A.P. (DIR Series) Circular No. 28 dated March 30, 2001.

#### Summary Provisions of Lending & Borrowing of Indian Rupee loans

By	To	Other conditions
Resident individual	NRI/ PIO close relative	<p>By way of crossed cheque /electronic transfer</p> <p>Free of interest</p> <p>Minimum maturity of loan is one year</p> <p>Loan amount within overall limit under the Liberalised Remittance Scheme of US\$ 75,000 per financial year</p> <p>Utilized for meeting the borrower's personal requirements or for his own business purposes in India</p> <p>Loan amount should be credited to the NRO account</p> <p>Repayment of loan by way of inward remittances or by debit to NRO / NRE / FCNR account of the borrower or <b>out of the sale proceeds of the shares or securities or immovable property against which such loan was granted</b></p>
AD in India	NRI	<p>Against the security of shares or other securities and immovable property (other than agricultural or plantation property or farm house)</p> <p>Loan amount shall not be credited to NRE/ FCNR account</p> <p>Repayment of loan out of remittances from outside India or by debit to NRO/ NRE/ FCNR account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted</p> <p>Loan can be repaid by any close relative of the borrower in India</p>
AD in India	NRI employees of Indian companies	<p>For acquiring shares of the companies under the Employees Stock Option Plan (ESOP) Scheme</p> <p>Loan amount not to exceed 90% of the purchase price of the shares or Rupees 20 lakhs per NRI employee</p> <p>Amount shall be paid directly to company and not be credited to the borrowers' non-resident accounts in India</p> <p>Loan amount would have to be repaid by the borrower by</p>

		<p>way of inward remittances or by debit to his/her NRO/NRE/FCNR(B) account</p> <p><b>Rupee loans to NRI employees of Indian companies under ESOP Scheme may be repaid by any close relative of the borrower in India</b></p>
AD or housing finance institution in India approved by the National Housing Bank	NRI/PIO resident outside India	<p>Housing loan for acquisition of a residential accommodation in India</p> <p>Loan amount shall not be credited to NRE/ FCNR Account</p> <p>Loan shall be fully secured by equitable mortgage of the property proposed to be acquired, and if necessary, also by lien on the borrower's other assets in India</p> <p>Instalment of loan, interest and other charges etc. out of remittances from outside India or out of NRE/ FCNR/ NRO, or out of rental income derived from renting out the property acquired by utilisation of the loan <b>or by any relative of the borrower in India by crediting the borrower's loan account through the bank account of such relative</b></p>
Body corporate registered or incorporated in India	Its employees who is NRI/PIO	<p>Rupee loan</p> <p>For personal purposes including purchase of housing property in India in accordance with the lender's Staff Welfare Scheme/Staff Housing Loan Scheme.</p> <p>Repayment of loan shall be made by way of remittance from outside India or from NRE/NRO/FCNR Account of the borrower; and the lender shall not accept repayment made from any other source.</p>
NRI / PIO resident outside India	A Person resident in India, not being a company incorporated in India	<p><b>Borrow in rupees on non-repatriation basis</b></p> <p>Period of loan shall not exceed three years</p> <p>Interest shall not exceed two percentage points over the Bank rate prevailing on the date of avilment of loan</p> <p><b>Amount borrowed shall not be allowed to be repatriated outside India</b></p>
<b>Guarantee provided by a person resident outside India</b>	Rupee loan - fund based or <b>non-fund based facilities</b> (such as Letters of Credit/guarantees /Letter of Undertaking (LoU) /Letter of Comfort (LoC) ) facilities entered into between two persons resident in India	<p>Amount payable by way of reimbursement by the resident principal debtor shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor under the guarantee.</p> <p>Provided further that where the payment of the amount is made by the guarantor out of funds held in NRO account/s maintained with an authorised dealer in India, the amount paid by way of reimbursement shall not be remitted outside India or credited to NRE/FCNR account of the non-resident.</p>



**Chapter E: BORROWING AND LENDING IN FOREIGN EXCHANGE REGULATIONS UNDER  
FEMA 3**

**Q.108. Can an individual resident in India borrow foreign exchange from his close relatives outside India? If yes, to what extent?**

**Ans. Yes. An individual resident in India** may borrow a sum not exceeding **US\$ 250,000** or its equivalent from **his close relatives** (as defined in section 6 of the Companies Act, 1956) **outside India**, subject to the conditions that—

- a. the **minimum maturity period of the loan is one year**;
- b. the loan is free of interest; and
- c. the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account of the non-resident lender.

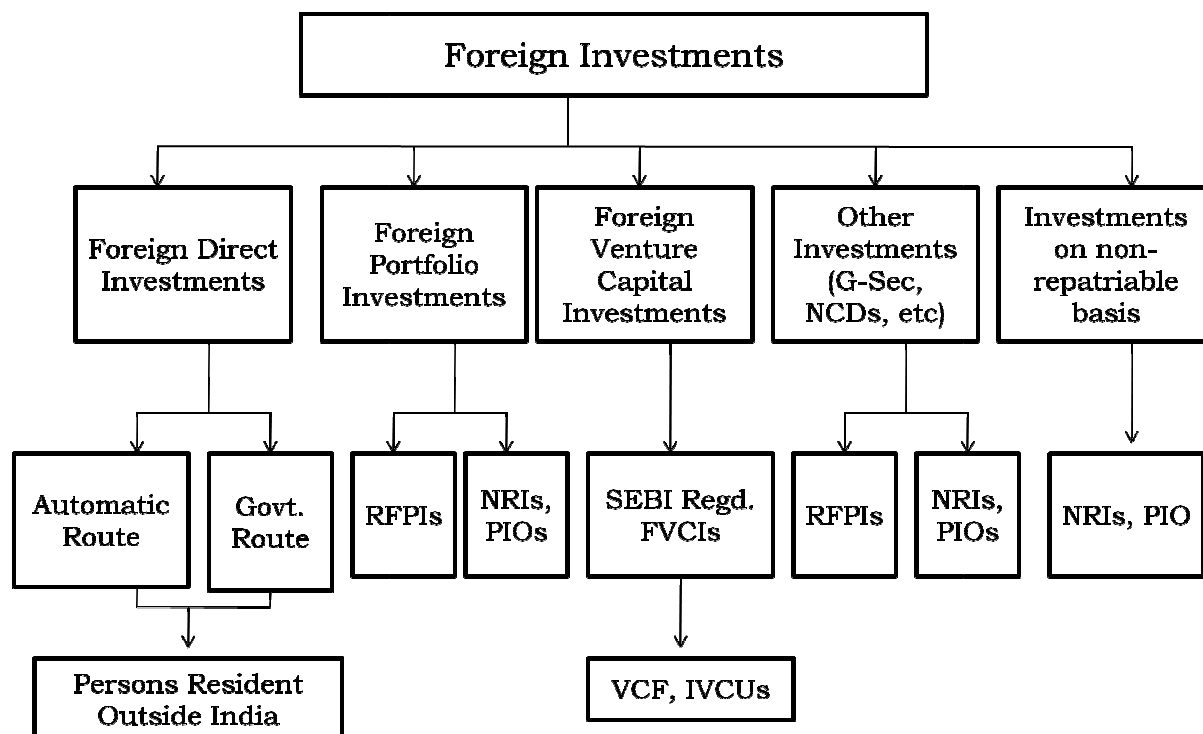
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**Also refer under chapter 'BANKING ACCOUNTS FOR NRIs/PIOs'**

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**Chapter F: FOREIGN DIRECT INVESTMENT (FDI) POLICY**  
**Foreign Investments in India-Schematic Representation**



**Q.109. Who can invest in India?**

**Ans.** A person resident outside India (a **non-resident entity including NRIs/PIOs** and Foreign Citizens Resident outside India, **but excluding OCB**) can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited.

A citizen of **Bangladesh** or an entity incorporated in Bangladesh can invest only under the Government route. A person who is a citizen of **Pakistan** or an entity incorporated in Pakistan may, with the prior approval of the Foreign Investment Promotion Board of the Government of India, purchase shares and convertible debentures of an Indian company under Foreign Direct Investment Scheme. The Indian company, receiving foreign direct investment, is not engaged or shall not engage in sectors / activities pertaining to defence, space and atomic energy and sectors/ activities prohibited for foreign investment.

**Q.110. Can NRIs invest/trade through a registered broker in the capital of Indian Companies under FDI scheme on recognized Indian Stock Exchanges?**

**Ans.** Only SEBI registered FIIs and NRI as per Schedule 2 and 3 respectively of FEMA 20 can invest/trade through a registered broker in the capital of Indian Companies on recognized Indian Stock Exchanges.

**A non resident including a Non Resident Indian may acquire shares of a listed Indian company on the stock exchange through a registered broker under FDI scheme also provided that:**

- i. The non-resident investor has **already** acquired and continues to **hold the control in accordance with SEBI** (Substantial Acquisition of Shares and Takeover) **Regulations**;
- ii. The **amount of consideration** for transfer of shares to non-resident consequent to purchase on the stock exchange may be paid as below:
  - a. by way of inward remittance through normal banking channels,
  - b. by way of debit to the NRE/FCNR account of the person concerned

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- maintained with an authorized dealer/bank;
  - c. by debit to non-interest bearing Escrow account (in Indian Rupees) maintained in India with the AD bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2000; or
  - d. the consideration amount may also be paid **out of the dividend payable by Indian investee company**, in which the said non-resident holds control as (i) above, provided the right to receive dividend is established and the dividend amount has been credited to specially designated non-interest bearing rupee account for acquisition of shares on the floor of stock exchange.
  - iii. The pricing for subsequent transfer of shares to non-resident shareholder shall be in accordance with the **pricing guidelines under FEMA**;
  - iv. The original and resultant investments are in line with the extant FDI policy and FEMA regulations in respect of sectoral cap, entry route, reporting requirement, documentation, etc.

**Q.111. What are the provisions for transfer of shares by a Person resident outside India?**

**Ans.** a. **Non Resident to Non-Resident (Sale / Gift):** A person resident outside India (other than NRI and OCB) may transfer by way of sale or gift, shares or convertible debentures to any person resident outside India (including NRIs but excluding OCBs).

**Note:** Transfer of shares from or by erstwhile OCBs would require prior approval of the Reserve Bank of India.

- b. **NRI to NRI (Sale / Gift):** NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.
- c. **Non Resident to Resident (Sale / Gift):**
  - (i) **Gift:** A person resident outside India can transfer any security to a person resident in India by way of gift.
  - (ii) **Sale under private arrangement:** General permission is also available for transfer of shares / convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India **in case where transfer of shares are under SEBI regulations and where the FEMA pricing guidelines are not met**, subject to the following
    - (a) The original and resultant investment comply with the extant FDI policy/ FEMA regulations;
    - (b) The pricing complies with the relevant SEBI regulations (such as IPO, Book building, block deals, delisting, exit, open offer/ substantial acquisition / SEBI (SAST) and buy back); and
    - (c) CA certificate to the effect that compliance with relevant SEBI regulations as indicated above is attached to the Form FC-TRS to be filed with the AD bank.
    - (d) Compliance with reporting and other guidelines as given in Annex 3.

Note: Transfer of shares from a Non Resident to Resident other than under SEBI regulations and where the FEMA pricing guidelines are not met would require the prior approval of the Reserve Bank of India.

- (iii) **Sale of shares/ convertible debentures on the Stock Exchange by person resident outside India:** A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.

AD Category –I bank may issue bank guarantee, without prior approval of the Reserve Bank, on behalf of a non-resident acquiring shares or convertible debentures of an

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Indian company through open offers/ delisting/exit offers, provided:

- a) the transaction is in compliance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) [SEBI(SAST)] Regulations;
- b) the guarantee given by the AD Category –I bank is covered by a counter guarantee of a bank of international repute.

It may be noted that the guarantee shall be valid for a tenure co-terminus with the offer period as required under the SEBI (SAST) Regulations. In case of invocation of the guarantee, the AD Category-I bank is required to submit to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai 400 001, a report on the circumstances leading to the invocation of the guarantee.

**Q.112. What is the procedure followed by resident in India so as to transfer any capital instrument by way of gift to a person resident outside India?**

**Ans.** A person resident in India, who intends to transfer any capital instrument, by way of gift to a person resident outside India, has to obtain prior approval from Reserve Bank. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the prescribed documents should be enclosed.

**Q.113. What factors are considered by RBI while processing applications for approval for transfer of capital instruments by way of gift?**

**Ans.** Reserve Bank considers the following factors while processing such applications:

- (a) The proposed transferee (donee) is eligible to hold such capital instruments under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.
- (b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company/each series of debentures/each mutual fund scheme.
- (c) The applicable sectoral cap limit in the Indian company is not breached.
- (d) The transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time.
- (e) The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of US\$ 50,000 per the financial year.
- (f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.

**Q.114. Are there any sector specific relaxations available to NRIs under FDI?**

**Ans.** Yes, in the following sectors:

<b>A. Air Transport Services</b>	<b>% of FDI Cap/Equity</b>	<b>Entry Route</b>
(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non- Scheduled Air Transport Services, helicopter and seaplane services.		
(b) No foreign airlines would be allowed to participate directly or indirectly in the equity of an Air Transport Undertaking engaged in operating Scheduled, Non-Scheduled Air Transport Services except Cargo airlines.		
(c) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services.		
(1) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	49% FDI <b>(100% for NRIs)</b>	Automatic
(2) Non-Scheduled Air Transport Service	74% FDI <b>(100% for NRIs)</b>	Automatic up to 49%  Government route beyond 49% and upto 74%.
(3) Helicopter services/ seaplane services requiring DGCA approval	100%	Automatic
<b>Other services under Civil Aviation Sector</b>		
(1) Ground Handling Services subject to sectoral regulations and security clearance	74% FDI <b>(100% for NRIs)</b>	Automatic up to 49%  Government route beyond 49% and up to 74%
(2) Maintenance and Repair	100%	Automatic

organizations; flying training institutes; and technical training institutions		
<b>B. <u>Construction Development: Townships, Housing, Built-up infrastructure</u></b>		
Townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational Institutions, recreational facilities, city and regional level infrastructure)	100%	Automatic
<p><b>The conditions of minimum area to be developed, minimum capitalization, lock-in-period etc. would not apply to Hotels &amp; Tourism, Hospitals, Special Economic Zones (SEZs), Education Sector, Old age Homes and investment by NRIs.</b></p> <p>FDI is not allowed in Real Estate Business. “Real estate business” means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.</p>		

**Q.115. What are ‘Sector-specific Policy for FDI’ applicable to all categories of foreign investor including NRIs?**

**Ans.** Refer chapter on Foreign Direct Investment (FDI) Policy.

**Q.116. What is the new Scheme for Acquisition/Transfer by a person resident outside India of capital contribution or profit share of Limited Liability Partnerships (LLPs)? Whether a person resident outside India permitted to contribute in the capital structure of an LLP under FDI?**

**Ans.** Refer Notification No. 298 dated March 13, 2014: Fem (Transfer Or Issue Of Security By A Person Resident Outside India) (Third Amendment) Regulations, 2014 - Amendment in Regulations 2 & 5 and Insertion of Schedule 9; read with RBI Circular no. 123 dated 16 April 2014.

**Q.117. Can the investment made by NRI on non-repatriation basis be converted into repatriable shares?**

**Ans.** Yes. Conversion of non-repatriable shares by Non-resident Indians (NRI) into repatriable shares is permissible under automatic route in terms of Press Note 4 of 2005 dated August 31, 2005 issued by DIPP in case the original investment by the NRI was made in foreign exchange under the FDI Scheme and the sector/activity in which the investment is proposed to be converted into repatriable equity is on the automatic route for FDI.

**Q.118. Whether a firm or other association of individuals / Proprietary concerns set up abroad cannot establish Liaison Office/Branch Office in India?**

**Ans.** Firm or other association of individuals / Proprietary concerns set up abroad cannot establish LO/BO in India.

**Q.119. Can a NRI and SEBI registered FII invest in Tier I and Tier II instruments issued by banks in India?**

**Ans.** SEBI registered FIIs and NRIs have been permitted to subscribe to the Perpetual Debt instruments (eligible for inclusion as Tier I capital) and Debt Capital instruments (eligible for inclusion as upper Tier II capital), issued by banks in India and denominated in Indian Rupees, subject to the following conditions.

- a. Investment by all FIIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 49 per cent of each issue and investment by individual FII should not exceed the limit of 10 per cent of each issue.
- b. Investments by all NRIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 percent of each issue.
- c. Investment by FIIs in Rupee denominated Debt Capital instruments (Tier II) shall be within the limits stipulated by SEBI for FII investment in corporate debt instruments.
- d. Investment by NRIs in Rupee denominated Debt Capital instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments.
- e. Investment by FIIs in Rupee denominated Upper Tier II Instruments raised in Indian Rupees will be within the limit prescribed by the SEBI for investment in corporate debt instruments.
- f. The details of the secondary market sales / purchases by FIIs and the NRIs in these instruments on the floor of the stock exchange are to be reported by the custodians and designated Authorised Dealer banks respectively, to the Reserve Bank through the soft copy of the Forms LEC (FII) and LEC (NRI).

**Q.120. Can a NRI and SEBI registered FII invest in Indian Depository Receipts (IDRs)?**

**Ans.** NRI and SEBI registered FIIs have been permitted to invest, purchase, hold and transfer IDRs of eligible companies resident outside India and **issued in the Indian capital market**, subject to the following conditions.

- (i) The purchase, hold and transfer of IDRs is in accordance with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000-RB dated May 3, 2000, as amended from time to time.

A limited two way fungibility for IDRs (similar to the limited two way fungibility facility available for ADRs/GDRs) subject to the following terms and conditions.

- i. The conversion of IDRs into underlying equity shares would be governed by the conditions mentioned in paras 6 and 7 of A.P. (DIR Series) Circular No. 5 dated July 22, 2009.
- ii. Fresh IDRs would continue to be issued in terms of the provisions of A.P. (DIR Series) Circular No. 5 dated July 22, 2009.
- iii. The re-issuance of IDRs would be allowed only to the extent of IDRs that have been redeemed /converted into underlying shares and sold.
- iv. There would be an overall cap of USD 5 billion for raising of capital by issuance of IDRs by eligible foreign companies in Indian markets. This cap would be akin to the caps imposed for FII investment in debt securities and would be monitored by SEBI.
- v. IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of issue of the IDRs.
- vi. At the time of redemption / conversion of IDRs into the underlying shares, the Indian holders (persons resident in India) of IDRs shall comply with the

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provisions of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120 / RB-2004 dated July 7 2004, as amended from time to time.

The FEMA provisions shall not apply to the holding of the underlying shares, on redemption of IDRs by the FIIs including SEBI approved sub-accounts of the FIIs and NRIs. The issuance, redemption and fungibility of IDRs would also be subject to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time as well as other relevant guidelines issued in this regard by the Government, the SEBI and the RBI from time to time.

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**Q.121. What are the facilities available to NRIs for purchase of securities on repatriation & non-repatriation basis?**

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**Ans. Purchase of other securities by NRIs**

**(i) On non-repatriation basis**

- (a) NRIs can purchase shares / convertible debentures issued by an Indian company on non-repatriation basis without any limit. Amount of consideration for such purchase shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE / FCNR(B) / NRO account maintained with the AD Category - I bank.
- (b) NRIs can also, without any limit, purchase on non-repatriation basis dated Government securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds. Government of India has notified that NRIs are not permitted to make Investments in Small Savings Schemes including PPF. In case of investment on non-repatriation basis, the sale proceeds shall be credited to NRO account. The amount invested under the scheme and the capital appreciation thereon will not be allowed to be repatriated abroad.

NRIs can also invest in non-convertible debentures issued by an Indian Company, both on repatriation basis and on non-repatriation basis, subject to the other terms and conditions stated under Notification No FEMA 4/2000-RB dated May 3,2000 (as amended from time to time).

**(ii) On repatriation basis**

A NRI can purchase on repatriation basis, without limit, Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds; bonds issued by a public sector undertaking (PSU) in India and shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

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**Q.122. What are the facilities available to NRIs for purchase of other securities on repatriation & non-repatriation basis including small savings or PPF?**

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**Ans. Investment facilities for NRIs**

**NRI may, without limit, purchase on repatriation basis:**

- \_ Government dated securities / Treasury bills
- \_ Units of domestic mutual funds;
- \_ Bonds issued by a public sector undertaking (PSU) in India.
- \_ Non-convertible debentures of a company incorporated in India.
- \_ Perpetual debt instruments and debt capital instruments issued by banks in India.
- \_ Shares in Public Sector Enterprises being dis-invested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.
- \_ Shares and convertible debentures of Indian companies under the FDI scheme (including automatic route & FIPB), subject to the terms and conditions specified in Schedule 1 to the FEMA Notification No. 20/2000- RB dated May 3, 2000, as amended from time to time.
- \_ Shares and convertible debentures of Indian companies through stock exchange under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3 to the FEMA Notification No. 20/2000- RB dated May 3, 2000, as



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amended from time to time.

**NRI may, without limit, purchase on non-repatriation basis:**

- \_ Government dated securities / Treasury bills
- \_ Units of domestic mutual funds
- \_ Units of Money Market Mutual Funds
- \_ National Plan/Savings Certificates
- \_ Non-convertible debentures of a company incorporated in India
- \_ Shares and convertible debentures of Indian companies through stock exchange under **Portfolio Investment Scheme**, subject to the terms and conditions specified in Schedules 3 and 4 to the FEMA Notification No. 20/2000- RB dated May 3, 2000, as amended from time to time.
- \_ Exchange traded derivative contracts approved by the SEBI, from time to time, out of INR funds held in India on non-repatriable basis, subject to the limits prescribed by the SEBI.

**Note: NRIs are not permitted to invest in small savings or Public Provident Fund (PPF).**

**Q.123 Can a Non-resident Indian purchase on non-repatriation basis, shares or convertible debentures of an Indian company issued whether by public issue or private placement or right issue?**

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**Ans.** Under **Schedule 4 of FEMA 20**, a Non-resident Indian may without any limit, purchase on non-repatriation basis, shares or convertible debentures of an Indian company issued whether by public issue or private placement or right issue:

**Method of payment for purchase of shares/convertible debentures.**

The amount of consideration for purchase of shares or convertible debentures of an Indian company on non-repatriation basis, shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE/FCNR/NRO account maintained with an authorised dealer or as the case may be with an authorised bank in India:

**Provided** that in the case of an NRI resident in Nepal and Bhutan, the amount of consideration for purchase of shares or convertible debentures of an Indian company on non-repatriation basis, shall be paid only by way of inward remittance in foreign exchange through normal banking channels.

**Sale/Maturity proceeds of shares or convertible debentures.**

(i) The sale/maturity proceeds (net of applicable taxes) of shares or convertible debentures purchased under this Scheme shall be credited only to NRO account where the purchase consideration was paid out of inward remittance or funds held in NRE/FCNR/NRO account.

(ii) The amount invested in shares or convertible debentures under this Scheme and the capital appreciation thereon shall not be allowed to be repatriated abroad.

[illegible]

**Chapter H: SALIENT FEATURES OF PORTFOLIO INVESTMENT SCHEME (PIS) FOR INVESTMENTS BY A NON RESIDENT INDIAN (NRI)**

**Q.124 What are the salient features Salient features of Portfolio Investment Scheme (PIS) for investments by a Non Resident Indian (NRI)?**

**Ans.**

- a) An NRI intending to buy and sell shares / convertible debentures of an Indian company through a registered broker on a recognized stock exchange in India will apply in prescribed form to the designated branch of AD bank for participating in the Scheme **on repatriation and / or non-repatriation basis.**
- b) While applying, the NRI should also undertake that
  - i) the particulars furnished are true and correct;
  - ii) he has no dealing with/ he will not deal with any other designated branch/bank under PIS;
  - iii) he will ensure that total holding in shares / convertible debentures, both on repatriation and non-repatriation basis in any one Indian company at no time shall exceed 5 per cent of the paid up capital/ paid up value of each series of convertible debentures of that company.
- c) The designated branch of the AD bank will grant one time permission to the NRI applicant for purchase and sale of shares / convertible debentures of an Indian company. **Two distinct permission letters (for repatriation basis and non-repatriation basis) shall be issued as per the prescribed format.**
- d) Designated branch shall open a **separate sub account of NRE/NRO account (opened and maintained by an NRI** in terms of the Foreign Exchange Management (Deposit) Regulations, 2000) for the exclusive purpose of routing the transactions under PIS on behalf of an NRI. **NRE(PIS)** account for investment made by the NRI **on repatriation basis** and **NRO(PIS)** account for investment made on **non-repatriation basis** under the Scheme. The designated branch shall ensure that amounts due to sale proceeds of shares / convertible debentures which have been acquired by modes other than PIS, such as underlying shares acquired on conversion of ADRs/GDRs, shares/ convertible debentures acquired under FDI Scheme, shares/ convertible debentures purchased outside India from other NRIs, shares/ convertible debentures acquired under private arrangement from residents / non-residents, shares/ convertible debentures purchased while resident in India, do not get credited/debited in the accounts opened exclusively for routing the PIS transactions.
- e) The permissible **credits and debits in the NRE (PIS) account for routing PIS transactions** will be as under:

**Permissible Credits**

- (i) **Inward remittances** in foreign exchange through normal banking channels;
- (ii) Transfer from **applicant's other NRE accounts or FCNR (B) accounts** maintained with AD bank in India ;
- (iii) **Net sale proceeds** ( after payment of applicable taxes) of shares and convertible debentures which were acquired on repatriation basis under PIS and sold on stock exchange through registered broker;
- (iv) **dividend or income earned on investments under PIS.**

**Permissible debits**

- (i) **Outward remittances of dividend or income earned;**
- (ii) Amounts paid on account of **purchase of shares and convertible** debentures on repatriation basis on stock exchanges through registered broker under PIS; and
- (iii) **Any charges on account of sale/ purchase** of shares or convertible

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debentures under PIS.

- f) The permissible **credits and debits in the NRO(PIS) account** for routing PIS transactions will be as under;

**Permissible Credits**

- (i) **Inward remittances** in foreign exchange through normal banking channels;
- (ii) **Transfer from applicant's other NRE accounts or FCNR (B) accounts or NRO accounts maintained with AD bank in India;**
- (iii) **Net sale proceeds** ( after payment of applicable taxes) of shares and convertible debentures which were acquired on repatriation (at the NRI's option) and non repatriation basis under PIS and sold on stock exchange through registered broker; and
- (iv) **dividend or income** earned on investments under PIS.

**Permissible debits**

- (i) **Outward remittances of dividend or income earned;**
  - (ii) Amounts paid on account of **purchase of shares and convertible debentures** on non- repatriation basis on stock exchanges through registered broker under PIS.
  - (iii) **Any charges** on account of sale/ purchase of shares or convertible debentures under PIS.
- g) The purchase of equity shares in an Indian company, both repatriation and non-repatriation basis by each NRI shall not exceed 5 per cent of the paid up capital of the company subject to an overall ceiling of 10 per cent of the total paid-up capital of the company concerned by all NRIs both on repatriation and non-repatriation basis taken together.
- h) The purchase of convertible debentures of each series of an Indian company both repatriation and non-repatriation basis by each NRI shall not exceed 5 per cent of the total paid -up value of convertible debentures subject to an overall ceiling of 10 per cent of the total paid –up value of each series of the convertible debentures issued by the Indian company concerned by all NRIs both on repatriation and non-repatriation basis taken together.
- i) Shares /convertible debentures purchased shall be held and registered in the name of the NRI.
- j) Shares /convertible debentures acquired by the NRI under this permission can be sold on recognized stock exchange in India through registered broker without any lock in period. NRI shall **not engage in short selling and shall take delivery of the shares and convertible debentures purchased and give the delivery of the shares and debentures sold.**
- k) Shares /convertible debentures acquired by the NRI under the Scheme shall not be transferred out of his name **by way of gift except to his close relatives** as defined in Section 6 of the Companies Act, 1956, as amended from time to time **or Charitable Trust duly registered** under the laws in India with prior approval of AD bank Shares /convertible debentures acquired by the NRI under the Scheme shall **not be transferred out of his name by way of sale under private arrangement without prior approval of the Reserve Bank.**
- l) Shares /convertible debentures acquired by the NRI under the Scheme shall **not be pledged for giving loan to a third party without prior permission of the Reserve Bank.**
- m) NRI is **permitted to buy or sale shares/convertible debentures through his own broker who is an authorized member of a recognized stock exchange.**

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Both purchase and sale contract notes, in original, should be submitted by the NRI within 24/48 hours of execution of the contract to his designated branch with whom his PIS account is maintained. The onus is on the NRI for submission of contract notes to the designated branch of the AD bank.

- n) NRI is at a **liberty to change the designated branch / AD bank**. The designated branch / AD bank from whom the PIS account is being transferred should do the following:
  - i) issue no objection certificate to the new designated branch / AD bank
  - ii) furnish the list of all the existing holding as also the dates of reporting the transaction in LEC(NRI) to the Reserve Bank to that designated branch/ AD bank to whom the PIS account is being transferred.
- o) In cases, where an NRI is eligible to make investment in India, his resident **Power of Attorney holder can be permitted by AD bank to operate NRE(PIS)/NRO (PIS) account to facilitate investment under the Scheme.**

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**Chapter I: INVESTMENT IN FIRM OR PROPRIETARY CONCERN IN INDIA REGULATIONS  
UNDER FEMA 24**

**Q.125. What is the definition of a 'Non-Resident Indian' for purposes of Investment in firm or a proprietary concern Regulations (FEMA 24)?**

**Ans.** "Non-Resident Indian (NRI)" means a person resident outside India who is a citizen of India.

**Q.126. What is the definition of a 'Person of Indian Origin' for purposes of Investment in firm or a proprietary concern Regulations (FEMA 24)?**

**Ans.** "Person of Indian Origin" means a citizen of any country **other than Bangladesh or Pakistan or Sri Lanka**, if

- (a) he at any time held Indian passport; or
- (b) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);

**Q.127. Under what conditions an NRI/PIO can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis?**

**Ans.** A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis provided;

- (a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers / Authorized banks.
- (b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.
- (c) Amount invested shall not be eligible for repatriation outside India.
- (d) The firm or the proprietary concern is not engaged in print media.

**Q.128. What is the procedure for above Investments with repatriation option?**

**Ans.** Investments with repatriation option: NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation option. The application will be decided in consultation with the Government of India.

**Q.129. Are there any exceptions to the investment in a firm or proprietorship concern in India by NRIs/PIO?**

**Ans.** An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business or Print Media.

**Q.130. Is a firm or a proprietary concern permitted to make payment to a non-resident Indian or a person of Indian origin who has made investment by way of profit on such investment?**

**Ans.** A firm or a proprietary concern in India may make payment to or for the credit of a non- resident Indian or a person of Indian origin the sum invested by such person in that firm or the proprietary concern or the income accruing to such person by way of profit on such investment.

**Q.131. How can the payment for investment be made?**

**Ans.** The payment for investment shall be made by remittance from abroad through normal banking channels or by debit to an account of the investor maintained with an authorised person in India in accordance with the regulations made by the Reserve Bank under the Act.

[illegible]



**Chapter J: REMITTANCE OF ASSETS REGULATIONS UNDER FEMA 13 & One Million US\$ Scheme**

**Q.132. What is the definition of a 'Non-Resident Indian' for purposes of Remittance of Assets Regulations (FEMA 13)?**

**Ans.** "Non-Resident Indian (NRI)" means a person resident outside India who is a citizen of India.

**Q.133. What is the definition of a 'Person of Indian Origin' for purposes of Remittance of Assets Regulations (FEMA 13)?**

**Ans.** "Person of Indian Origin (PIO)" means a citizen of **any country other than Bangladesh or Pakistan**, if

(a) he at any time held Indian passport;

or

(b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);

or

(c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b).

**Q.134. What is the meaning of Remittance of assets?**

**Ans.** "Remittance of assets" means remittance outside India of funds representing a **deposit** with a bank or a firm or a company, **provident fund balance or superannuation benefits**, amount of claim or **maturity proceeds of Insurance Policy**, sale proceeds of **shares, securities, immovable property** or **any other asset** held in India in accordance with the provisions of the Act or rules or regulations made thereunder.

**Q.135. Is Remittance of assets permitted?**

**Ans.** No person whether resident in India or not, shall make remittance of any asset held in India by him or by any other person.

**Q.136. How can an NRI/PIO avail the remittance facility of US\$ 1,000,000?**

**Ans.** A Non-Resident Indian (NRI)/Person of Indian Origin (PIO) may remit an amount, not exceeding **US\$ 1,000,000** per financial year,

(i) Out of the **balances held in NRO accounts/sale proceeds of assets/the assets in India acquired by him by way of inheritance/legacy on production of:**

(a) documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and

(b) an undertaking by the remitter and certificate from a Chartered Accountant in the format prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No. 10/2002, dated October 9, 2002.

(ii) Under a deed of settlement made by either of his parents or a close relative (as defined in section 6 of the Companies Act, 1956) and the settlement taking effect on the death of the settler, on production of:

(a) the original deed of settlement; and

(b) an undertaking by the remitter and certificate from a Chartered Accountant in the format prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No. 10/2002, dated October 9, 2002 :]

**Provided** that where the remittance under clauses (i) and (ii) is made in more than one instalment, the remittance of all instalments shall be made through the **same authorised dealer**.

**Q.137. Is a Foreign citizen/PIO eligible to get the remittance facility of US\$ 1,000,000 per financial year? What documents need to be furnished to facilitate such remittance?**

- Ans.** A citizen of foreign state, not being a citizen of Nepal or Bhutan or a **Person of Indian Origin (PIO)**, who:
- (i) has **retired from an employment in India**; or
  - (ii) has **inherited the assets** from a person referred to in sub-section (5) of section 6 of the Act i.e. **A person resident outside India** who acquired **Indian currency, security or any immovable property situated in India** if such currency, security or property was acquired, held or owned by such person **when he was resident in India or inherited from a person who was resident in India**; or
  - (iii) is a **widow resident outside India and has inherited assets of her deceased husband** who was an Indian citizen resident in India, may remit an amount, not exceeding US \$ **1,000,000 per financial year**, on production of,
    - (a) documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter; and
    - (b) an undertaking by the remitter and certificate from a Chartered Accountant in the format prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No. 10/2002, dated October 9, 2002.
  - (iv) **had come to India for studies/training and has completed his studies/training**, may remit the balance available in his account, provided such balance represents funds derived out of remittances received from abroad through normal banking channels or rupee proceeds of foreign exchange brought by such person and sold to an authorised dealer or out of stipend/scholarship received from the Government or any Organisation in India.

**Q.138. Under what cases remittance abroad can be made with Reserve Bank's prior permission?**

- Ans.** A person, who desires to make a remittance of assets in the following cases, may apply to the Reserve Bank, namely:
- (i) Remittance **exceeding US\$ 1,000,000** per financial year (a) on account of legacy, bequest or inheritance to a citizen of foreign State, permanently resident outside India; and (b) by a Non-Resident Indian (NRI)/Person of Indian Origin (PIO), out of the balances held in NRO accounts/sale proceeds of assets/the assets in India acquired by way of inheritance/legacy;
  - (ii) Remittance to a person resident outside India on the ground that hardship will be caused to such a person if remittance from India is not made.

**Q.139. Whether funds representing sale proceeds of shares and immovable property owned or held by the citizen of foreign State considered while computing amount of US\$ 1,000,000?**

- Ans.** For the purpose of arriving at annual ceiling of remittance of US \$ **1,000,000**, the funds **representing sale proceeds of shares and immovable property** owned or held **by the citizen of foreign State on repatriation basis** in accordance with the FEMA 21 and FEMA 20, **shall not be included**.

**Q.140. Is it necessary to make the remittance of all installments through the same AD?**

- Ans.** Where the remittance is made in more than one instalment, the remittance of all instalments shall be made through **the same authorised dealer**.

**Q.141. Is there any lock-in-period for remitting sale proceeds of immovable property purchased by NRI/PIO out of Rupee funds?**

- Ans.** NRI/PIO may remit sale proceeds of immovable property purchased by him out of Rupee funds (or as a person resident in India) as above without any lock-in-period.

**Q.142. What are the provisions regarding remittance of sale proceeds of assets acquired by way of inheritance or legacy or settlement?**

- Ans.** In respect of remittance of sale proceeds of assets acquired **by way of inheritance or legacy or settlement** for which there is no lock-in period, NRI / PIO may submit to the Authorised Dealer documentary evidence in support of inheritance or legacy of assets, an undertaking by the remitter and certificate by a Chartered Accountant in

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the prescribed formats. Settlement is also a mode of inheritance from the parent, the only difference being that the property under the settlement passes to the beneficiary on the death of the owner/parent without any legal procedures/hassles and helps in avoiding delay and inconvenience in applying for probate, etc. In case **settlement** is done without retaining any life interest in the property i.e. during the lifetime of the owner/parent, it would be tantamount to regular transfer by way of gift. Therefore, if the property is received by NRI/PIO **by way of settlement without the settler retaining life interest, it may be reckoned as transfer by way of gift** and the remittance of sale proceeds of such property would be **guided by the extant instructions on remittance of balance in the NRO account**.

**Q.143. What are the restrictions to repatriation of sale proceeds of residential property purchased by NRIs / PIO out of foreign exchange?**

**Ans.** Repatriation of sale proceeds of residential property purchased by NRI / PIO is permitted to the extent of the amount paid for acquisition of immovable property in foreign exchange received through banking channels. The facility is restricted to not more than **two such properties**. The balance amount can be credited to the NRO account and can be remitted under USD one million facility.

**Q.144. What are the different kinds of repatriation permitted by AD? What are the conditions?**

**Ans.** Authorised Dealer banks may permit repatriation of amounts representing the refund of application / earnest money / purchase consideration made by the house building agencies / seller on account of non-allotment of flat / plot / cancellation of bookings / deals for purchase of residential / commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE / FCNR (B) account of the account holder, or remittance from outside India through normal banking channels and the Authorized Dealer bank is satisfied about the genuineness of the transaction. Such funds may also be credited to the NRE / FCNR (B) account of the NRI / PIO, if they so desire.

**Q.145. Is repatriation of sale proceeds of residential accommodation purchased by NRIs/PIO out of funds raised by them by way of loans from the authorized dealer banks / housing finance institutions allowed?**

**Ans.** Authorised Dealer banks may allow repatriation of sale proceeds of residential accommodation purchased by NRIs/PIO out of funds raised by them by way of loans from the authorized dealer banks / housing finance institutions to the extent of such loan/s repaid by them out of foreign inward remittances received through normal banking channel or by debit to their NRE / FCNR(B) accounts.

**Q.146. What are the provisions for remittance of current income outside India?**

**Ans.** Remittance outside India of **current income like rent, dividend, pension, interest, etc.** (over and above under US\$ 1 million scheme) in India of the account holder is a permissible debit to the NRO account. Authorised Dealer banks may also allow repatriation of current income like rent, dividend, pension, interest, etc. of NRIs who **do not maintain an NRO account** in India based on an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for. While the principal of NRO deposits is non-repatriable, current income and interest earning is repatriable.

**Q.147. Can NRIs/PIOs credit the current income to their Non-Resident (External) Rupee account?**

**Ans.** NRIs/PIO have the **option to credit the current income to their Non-Resident (External) Rupee account**, provided the Authorized Dealer bank is satisfied that the credit represents current income of the non-resident account holder and income tax thereon has been deducted / provided for.

**Q.148. Are Authorised Dealer banks permitted to issue International Credit Cards to**

**NRIs/PIO?**

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**Ans.** Authorised Dealer banks have been permitted to issue International Credit Cards to NRIs/PIO, without prior approval of the Reserve Bank. Such transactions may be settled by inward remittance or out of balances held in the cardholder's FCNR(B) / NRE / NRO accounts.

## Chapter K: ACQUISITION OF IMMOVABLE PROPERTY IN INDIA BY PERSONS RESIDENT OUTSIDE INDIA-FEMA 21

### Chapter K.1: INTRODUCTION

**Q.149. Which regulation under FEMA regulates Acquisition of immovable property in India by persons resident outside India?**

**Ans.** Acquisition of immovable property in India by persons resident outside India (foreign national) is regulated in terms of section 6 (3) (i) of the Foreign Exchange Management Act (FEMA), 1999 as well as by the regulations contained in **FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2000** (FEMA 21), as amended from time to time.

**Q.150. What are the meanings of 'person resident in India' and a 'person resident outside India'?**

**Ans.** Section 2 (v) and Section 2 (w) of FEMA, 1999 defines 'person resident in India' and a 'person resident outside India', respectively. Person resident outside India is categorized as Non- Resident Indian (NRI) or a foreign national of Indian Origin (PIO) or a foreign national of non-Indian origin. The Reserve Bank does not determine the residential status. Under FEMA, residential status is determined by operation of law. The onus is on an individual to prove his / her residential status, if questioned by any authority.

A person resident in India who is not a citizen of India is also covered by the relevant Notifications.

**Q.151. What are the provision when a person resident in India becomes a person outside India, or any immovable property situated in India inherited from a person who was a resident in India?**

**Ans.** In terms of the provisions of Section 6(5) of FEMA 1999, a person resident outside India can hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was a resident in India or inherited from a person who was a resident in India.

**Q.152. What are the provision for acquisition of agricultural land or, plantation property or farm house by NRI/PIO?**

**Ans.** FEMA 21 permits a NRI or a PIO to acquire immovable property in India, other than agricultural land or, plantation property or farm house.

**Q.153. What are the provision for acquisition immovable property in India by foreign companies?**

**Ans.** Foreign companies who have been permitted to open a Branch or Project Office in India are also allowed to acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. Such dispensation is however not available to entities which are permitted to open liaison offices in India.

**Q.154. What are the provision for acquisition by way of a lease for a period not exceeding 5 years?**

**Ans.** The restrictions on acquiring immovable property in India by a person resident outside India would not apply where the immovable property is proposed to be acquired by way of a lease for a period not exceeding 5 years or where a person is deemed to be resident in India.  
In order to be deemed to be a person resident in India, from FEMA angle, the person would need to comply with the provisions of Section 2(v) of FEMA 1999.

**Q.155. What are the provision for acquisition immovable property in India by Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan?**

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**Ans.** Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan cannot acquire or transfer immovable property in India, (other than on lease not exceeding five years) without the prior permission of the Reserve Bank.

**Q.156. What are the provision for repatriation by NRIs/PIOs against sale proceeds of assets?**

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**Ans.** NRIs/ PIOs are allowed to repatriate an amount up to USD one million per financial year (April-March), out of the balances held in the Non-Resident (Ordinary) Rupee (NRO) account, subject to compliance with applicable tax requirements. This amount includes sale proceeds of assets acquired by way of inheritance or settlement.

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**Chapter K.2: ACQUISITION OF IMMOVABLE PROPERTY IN INDIA THROUGH PURCHASE / GIFT/ INHERITANCE**

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**Q.157. Who can purchase immovable property in India?**

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**Ans.** Under the general permission available, the following categories can purchase immovable property in India:  
i) Non-Resident Indian (NRI)  
ii) Person of Indian Origin (PIO)

The general permission, however, covers only purchase of residential and commercial property and is not available for purchase of agricultural land / plantation property / farm house in India.

**Q.158. Can NRI/PIO acquire agricultural land/ plantation property / farm house in India?**

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**Ans.** No.

**Q.159. Are any documents required to be filed with the Reserve Bank after the purchase?**

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**Ans.** No. An NRI / PIO who has purchased residential / commercial property under general permission, is not required to file any documents/reports with the Reserve Bank.

**Q.160. How many residential / commercial properties can NRI / PIO purchase under the general permission?**

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**Ans.** There are no restrictions on the number of residential / commercial properties that can be purchased.

**Q.161. Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI / PIO?**

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**Ans.** No.

**Q.162. Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?**

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**Ans.** No. A foreign national of non-Indian origin, resident outside India cannot purchase any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. However, he / she can acquire or transfer immovable property in India, on lease, not exceeding five years. In such cases, there is no requirement of taking any permission of /or reporting to the Reserve Bank.

**Q.163. Can a foreign national who is a person resident in India purchase immovable property in India?**

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**Ans.** Yes, a foreign national who is a 'person resident in India' within the meaning of Section 2(v) of FEMA, 1999 can purchase immovable property in India, but the person concerned would have to obtain the approvals and fulfil the requirements, if any, prescribed by other authorities, such as, the State Government concerned,

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etc. The onus to prove his/her residential status is on the individual as per the extant FEMA provisions, if required by any authority. **However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of the Reserve Bank.**

**Q.164. Can the branch / liaison office of a foreign company purchase immovable property in India?**

**Ans.** A foreign company which has established a Branch Office or other place of business in India, in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, can acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. The payment for acquiring such a property should be made by way of foreign inward remittance through the proper banking channels. A declaration in form IPI should be filed with the Reserve Bank within ninety days from the date of acquiring the property. Such a property can also be mortgaged with an Authorised Dealer as a security for the purpose of borrowings. On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of the Reserve Bank. Further, acquisition of immovable property by entities incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan and who have set up Branch Offices in India and would require prior approval of the Reserve Bank.

However, if the foreign company has established a Liaison Office in India, it cannot acquire immovable property. In such cases, Liaison Offices can acquire property by way of lease not exceeding 5 years.

**Q.165. Can a NRI/PIO acquire immovable property in India by way of gift? Can a foreign national acquire immovable property in India by way of gift?**

**Ans.** (a) Yes, NRIs and PIOs can freely acquire immovable property by way of gift either from

- i) a person resident in India; or
- ii) an NRI; or
- iii) a PIO.

However, the property can only be commercial or residential in nature. Agricultural land / plantation property / farm house in India cannot be acquired by way of gift.

(b) A foreign national of non-Indian origin resident outside India cannot acquire any immovable property in India by way of gift.

**Q.166. Can a non-resident inherit immovable property in India?**

**Ans.** Yes, a person resident outside India i.e. i) an NRI; ii) a PIO; and iii) a foreign national of non-Indian origin can inherit and hold immovable property in India from a person who was resident in India.

**Q.167. From whom can a non-resident person inherit immovable property?**

**Ans.** A person resident outside India (i.e. NRI or PIO or foreign national of non-Indian origin) can inherit immovable property from

- (a) a person resident in India
- (b) a person resident outside India

However, the person from whom the property is inherited should have acquired the same in accordance with the foreign exchange law in force or FEMA regulations, applicable at the time of acquisition of the property.

### (I) TRANSFER BY WAY OF SALE

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**Q.168. Can an NRI/ PIO/foreign national sell his residential / commercial property?**

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- Ans.**
- (a) NRI can sell property in India to
    - i) a person resident in India; or
    - ii) an NRI; or
    - iii) a PIO.
  - (b) PIO can sell property in India to
    - i) a person resident in India; or
    - ii) an NRI; or
    - iii) a PIO – **with the prior approval of the Reserve Bank**
  - (c) Foreign national of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan can sell property in India with prior approval of the Reserve Bank to
    - i) a person resident in India
    - ii) an NRI
    - iii) a PIO

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**Q.169. Can a non-resident owning / holding an agricultural land / a plantation property / a farm house in India sell the said property?**

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- Ans.**
- (a) NRI / PIO may sell agricultural land /plantation property/farm house to a person resident in India who is a citizen of India.
  - (b) Foreign national of non-Indian origin resident outside India would need prior approval of the Reserve Bank to sell agricultural land/plantation property/farm house in India.

### (II) TRANSFER BY WAY OF GIFT

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**Q.170. Can a non-resident gift his residential / commercial property?**

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- Ans.**
- Yes.
- (a) NRI / PIO may gift residential / commercial property to –
    - (i) person resident in India or
    - (ii) an NRI or
    - (iii) PIO.
  - (b) A foreign national of non-Indian origin requires the prior approval of the Reserve Bank for gifting the residential / commercial property.

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**Q.171. Can an NRI / PIO / foreign national holding an agricultural land / a plantation property / a farm house in India, gift the same?**

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- Ans.**
- (a) NRI / PIO can gift an agricultural land / a plantation property / a farm house in India only to a person resident in India who is a citizen of India.
  - (b) A foreign national of non-Indian origin would require the prior approval of the Reserve Bank to gift an agricultural land / a plantation property / a farm house in India.

### (III) TRANSFER THROUGH MORTGAGE

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**Q.172. Can residential / commercial property be mortgaged by NRI/ PIO?**

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- Ans.**
- i) NRI / PIO can mortgage a residential / commercial property to:
    - (a) an Authorised Dealer / the housing finance institution in India without the approval of Reserve Bank
    - (b) a bank abroad, with the prior approval of the Reserve Bank.
  - ii) A foreign national of non-Indian origin can mortgage a residential /



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commercial property only with prior approval of the Reserve Bank.

- iii) A foreign company which has established a Branch Office or other place of business in accordance with FERA/FEMA regulations has general permission to mortgage the property with an Authorised Dealer in India.

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**Chapter K.4: MODE OF PAYMENT FOR PURCHASE OF IMMOVABLE PROPERTY IN INDIA.**

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**Q.173. How can an NRI / PIO make payment for purchase of residential / commercial property in India?**

- Ans.** Payment can be made by NRI / PIO out of:
- (a) funds remitted to India through normal banking channels or
  - (b) funds held in NRE / FCNR (B) / NRO account maintained in India

No payment can be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above.

**Q.174. Is repatriation of application money for booking of flat / payment made to the builder by NRI/ PIO allowed when the flat or plot is not allotted or the booking / contract is cancelled?**

- Ans.** The Authorised Dealers can allow NRIs / PIOs to credit refund of application/ earnest money/ purchase consideration made by the house building agencies/ seller on account of non-allotment of flat/ plot/ cancellation of bookings/ deals for purchase of residential, commercial property, together with interest, if any, net of income tax payable thereon, to NRE/FCNR account, provided, the original payment was made out of NRE/FCNR account of the account holder or remittance from outside India through normal banking channels and the Authorised Dealer is satisfied about the genuineness of the transaction.

**Q.175. Can NRI / PIO, avail of housing loan in Rupees from an Authorised Dealer or a Housing Finance Institution in India approved by the National Housing Bank for purchase of residential accommodation or for the purpose of repairs / renovation / improvement of residential accommodation ? How can such loan be repaid?**

- Ans.** Yes, NRI/PIO can avail of housing loan in Rupees from an Authorised Dealer or a Housing Finance Institution subject to certain terms and conditions laid down in Regulation 8 of Notification No. FEMA 4/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000, as amended from time to time. Authorised Dealers/ Housing Finance Institutions can also lend to the NRIs/ PIOs for the purpose of repairs/renovation/ improvement of residential accommodation owned by them in India. Such a loan can be repaid (a) by way of inward remittance through normal banking channel or (b) by debit to the NRE / FCNR (B) / NRO account of the NRI / PIO or (c) out of rental income from such property; or (d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

**Q.176. Can NRI/PIO avail of housing loan in Rupees from his employer in India?**

- Ans.** Yes, subject to certain terms and conditions given in Regulation 8A of Notification No. FEMA 4/2000-RB dated May 3, 2000 and A.P. (DIR Series) Circular No.27 dated October 10, 2003, i.e.,
- (i) The loan shall be granted only for personal purposes including purchase of housing property in India;
  - (ii) The loan shall be granted in accordance with the lender's Staff Welfare Scheme/Staff Housing Loan Scheme and subject to other terms and conditions applicable to its staff resident in India;
  - (iii) The lender shall ensure that the loan amount is not used for the purposes specified in sub-clauses (i) to (iv) of clause (1) and in clause (2) of Regulation 6

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of Notification No.FEMA.4/2000-RB dated May 3, 2000.

- (iv) The lender shall credit the loan amount to the borrower's NRO account in India or shall ensure credit to such account by specific indication on the payment instrument;
- (v) The loan agreement shall specify that the repayment of loan shall be by way of remittance from outside India or by debit to NRE/NRO/FCNR Account of the borrower and the lender shall not accept repayment by any other means.

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**Chapter K.5: REPATRIATION OF SALE PROCEEDS OF RESIDENTIAL / COMMERCIAL  
PROPERTY PURCHASED BY NRI / PIO**

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**Q.177. Can NRI / PIO repatriate outside India the sale proceeds of immovable property held in India?**

- Ans.**
- (a) In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by a NRI / PIO, the Authorised Dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:
    - (i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations;
    - (ii) the amount to be repatriated does not exceed:
      - the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels, or
      - the amount paid out of funds held in Foreign Currency Non-Resident Account, or
      - the foreign currency equivalent (as on the date of payment) of the amount paid where such payment was made from the funds held in Non-Resident External account for acquisition of the property; and
    - (iii) in the **case of residential property**, the **repatriation of sale proceeds is restricted to not more than two such properties.**

For this purpose, **repatriation outside India** means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through normal banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency.

- (b) in case the property is acquired out of Rupee resources and/or the loan is repaid by close relatives in India (as defined in Section 6 of the Companies Act, 1956), the amount can be credited to the NRO account of the NRI/PIO. The amount of capital gains, if any, arising out of sale of the property can also be credited to the NRO account.

NRI/PIO are also allowed by the Authorised Dealers to repatriate an amount up to USD 1 million per financial year out of the balance in the NRO account / sale proceeds of assets by way of purchase / the assets in India acquired by him by way of inheritance / legacy. This is subject to production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and a tax clearance / no objection certificate from the Income Tax Authority for the remittance. Remittances exceeding US \$ 1,000,000 (US Dollar One million only) in any financial year requires prior permission of the Reserve Bank.

- (c) A **person referred to in sub-section (5) of Section 6** of the Foreign Exchange Management Act, or his successor shall not, **except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section.**

**Q.178. Can an NRI/PIO repatriate the proceeds in case the sale proceeds were deposited in the NRO account?**

**Ans.** NRI/PIO may repatriate up to USD one million per financial year (April-March) from their NRO account which would also include the sale proceeds of immovable property. There is no lock in period for sale of immovable property and repatriation of sale proceeds outside India.

**Q.179. If a Rupee loan was taken by the NRI/ PIO from an Authorised Dealer or a Housing Finance Institution for purchase of residential property can the NRI / PIO repatriate the sale proceeds of such property?**

**Ans.** Yes, Authorised Dealers have been authorised to allow repatriation of sale proceeds of residential accommodation purchased by NRIs/ PIOs out of funds raised by them by way of loans from the authorised dealers/ housing finance institutions to the extent such loan/s repaid by them are out of the foreign inward remittances received through normal banking channel or by debit to their NRE/FCNR accounts. The balance amount, if any, can be credited to their NRO account and the NRI/PIO may repatriate up to USD one million per financial year (April-March) subject to payment of applicable taxes from their NRO account balances which would also include the sale proceeds of the immovable property.

**Q.180. If the immovable property was acquired by way of gift by the NRI/PIO, can he repatriate abroad the funds from sale of such property?**

**Ans.** The sale proceeds of immovable property acquired by way of gift should be credited to NRO account only. From the balance in the NRO account, NRI/PIO may remit up to USD one million, per financial year, subject to the satisfaction of Authorised Dealer and payment of applicable taxes.

**Q.181. If the immovable property was received as inheritance by the NRI/PIO can he repatriate the sale proceeds?**

**Ans.** Yes, general permission is available to the NRIs/PIO to repatriate the sale proceeds of the immovable property inherited from a person resident in India subject to the following conditions:

- (i) The amount should not exceed USD one million, per financial year
- (ii) This is subject to production of documentary evidence in support of acquisition / inheritance of assets and an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No.4/2009 dated June 29, 2009
- (iii) In cases of deed of settlement made by either of his parents or a close relative (as defined in section 6 of the Companies Act, 1956) and the settlement taking effect on the death of the settler
- (iv) the original deed of settlement and a tax clearance / No Objection Certificate from the Income-Tax Authority should be produced for the remittance
- (v) Where the remittance as above is made in more than one installment, the remittance of all such installments shall be made through the same Authorised Dealer
- (vi) In case of a foreign national, sale proceeds can be repatriated if the property is inherited from a person resident outside India with the prior approval of the Reserve Bank. The foreign national has to approach the Reserve Bank with documentary evidence in support of inheritance of the immovable property and the undertaking and the C.A. Certificate mentioned above.

The general permission for repatriation of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan and Iran and he has to seek specific approval of the Reserve Bank.

As FEMA, 1999 specifically permits transactions only in Indian Rupees with citizens of Nepal and Bhutan. Therefore, the question of repatriation of the sale proceeds in foreign exchange to Nepal and Bhutan would not arise.

## **Chapter K.6: PROVISIONS FOR FOREIGN EMBASSIES / DIPLOMATS / CONSULATES GENERAL**

### **Q.182. Can Foreign Embassies / Diplomats / Consulates General purchase / sell immovable property in India?**

**Ans.** In terms of Regulation 5A of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000, Foreign Embassies/ Diplomats/ Consulates General, may purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –  
(i) Clearance from the Government of India, Ministry of External Affairs has been obtained for such purchase/sale; and  
(ii) The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels.

## **Chapter K.7: OTHER ASPECTS**

### **Q.183. Can NRI / PIO rent out the residential / commercial property purchased out of foreign exchange / rupee funds?**

**Ans.** Yes, NRI/PIO can rent out the property without the approval of the Reserve Bank. The rent received can be credited to NRO / NRE account or remitted abroad. Powers have been delegated to the Authorised Dealers to allow repatriation of current income like rent, dividend, pension, interest, etc. of NRIs/PIO who do not maintain an NRO account in India based on an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for.

### **Q.184. Can a person who had bought immovable property, when he was a resident, continue to hold such property even after becoming an NRI/PIO? In which account can the sale proceeds of such immovable property be credited?**

**Ans.** Yes, a person who had bought the residential / commercial property / agricultural land/ plantation property / farm house in India when he was a resident, continue to hold the immovable property without the approval of the Reserve Bank even after becoming an NRI/PIO. The sale proceeds may be credited to NRO account of the NRI /PIO.

### **Q.185. Can the sale proceeds of the immovable property be remitted abroad?**

**Ans.** Yes, From the balance in the NRO account, NRI/PIO may remit up to USD one million, per financial year, subject to the satisfaction of Authorised Dealer and payment of applicable taxes.

### **Q.186. Can foreign nationals of non-Indian origin resident in India or outside India who had earlier acquired immovable property under FERA with specific approval of the Reserve Bank continue to hold the same? Can they transfer such property?**

**Ans.** Yes, they may continue to hold the immovable property under holding license obtained from the Reserve Bank. However, they can transfer the property only with the prior approval of the Reserve Bank.

### **Q.187. Is a resident in India governed by the provisions of the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?**

**Ans.** A person resident in India who is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan is governed by the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, as amended from time to time, i.e. she/he would require prior approval of the Reserve Bank for acquisition and transfer of immovable property in India even though she/he is resident in India. Such requests are considered by the Reserve Bank in consultation with the Government in India.  
The citizens of countries other than those listed above can be PIOs who are covered under the general permission.

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**Chapter K.8: PURCHASE OF IMMOVABLE PROPERTY IN INDIA BY A FOREIGN NATIONAL OF NON- INDIAN ORIGIN RESIDENT OUTSIDE INDIA**

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**Q.188. What are the provisions for purchase of Immovable Property in India by a Foreign National of Non- Indian Origin resident outside India?**

- Ans.**
- (i) Foreign nationals of non-Indian origin resident outside India are not permitted to acquire any immovable property in India unless such property is acquired **by way of inheritance from a person who was resident in India**. However, they can acquire or transfer immovable property in India, **on lease, not exceeding five years** without the prior permission of the Reserve Bank.
  - (ii) Foreign Nationals of non-Indian origin, **other than a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan**, can acquire immovable property in India **on becoming resident in India** in terms of Section 2(v) of the Foreign Exchange Management Act, 1999. In this connection, he has to satisfy the condition of period of stay. **The type of visa granted should clearly indicate the intention to stay in India for an uncertain period to determine his residential status** in terms of section 2(v) FEMA, 1999.
  - (iii) Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of the Reserve Bank or have purchased the immovable property with the specific approval of the Reserve Bank **cannot transfer such property without the prior permission of the Reserve Bank**.

**SUMMARY PROVISIONS FOR ACQUISITION & TRANSFER OF IMMOVABLE PROPERTY IN INDIA**

<b>In case of Residential/Commercial Property</b>			
	<b>NRI</b>	<b>PIO</b>	<b>Resident</b>
<b>NRI may:</b>			
Purchase from	Yes	Yes	Yes
Sell to	Yes	Yes	Yes
Receive Gift from	Yes	Yes	Yes
Give Gift to	Yes	Yes	Yes
Inheritance from person resident in India/Outside India – By	Yes	Yes	
<b>PIO may:</b>			
Purchase from	Yes	Yes	Yes
Sell to	Yes	Yes*	Yes
Receive Gift from	Yes	Yes	Yes
Give Gift to	Yes	Yes	Yes
<b>In case of Agricultural property/Plantation/ Farmhouse</b>			
	<b>NRI</b>	<b>PIO</b>	<b>Resident</b>
<b>NRI/PIO may:</b>			
Purchase from	No	No	No
Sell to	No	No	Yes @
Receive Gift from	No	No	No
Give Gift to	No	No	Yes @

\* Prior approval of RBI is mandatory; @ Who is a citizen of India.

**Immovable properties by a foreign national of non-Indian origin resident outside India:**

Acquire by way of inheritance from a person resident in India or from a person resident outside India	Yes
Acquire by way of Gift	No
Acquire by way of Purchase	No
Sell to a person resident in India/ NRI/ PIO	Yes with prior approval of RBI
Transfer by way of Gift	Yes with prior approval of RBI
Mortgage	Yes with prior approval of RBI

- **Foreign Nationals of non-Indian origin**, other than a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, can acquire immovable property in India **on becoming resident** in India in terms of Section 2(v) of the Foreign Exchange Management Act, 1999.
- **Foreign nationals of non-Indian origin** who have **acquired** immovable property in India **by way of inheritance with the specific approval** of the Reserve Bank or have purchased the immovable property with the specific approval of the Reserve Bank **cannot transfer** such property **without the prior permission of the Reserve Bank**.
- A **foreign national of non-Indian origin cannot be a second holder** to immovable property purchased by NRI / PIO.
- **Acquisition of immovable property by person resident outside India for carrying on a permitted activity:**  
A person resident outside India who has established a Branch, Office or other place of business, excluding a Liaison Office, for carrying on in India any activity in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 may –  
(a) **acquire** any immovable property in India, which is necessary for or incidental to carrying on such activity, provided that all applicable laws,

- rules, regulations or directions for the time being in force are duly complied with; and the person files with the Reserve Bank a declaration in the form IPI (Annex-2), not later than ninety days from the date of such acquisition; and
- (b) **transfer** by way of mortgage to an Authorised Dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a) above.

- **Transfer through mortgage:**

- i) **NRI / PIO** can mortgage a residential / commercial property to:
    - (a) an Authorised Dealer / the housing finance institution in India without the approval of Reserve Bank
    - (b) a bank abroad, with the prior approval of the Reserve Bank.
  - ii) A **foreign national of non-Indian origin** can mortgage a residential / commercial property only with prior approval of the Reserve Bank.
  - iii) A **foreign company** which has established a Branch Office or other place of business in accordance with FERA/FEMA regulations has general permission to mortgage the property with an Authorised Dealer in India.
- NRI / PIO can **rent out the residential / commercial property** purchased out of foreign exchange / rupee funds.

[illegible]



**Q.189. Can a person resident in India hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India?**

**Ans.** As per section 6(4) of FEMA, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India **or** inherited from a person who was resident outside India.

Section 6(4) of FEMA, 1999 covers the following transactions:

- (i) Foreign currency accounts opened and maintained by such a person **when he was resident outside India;**
- (ii) Income earned through employment or business or vocation outside India taken up or commenced **while such person was resident outside India, or** from investments made **while such person was resident outside India, or** from gift or inheritance received **while such a person was resident outside India;**
- (iii) Foreign exchange including any income arising there from, and conversion or replacement or accrual to the same, held outside India by a person resident in India **acquired by way of inheritance from a person resident outside India.**
- (iv) A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received there for are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

**Q.190. What is an RFC Account & who can open such an account?**

**Ans.** A person resident in India may open, hold and maintain with an Authorised Dealer in India a Resident Foreign Currency (RFC) Account to keep their foreign currency assets which were held outside India at the time of return can be credited to such accounts. A resident in India can maintain RFC account if the foreign exchange was earned when he was abroad, or he inherited the amount or obtained gift from a person who was not resident in India.

**Q.191. What are the permissible credits into RFC account?**

**Ans.** The foreign exchange received as followed may also be credited to this account:

- (a) Received as pension or any other superannuation or other monetary benefits from his employer outside India; or
- (b) realized on conversion of the assets acquired by a person resident in India when he was resident outside India, and repatriated to India; or
- (c) Received or acquired as gift or inheritance from a person who was resident outside India; or
- (d) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank referred to in clause (c) of section 9 of the Act, or acquired as gift or inheritance therefrom; or
- (e) Received as the proceeds of life insurance policy claims/maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

**Q.192. How can RFC Accounts facilitate returning NRIs/PIOs?**

**Ans.** Returning NRIs /PIOs may open, hold and maintain with an authorised dealer in India a Resident Foreign Currency (RFC) Account to transfer balances held in NRE/FCNR(B) accounts.

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Proceeds of assets held outside India at the time of return, can be credited to RFC account.

The funds in RFC accounts are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment in any form outside India.

RFC accounts can be maintained in the form of current or savings or term deposit accounts, where the account holder is an individual and in the form of current or term deposits in all other cases.

RFC accounts are permitted to be held jointly with the resident close relative(s) as defined in the Companies Act, 1956 as joint holder (s) in their RFC bank account on 'former or survivor basis'. However, such resident Indian close relative, now being made eligible to become joint account holder shall not be eligible to operate the account during the life time of the resident account holder.

**Q.193. Are NRI/PIO permitted to open RFC account, and credit proceeds of sale of assets to RFC account?**

**Ans.** Yes. NRI/PIO is permitted to hold, own and transfer or invest in foreign currency, foreign security or immovable property situated outside India, if such currency, security or property was held or owned when resident outside India. Proceeds of sale of assets outside India can be credited to RFC account.

**Q.194. Whether income and sale proceeds of assets held abroad by returning NRIs need to be repatriated?**

**Ans.** Income and sale proceeds of assets held abroad by NRIs who have returned to India for permanent settlement need not be repatriated (Circular 37 dated 19.10.2011).

**Q.195. What is the impact of change of resident status of the NRE account, FCNR(B) account and NRO account holder?**

**Ans. NRE accounts:**  
NRE accounts should be redesignated as resident accounts or the funds held in these accounts may be **transferred to the RFC accounts** (if the account holder is eligible for maintaining RFC account) at the option of the account holder **immediately upon the return of the account holder to India** for taking up employment or for carrying on business or vocation or for any other purpose indicating intention to stay in India for an uncertain period. **Where the account holder is only on a short visit to India, the account may continue to be treated as NRE account even during his stay in India.**

**FCNR(B) deposits:**

When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. However, except the provisions relating to rate of interest and reserve requirements as applicable to FCNR(B) deposits, for all other purposes such deposits shall be treated as resident deposits from the date of return of the account holder to India. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.

**NRO accounts:**

NRO accounts may be re-designated as resident rupee accounts on the return to the account holder to India for taking up employment, or for carrying on business or vocation or for any other purpose indicating his intention to stay in India for an uncertain period. Where the account holder is only on a temporary visit to India, the account should continue to be treated as non-resident during such visit.

**Q.196. Can a foreign citizen be hired/appointed as technician/ Director/ Managing Director/ Whole-time Director; and payment of salary, remuneration and fee thereof?**

**Ans.** Remuneration, salary, fees etc. being current account transactions, there are no restrictions from FEMA angle on remittances abroad.

**Foreign technicians:** Hiring of foreign nationals (technical or non-technical) is permissible without any restrictions. There is no ceiling on salary, which can be paid as per contract. Their salary can be remitted abroad, after applicable withholding tax. Their expenses of to and fro travel and local hospitality can be paid in Indian Rupees by Indian host.

**Managing/ Whole-Time Director:** A foreign national can be appointed as Managing Director/ Whole-Time Director. He will require permission from Ministry of Corporate Affairs, Government of India, irrespective of salary.

**Appointment as Director:** A foreign national/NRI can be appointed as a director in Indian Company without any permission. He can be paid sitting fees in Rupees. His expenses of to and fro travel and local hospitality can be paid in Indian Rupees by Indian company.

A company in or resident in India, to make payment in rupees to its **non whole time director** who is resident outside India and is on a visit to India for the company's work and is entitled to **payment of sitting fees or commission or remuneration, and travel expenses to and from and within India**, in accordance with the provisions contained in the company's Memorandum of Association or Articles of Association or in any agreement entered into by it or in any resolution passed by the company in general meeting or by its Board of Directors, provided the requirements of any law, rules, regulations, directions applicable for making such payments are duly complied with.

**Q.197. How can a foreign citizen resident in India remit his salary payable to him for the services rendered in India?**

**Ans.** A citizen of a foreign state resident in India, being an employee of a foreign company and on deputation to the office/ branch/ subsidiary/ joint venture in India of such foreign company or being an employee of a company incorporated in India, may open, hold and maintain a foreign currency account with a bank outside India and receive/ remit the whole salary payable to him for the services rendered, by credit to such account, provided that income tax chargeable under the Income Tax Act, 1961 is paid on the entire salary as accrued in India.

**Q.198. How can an Indian citizen employed by a foreign company outside India remit salary payable to him for the services rendered to the office/ branch/ subsidiary/ joint venture in India of such foreign company?**

**Ans.** A citizen of India, employed by a foreign company outside India and on deputation to the office/ branch/ subsidiary/ joint venture in India of such foreign company, may open, hold and maintain a foreign currency account with a bank outside India and receive the whole salary payable to him for the services rendered to the office/ branch/ subsidiary/ joint venture in India of such foreign company, by credit to such account, provided that income tax chargeable under the Income Tax Act, 1961 is paid on the entire salary as accrued in India.

**Q.199. Can a foreign citizen Resident outside India purchase shares or convertible debentures/preference shares of an Indian company under Foreign Direct Investment (FDI) Scheme?**

**Ans.** A person resident outside India **including foreign citizen** Resident outside India (other than a citizen of Bangladesh or Pakistan or an entity incorporated outside

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India (other than an entity in Bangladesh or Pakistan), may purchase shares or convertible debentures/preference shares of an Indian company under Foreign Direct Investment (FDI) Scheme, subject to the terms and conditions specified in Schedule 1 of FEMA 20.

**Q.200. Can a citizen of Bangladesh or Pakistan, or an entity incorporated in Bangladesh or Pakistan purchase shares or convertible debentures/preference shares of an Indian company under Foreign Direct Investment (FDI) Scheme?**

**Ans.** A person who is a citizen of Bangladesh or an entity incorporated in Bangladesh may, with the prior approval of the Foreign Investment Promotion Board of the Government of India, purchase shares and convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1 of FEMA 20.

A citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space and atomic energy.

**Q.201. Are citizens of Nepal and Bhutan also permitted to invest in the capital of Indian companies, and that too on repatriation basis?**

**Ans.** Citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

**Q.202. Whether a citizen of foreign state, not being a citizen of Nepal or Bhutan is eligible for remittance facilities of US \$ 1,000,000 per financial year? If yes, then what are those facilities?**

**Ans.** A citizen of foreign state, not being a citizen of Nepal or Bhutan or a Person of Indian Origin (PIO), who:

- (i) has **retired from an employment in India**; or
- (ii) has **inherited the assets** from a person referred to in sub-section (5) of section 6 of the Act i.e. **A person resident outside India** who acquired **Indian currency, security or any immovable property situated in India** if such currency, security or property was acquired, held or owned by such person **when he was resident in India or inherited from a person who was resident in India**; or
- (iii) is a **widow resident outside India and has inherited assets of her deceased husband** who was an Indian citizen resident in India, may remit an amount, not exceeding US \$ **1,000,000 per financial year**, on production of,
  - (a) documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter; and
  - (b) an undertaking by the remitter and certificate from a Chartered Accountant in the format prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No. 10/2002, dated October 9, 2002.
- (iv) **had come to India for studies/training and has completed his studies/training**, may remit the balance available in his account, provided such balance represents funds derived out of remittances received from abroad through normal banking channels or rupee proceeds of foreign exchange brought by such person and sold to an authorised dealer or out of stipend/scholarship received from the Government or any Organisation in India.

**Q.203. Under what cases remittance abroad can be made with Reserve Bank's prior permission?**

**Ans.** A person, who desires to make a remittance of assets in the following cases, may apply to the Reserve Bank, namely:

- (i) Remittance exceeding US\$ 1,000,000 per financial year (a) on account of legacy, bequest or inheritance to a citizen of foreign State, permanently resident outside India; and (b) by a Non-Resident Indian (NRI)/Person of Indian Origin (PIO), out of the balances held in NRO accounts/sale proceeds of assets/the assets in India

	acquired by way of inheritance/legacy;
	(ii) Remittance to a person resident outside India on the ground that hardship will be caused to such a person if remittance from India is not made.
<b>Q.204.</b>	<b>Whether funds representing sale proceeds of shares and immovable property owned or held by the citizen of foreign State considered while computing amount of US \$ 1,000,000?</b>
<b>Ans.</b>	For the purpose of arriving at annual ceiling of remittance of US \$ <b>1,000,000</b> , the funds <b>representing sale proceeds of shares and immovable property</b> owned or held by the citizen of foreign State on repatriation basis in accordance with the FEMA 21 and FEMA 20 <b>shall not be included</b> .
<b>Q.205.</b>	<b>Is it necessary to make the remittance of all installments through the same AD?</b>
<b>Ans.</b>	Where the remittance is made in more than one instalment, the remittance of all installments shall be made through <b>the same authorised dealer</b> .
<b>Q.206.</b>	<b>Are these remittance facilities also available to citizens of Nepal and Bhutan?</b>
<b>Ans.</b>	These remittance facilities are not available to citizens of Nepal and Bhutan.
<b>Q.207.</b>	<b>Whether citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China require any prior permission to establish a branch or a liaison office or a project office in India?</b>
<b>Ans.</b>	No. Person, being a citizen of <b>Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hongkong or Macau</b> , without prior permission of the Reserve Bank, shall establish in India, a <b>branch or a liaison office or a project office or any other place of business</b> by whatever name called.
<b>Q.208.</b>	<b>Are there any exceptions to the remittance facility in respect of sale proceeds of immovable property?</b>
<b>Ans.</b>	The remittance facility in respect of sale <b>proceeds of immovable property</b> is <b>not available</b> to citizens of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.
<b>Q.209.</b>	<b>Are there any exceptions to the remittance facility in respect of sale proceeds of other financial assets?</b>
<b>Ans.</b>	The facility of remittance of <b>sale proceeds of other financial assets</b> is <b>not available</b> to citizens of Pakistan, Bangladesh, Nepal and Bhutan.
<b>Q.210.</b>	<b>Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI / PIO?</b>
<b>Ans.</b>	No.
<b>Q.211.</b>	<b>Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?</b>
<b>Ans.</b>	No. A foreign national of non-Indian origin, resident outside India cannot purchase any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. However, he / she can acquire or transfer immovable property in India, on lease, not exceeding five years. In such cases, there is no requirement of taking any permission of /or reporting to the Reserve Bank.
<b>Q.212.</b>	<b>Can a foreign national who is a person resident in India purchase immovable property in India?</b>
<b>Ans.</b>	Yes, a foreign national who is a 'person resident in India' within the meaning of Section 2(v) of FEMA, 1999 can purchase immovable property in India, but the person concerned would have to obtain the approvals and fulfill the requirements, if any, prescribed by other authorities, such as, the State Government concerned, etc. The onus to prove his/her residential status is on the individual as per the extant FEMA provisions, if required by any authority. <b>However, a foreign national resident in</b>

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**India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of the Reserve Bank.**

**Q.213. Is purpose of stay as well as the type of Indian visa granted important considerations to establish residential status in India?**

**Ans.** Yes, a foreign national who is residing in India for more than 182 days during the course of the preceding financial year for taking up employment or carrying on business / vocation or for any other purpose indicating his intention to stay for an uncertain period can acquire immovable property in India as he would be a 'person resident in India' as per section 2(v) of FEMA, 1999. To be treated as a person resident in India under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of preceding financial year) but **also his purpose of stay as well as the type of Indian visa granted to him to clearly indicate the intention to stay in India for an uncertain period. In this regard, to be eligible, the intention to stay has to be unambiguously established with supporting documentation including visa.** It has also been observed that foreign nationals coming to India and staying beyond 182 days on a tourist or other visa meant for a certain period are illegally acquiring immovable property in India in violation of the extant rules and regulations under FEMA.

**Q.214. Can Foreign nationals of non-Indian origin who have acquired immovable property in India transfer such property?**

**Ans.** Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of the Reserve Bank or have purchased the immovable property with the specific approval of the Reserve Bank cannot transfer such property without the prior permission of the Reserve Bank.

Foreign national of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan can sell property in India with prior approval of the Reserve Bank to i) a person resident in India ii) an NRI iii) a PIO.

**Q.215. In which cases Foreign national of non-Indian origin resident outside India would require prior approval of Reserve bank?**

**Ans.** (i) Foreign national of non-Indian origin resident outside India would need prior approval of the Reserve Bank **to sell** agricultural land/plantation property/ farm house in India.  
(ii) A foreign national of non-Indian origin would require the prior approval of the Reserve Bank **to gift an agricultural land / a plantation property / a farm house in India.**  
(iii) A foreign national of non-Indian origin requires the prior approval of the Reserve Bank for **gifting the residential / commercial property.**  
(iv) A foreign national of non-Indian origin can **mortgage a residential / commercial property** only with prior approval of the Reserve Bank.  
(v) In case of a foreign national, sale proceeds can be repatriated if the **property is inherited from a person resident outside India** with the prior approval of the Reserve Bank.

**Q.216. Can Foreign Embassies / Diplomats / Consulates General purchase / sell immovable property in India?**

**Ans.** In terms of Regulation 5A of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000, Foreign Embassies/ Diplomats/ Consulates General, may purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –  
(i) Clearance from the Government of India, Ministry of External Affairs has been obtained for such purchase/sale; and  
(ii) The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels.

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**Q.217. Can foreign tourists open a bank account in India during their short visit?**

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**Ans.** Yes. Foreign tourists during their short visit to India can open a Non-Resident (Ordinary) Rupee (NRO) account (Current / Savings) with any Authorised Dealer bank dealing in foreign exchange. Such account can be opened up to a maximum period of 6 months.

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**Q.218 What are the documents required for opening such accounts?**

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**Ans.** Passports and other valid identification proofs are required for opening the accounts. Authorised Dealer banks are also required to follow the Know Your Customer norms while opening of the accounts.

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**Q.219. What credits can be made to such accounts?**

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**Ans.** Funds remitted from outside India through banking channel or those obtained by sale of foreign exchange brought by the tourists to India can be credited to the NRO account.

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**Q.220. Can the NRO account be used for making local payments?**

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**Ans.** Yes. Tourists can freely make local payments through the NRO account. All payments to residents exceeding INR 50,000 can be made only by means of cheques / pay orders / demand drafts.

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**Q.221. Can foreign tourists repatriate the balance held in their NRO account at the time of departure from India?**

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**Ans.** Yes. Allowed to convert the balance into foreign currency, provided the account has been **maintained for a period not exceeding six months** and the account has not been credited with any local funds, other than interest accrued thereon.

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**Q.222. What can be done to repatriate the proceeds of an account that has been maintained for more than six months?**

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**Ans.** In such cases, applications for repatriation of balance may be made on plain paper to the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through the Authorised Dealer bank maintaining the account.

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**Q.223. Can foreign nationals Resident in India open resident account?**

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**Ans.** Yes. Foreign nationals Resident in India can open and maintain a resident Rupee account in India. Foreign nationals who come to India on employment and become residents in terms of section 2 (v) of FEMA, 1999, and are eligible to open/hold a resident savings bank account, are permitted to re-designate their resident account maintained in India as NRO account on leaving the country after their employment to enable them to receive their legitimate dues subject to certain conditions.

A foreign national who has opened such account in India may leave the country and go out of India for business, employment of vocation for uncertain period. However, he may have to collect his pending dues. In such case, his resident account can be converted to NRO account after the foreign national leaves India to other country (except Nepal and Bhutan). The account can continue till his bona fide dues are received. He can remit funds from this account outside India. Remittance upto US\$ one million per financial year are allowed. The account should be closed after dues are received.

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**Q.224. Can AD Category-I banks remit proceeds of such accounts on closure?**

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**Ans.** Yes. But AD Category-I banks should ensure that the funds to be repatriated outside India were either received from abroad or they are repatriable in nature or permissible in terms of RBI notification No. FEMA 13/2000 dated 3rd May 2000, as amended from time to time. The foreign nationals employed in India holding valid visas are eligible to maintain resident accounts with an Authorised Dealer Category - I (AD Category-I) bank in India. In order to facilitate such foreign nationals to collect their pending dues in India, AD Category-I banks may, permit foreign nationals to re-designate their resident account maintained in India as NRO account on leaving the

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country after their employment to enable them to receive their pending bonafide dues, subject to conditions.

**Q.225. What are the different types of Accounts that foreign diplomatic missions and diplomatic personnel can maintain to hold their Deposits? What are the permissible debits and credits to such accounts?**

**Ans. (1) Deposits held in rupee accounts maintained by foreign diplomatic missions and diplomatic personnel and their family members in India with an authorised dealer.**

**(2) Deposits held by diplomatic missions and diplomatic personnel in special rupee accounts namely Diplomatic Bond Stores Account to facilitate purchases of bonded stocks from firms and companies who have been granted special facilities by customs authorities for import of stores into bond, subject to following conditions :**

- (a) Credits to the account shall be only by way of proceeds of inward remittances received from outside India through normal banking channels or by a transfer from a foreign currency account in India of the account holder maintained with an authorised dealer in accordance with clause 3 of this Regulation;
- (b) All cheque leaves issued to the account holder shall be superscribed as 'Diplomatic Bond Stores Account No.';
- (c) Debits to the account shall be for local disbursements, or for payments for purchases of bonded stocks to firms and companies who have been granted special facilities by customs authorities for import of stores into bond;
- (d) The funds in the account may be repatriated outside India without the approval of Reserve Bank.

**(3) Deposits held in accounts maintained in foreign currency by diplomatic missions, diplomatic personnel and non-diplomatic staff, who are the nationals of the concerned foreign countries and hold official passport of foreign embassies in India subject to the following conditions:**

- (a) Credits to the account shall be only by way of:
  - (i) Proceeds of inward remittances received from outside India through normal banking channels; and
  - (ii) transfer of funds, from the rupee account of the diplomatic mission in India, which are collected in India as visa fees and credited to such account;
- (b) Funds held in such account if converted in rupees shall not be converted back into foreign currency;
- (c) The account may be held in the form of current or term deposit account, and in the case of diplomatic personnel and non-diplomatic staff, may also be held in the form of savings account;
- (d) The rate of interest on savings or term deposits shall be such as may be determined by the authorised dealer maintaining the account;
- (e) The funds in the account may be repatriated outside India without the approval of Reserve Bank.

**Q.226. Are non-resident close relative(s) permitted to be a joint holder(s) in resident bank accounts maintained by residents in India?**

**Ans.** Yes. Individuals resident in India are permitted to include non-resident close relative(s) (relatives as defined in Section 6 of the Companies Act, 1956) as a joint holder(s) in their resident bank accounts on 'former or survivor' basis. However, such non-resident Indian close relatives shall not be eligible to operate the account during the life time of the resident account holder.

**Q.227. Can foreign nationals resident outside India invest in rupee denominated units of equity schemes of domestic MFs, and units of domestic MF debt schemes which invest in infrastructure debt of infrastructure companies, on repatriation basis?**



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**Ans.** Non-resident investors/ 'Qualified Foreign Investors' (**QFIs**) (other than SEBI registered FIIs and SEBI registered FVCIs) are permitted to purchase on repatriation basis rupee denominated units of equity schemes of domestic MFs issued by SEBI registered domestic MFs, under the two routes, namely:

1. Direct Route – SEBI registered Depository Participant (DP) route
2. Indirect Route - Unit Confirmation Receipt (UCR) route

Investments by the QFIs would be subject to a ceiling of US\$ 10 billion under both the routes plus up to an additional amount of US\$ 3 billion in units of domestic MF debt schemes which invest in infrastructure ("Infrastructure" as defined under the extant ECB guidelines) debt of minimum residual maturity of 5 years, within the existing ceiling of US\$ 25 billion for FII investment in corporate bonds issued by infrastructure companies.

The investment under both the routes by the QFIs will be in the units which are directly issued by the domestic MFs and no secondary market purchases would be allowed.

Units and UCRs issued under this scheme to QFIs, would be non-tradable and non-transferable.

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**Q.228. Can Residents bear medical expenses of visiting NRIs/PIOs close relatives?**

**Ans.** **Yes.** He can also bear **medical expenses of visiting NRIs/PIOs close relatives**, who is on a visit to India. **Earlier**, a person resident in India was free to make any payment in Indian Rupees towards meeting expenses, on account of boarding, lodging and services related thereto or travel to and from and within India only, of a person resident outside India (including NRIs/PIOs), who is on a visit to India.

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**Q.229. Can a resident extend local hospitality to a non-resident?**

**Ans.** A person resident in India is free to make any payment in Indian Rupees towards meeting expenses, on account of boarding, lodging and services related thereto or travel to and from and within India, of a person resident outside India, who is on a visit to India.

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**Q.230. What are the facilities available to students for pursuing their studies abroad?**

**Ans.** For studies abroad the estimate received from the institution abroad or USD 100,000, per academic year, whichever is higher, may be availed of from an AD Category I bank and AD Category II. Students going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA, 1999. Educational and other loans availed of by students as residents in India can be allowed to continue. A student holding NRO account may withdraw and repatriate up to USD 1 million per financial year from his NRO account. The student may avail of an amount of USD 10,000 or its equivalent for incidental expenses out of which USD 3000 or its equivalent may be carried in the form of foreign currency while going for study abroad.

(Master Circular2013\_Facilities to NRI etc: Para 8.2)

**As non-residents, they will be eligible to receive remittances from India:**

- (i) up to US\$ 100,000 from close relatives in India, on self declaration, towards maintenance, which could include remittances towards their studies also,
- (ii) up to US\$ 1 million per financial year, out of sale proceeds of assets / balances in their NRO account maintained with an Authorised Dealer bank in India, and
- (iii) upto US\$ 75,000 per financial year under the Liberalized Remittance Scheme.

**All other facilities available to NRIs under FEMA are equally applicable to the students.**

**Q.231. How much foreign exchange can be brought in while visiting India?**

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**Ans.** A person coming into India from abroad can bring with him foreign exchange without any limit. However, if the aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in exceeds USD 10,000 or its equivalent and/or the value of foreign currency alone exceeds USD 5,000 or its equivalent, it should be declared to the Customs Authorities at the Airport in the Currency Declaration Form (CDF), on arrival in India.

**Chapter N: FOREIGN STUDENTS STUDYING IN INDIA –  
KYC PROCEDURE FOR OPENING OF BANK ACCOUNTS**

**Q.232. What are the KYC procedure for opening of bank accounts for Foreign students studying in India?**

**Ans.** Procedure for opening accounts of foreign students who are not able to provide an immediate address proof while approaching a bank for opening bank account;

- a) Banks may open a Non Resident Ordinary (**NRO**) bank account of a foreign student on the basis of his/her passport (with appropriate visa & immigration endorsement) which contains the proof of identity and address in the home country along with a photograph and a letter offering admission from the educational institution.
- b) Within a period of 30 days of opening the account, the foreign student should submit to the branch where the account is opened, a valid address proof giving local address, in the form of a rent agreement or a letter from the educational institution as a proof of living in a facility provided by the educational institution. Banks should not insist on the landlord visiting the branch for verification of rent documents and alternative means of verification of local address may be adopted by banks.
- c) During the 30 days period, the account should be operated with a condition of allowing foreign remittances not exceeding USD 1,000 into the account and a cap of monthly withdrawal to Rs. 50,000/-, pending verification of address.
- d) On submission of the proof of current address, the account would be treated as a normal NRO account, and will be operated in terms of instructions contained in RBI's Master Circular on Non-Resident Ordinary Rupee (NRO) Account No. RBI/2013-14/2 Master Circular No.2/2013-14 dated July 1, 2013, and the provisions of Schedule 3 of FEMA Notification 5/2000 RB dated May 3, 2000 may also be kept in view.
- e) Students with Pakistani nationality will need prior approval of the Reserve Bank for opening the account.

[illegible]

**Q.233. What is foreign contribution?**

**Ans.** As defined in Section 2(1)(h) of FCRA, 2010, "foreign contribution" means the donation, delivery or transfer made by any foreign source, —

- (i) of any article, not being an article given to a person\* as a gift for his personal use, if the market value, in India, of such article, on the date of such gift is not more than such sum\*\* as may be specified from time to time by the Central Government by rules made by it in this behalf;
- (ii) of any currency, whether Indian or foreign;
- (iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of Section 2 of the Foreign Exchange Management Act, 1999.

Explanation 1 – A donation, delivery or transfer or any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution with the meaning of this clause.

Explanation 2 – The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of Section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3 – Any amount received, by a person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent or a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.

\* In terms of FCRA, 2010 "person" includes – (i) an individual; (ii) a Hindu undivided family; (iii) an association; and (iv) a company registered under section 25 of the Companies Act, 1956.

\*\* The sum, as stated at (i) above, has been specified as Rs. 25,000 vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012].

**Q.234. What is a foreign source?**

**Ans.** Foreign source, as defined in Section 2(1) (j) of FCRA, 2010 includes:-

- (i) the Government of any foreign country or territory and any agency of such Government;
- (ii) any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g);
- (vi) a company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:-
  - (A) the Government of a foreign country or territory;
  - (B) the citizens of a foreign country or territory;
  - (C) corporations incorporated in a foreign country or territory;

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- (D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
  - (E) Foreign company;
  - (vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
  - (viii) a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;
  - (ix) a society, club or other association or individuals formed or registered outside India;
  - (x) **a citizen of a foreign country;”**

**Q.235. Whether donation given by NRIs holding valid Indian Passport, i.e., Indian citizenship, is treated as foreign contribution?**

**Ans.** Contributions made by a Non-Resident Indian holding valid Indian passport from his personal earnings/savings are not treated as foreign contribution. However, while accepting any donation from such NRI, it is advisable to obtain his passport details to ascertain that he/she is an Indian passport holder.

**Q.236. Whether donation given by a PIO, an individual of Indian origin and having foreign nationality, is treated as foreign contribution?**

**Ans.** Yes. Donation from an Indian who has acquired foreign citizenship is treated as foreign contribution. This will also apply to the holder of Person of India Origin (PIO) card as well as Overseas Citizen of India (OCI) card as they are foreign citizens with certain other privileges.

**Q.237. Whether foreign contribution can be made out of Non Resident External (NRE) or Non-Resident Ordinary (NRO) account by NRI/PIO not holding Indian passport?**

**Ans.** Permissible Debits to NRE Account includes: (a) Local disbursements, and (b) any other transaction if covered under general or special permission granted by the Reserve Bank. Permissible Debits to NRO Account includes all local payments in rupees subject to compliance with the relevant regulations made by the Reserve Bank. Contributions being a current account transaction, there is no restriction for such foreign contributions made out of Non Resident External (NRE) or Non-Resident Ordinary (NRO) account by a NRI/PIO.

**Q.238. An Indian citizen (NRI), i.e., Indian passport holder, working abroad collects some donation from a foreign source. Thereafter, he passes on the contribution to an Association in India, which is registered under FCRA, 2010. Whether that money will be treated as foreign contribution?**

**Ans.** NRI concerned should have taken prior permission of the Government before accepting the donation from a foreign source. Secondly, he has transferred the donation received to an Association in India. He should have taken approval of MHA before transferring the money to the Association. The contribution received by the Association will be treated as foreign contribution although it did not receive the same directly from the foreign source.

**Q.229. Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA, 2010?**

**Ans.** In terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relative shall inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution. FCRA would not apply if the relative is a NRI, Indian holding valid Indian passport.

Any **gift received from an NRI** who holds a valid Indian passport will not be covered under the purview of FCRA, 2010. However, gifts from Persons of Indian Origin (PIO) card holders and Overseas Citizen of India (OCI) card holders will

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attract the provision of FCRA, 2010.

Any article gifted to a person for his **personal use** whose market value in India on the date of such gift does not exceed rupees twenty-five thousand shall not be a foreign contribution.

A gift from a non-relative NRI is exempt. A gift from non-relative who is a foreigner including PIO is also exempt.

Any contribution received by individual from foreign source through WILL or as a legal heir or through nomination shall not be treated FC unless there is a condition to utilize such money for a definite purpose as defined under section 11(1). However, if the same contribution is received by an institution covered by the FCRA then it would be treated as FC.

[illegible]



### **Reference material:**

#### **Act, Rules & Regulations**

- Foreign Exchange Management Act, 1999 (FEMA)
- FEM (Deposit) Regulations, 2000 (FEMA 05)
- FEM (Transfer or Issue of any Foreign Security) Regulations, 2004 (FEMA 20)
- FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 (FEMA 21)
- FEM (Borrowing and Lending in Rupees) Regulations, 2000 (FEMA 04)
- FEM (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (FEMA 03)
- FEM (Remittance of Assets) Regulations, 2000 (FEMA 13)
- FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000 (FEMA 24)
- FEM (Current Account Transactions) Rules, 2000
- FEM (Permissible Capital Account Transactions) Regulations, 2000 [FEMA 1]
- Foreign Contribution (Regulation) Act, 2010, and Rules (FCRA)

#### **Master Circulars**

- Remittance Facilities for Non-Resident Indians - Persons of Indian Origin - Foreign Nationals
- Acquisition and Transfer of Immovable Property in India by NRIs-PIOs-Foreign Nationals of Non- Indian Origin
- Non-Resident Ordinary Rupee (NRO) Account
- Interest Rates on Rupee Deposits held in Domestic, Ordinary Non-Resident (NRO) and Non-Resident (External) (NRE) Accounts
- Instructions relating to deposits held in FCNR(B) Accounts

#### **Frequently Asked Questions (FAQs)**

- Facilities for NRIs and PIOs dated 17.01.2012
- Acquisition and Transfer of Immovable Property in India by a person resident outside India dated 11.07.2012
- Facilities for NRIs and PIOs Features of various Deposit Schemes available to Non-Resident Indians (NRIs) dated 13.09.2013
- Account Opened by Foreign Nationals and Foreign Tourists dated 22.06.2012
- Foreign Investments in India dated 07.03.2014

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