

# Do's and Don'ts for NRIs under FEMA

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# Important definitions under FEMA

def·i·ni·tion

\dē-fə'-nī-shən\

meaning of a word;  
can be subjective

# Definition - Residence

## ❖ Sec 2(v) – Person Resident in India:

### • Individuals

- **Basic Rule:** > 182 days in preceding FY
- **Exception 1 to Basic Rule:** Goes out of India for:
  - ✓ For employment o/s India
  - ✓ For carrying on business / vocation o/s India
  - ✓ For any other purpose indicating intention to stay o/s India for uncertain period
- **Exception 2 to Basic Rule:** Comes to India for:
  - ✓ For employment in India
  - ✓ For carrying on business / vocation in India
  - ✓ For any other purpose indicating intention to stay in India for uncertain period

## ❖ **PRI but not permanently resident:** Employment for specified duration; specific job / assignment < 3 years. Used at following places:

- No limit for possession of foreign currency in India – FEMA 11(R)
- Contribution to foreign PF / superannuation / pension fund for expatriate staff – FEMA 13(R)
- FEMA 120 not to apply when foreign security is purchased out of forex resources o/s India

## ❖ **Basic rule mandatory satisfaction + Intention to be established with supporting documentation including visa**– MOF press release dated 1<sup>st</sup> Feb 2009 – (Government’s advice on acquiring land by persons residing outside India)

# Definition – Non-Resident Indian (NRI)

## ❖ NRI definition under different Regulations

Definition	Regulation
Means a person resident outside India who is a citizen of India	FEM (Borrowing & Lending) Regulations, 2018
	FEM (Deposits) Regulations, 2016
	FEM (Remittance of Assets) Regulations, 2016
	FEM (Acquisition & Transfer of Immovable Property in India) Regulations, 2018
Means an individual resident outside India who is a citizen of India	FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017

# Definition – Overseas Citizen of India (OCI)

## ❖ OCI definition under different Regulations

Definition	Regulation
Means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955	FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017
	FEM (Acquisition & Transfer of Immovable Property in India) Regulations, 2018
Same meaning assigned to it under Section 7(A) of the Citizenship Act, 1955	FEM (Borrowing & Lending) Regulations, 2018

## ❖ Section 7(A) of the Citizenship Act, 1955 – Registration of OCI Cardholder

(a) any person of full age and capacity, —

- (i) who is a citizen of another country, but **was a citizen of India** at the time of, or at any time after the commencement of the Constitution; or
- (ii) who is a citizen of another country, but **was eligible to become a citizen of India** at the time of the commencement of the Constitution; or
- (iii) who is a citizen of another country, but **belonged to a territory that became part of India after the 15th day of August, 1947**; or

# Definition – Overseas Citizen of India (OCI)

## ❖ Section 7(A) of the Citizenship Act, 1955 (Contd.)

(a) any person of full age and capacity,—

(iv) who is a **child** or a **grandchild** or a **great grandchild** of such a citizen; or

(b) a person, who is a **minor child** of a person mentioned in clause (a); or

(c) a person, who is a **minor child**, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) **spouse of foreign origin of a citizen of India** or **spouse of foreign origin of an Overseas Citizen of India Cardholder** registered under section 7A and **whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:**

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

Provided further that **no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh** or such other country as the Central Government may, by notification in the Official Gazette, specify, **shall be eligible for registration as an Overseas Citizen of India Cardholder** under this sub-section.

# Definition – Persons of Indian Origin (PIO)

## ❖ Comparison of PIO definition between different Regulations

Definition	Regulation
<p>Means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan, or such other country as may be specified by the Central Government, satisfying the following conditions :</p> <p>(a) Who <b>was a citizen of India</b> by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or</p> <p>(b) Who <b>belonged to a territory that became part of India after the 15th day of August, 1947</b>; or</p> <p>(c) Who is a <b>child</b> or <b>grandchild</b> or a <b>great grandchild</b> of a citizen of India or of a person referred to in clause (a) or (b)</p> <p>(d) Who is a <b>spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)</b></p> <p><u>Explanation:</u> for the purpose of this sub-regulation, the expression '<b>Person of Indian Origin</b>' includes an '<b>Overseas Citizen of India</b>' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.</p>	<p>FEM (Deposits) Regulations, 2016</p> <p>FEM (Remittance of Assets) Regulations, 2016</p>

# Importance of NRI / PIO / OCI definition

## ❖ Difference in definition becomes critical under certain situations.

For e.g. Indian Citizen is staying in Singapore on work visa. He marries a Singaporean woman. His wife wants to invest in NRE FDs in India and also invest in house property at Pondicherry.

- Upon Marriage, she qualifies as PIO and can open NRE FD on an immediate basis
- However, unless she obtains OCI cardholder (minimum 2 years), she does not qualify as OCI and cannot invest in house property at Pondicherry either jointly or singly.

## ❖ Maternal lineage is also to considered under definition of OCI and PIO.

For e.g. Portuguese citizen can open NRE deposit even if his great grandfather was a Portuguese Citizen but whose great grandmother was born in Goa and acquired Portuguese Citizenship before integration of Goa with India.



# Deposits and Accounts by Non-Residents



# NRE Account vs. FCNR(B) Account vs. NRO Account

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

# NRE Account vs. FCNR(B) Account vs. NRO Account

## ❖ NRE & FCNR (B) account

### • Permitted Credits

- a) Inward remittances from o/s India thru banking channels
- b) Personal cheques of FCA outside India / travellers cheques / bank drafts deposited by the account holder in person during his temporary visit to India
- c) Tender of foreign currency / bank notes during his temporary visit to India
- d) Transfers from other NRE/ FCNR(B) accounts
- e) Interest accruing on the funds held in the account
- f) Current income in India due to the account holder, subject to payment of applicable taxes in India (like rent, dividend, pension, interest) **(no qualification of earlier investment account source i.e. original investment could have been made from either NRE or NRO a/c)**
- g) Maturity or sale proceeds of any permissible investment in India which was originally made from NRE/FCNR(B) a/c or out of inward remittances from o/s India thru banking channels *(FEMA Notf. 21(R)/2018 - Sale of immovable property in India: Credit to NRE a/c restricted to 2 properties during lifetime + restricted to investment amount paid from NRE/ FCNR(B) a/c or out of inward remittances from o/s India thru banking channels)*
- h) Refund of share/ debenture subscriptions to new issues of Indian companies or portion thereof, if subscription amount was paid from NRE/ FCNR(B) a/c or out of inward remittances from o/s India thru banking channels
- i) 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 original payment was paid from NRE / FCNR(B) a/c or out of inward remittances from o/s India thru banking channels and AD is satisfied about the genuineness of the transaction

# NRE Account vs. FCNR(B) Account vs. NRO Account

## ❖ NRE & FCNR (B) account

- Permitted Debits
  - a) Local disbursements
  - b) Remittances outside India
  - c) Transfer to NRE/ FCNR(B) accounts of the account holder *or* any other person eligible to maintain such account
  - d) Investment in shares/ securities/ commercial paper of an Indian company or for purchase of immovable property in India provided such investment/ purchase is covered by the regulations made, or the general/ special permission granted by RBI
  
- FCNR(B): If inward remittance is in currency other than designated currency, currency conversion costs for conversion into designated currency to be borne by remitter. Fully covered swap is permitted in such cases.

# NRE Account vs. FCNR(B) Account vs. NRO Account

## ❖ NRO account

- Permitted Credits
  - a) Inward remittances from o/s India thru banking channels
  - b) Tender of any permitted currency during his temporary visit to India
  - c) Legitimate dues in India of the account holder
  - d) Transfers from other NRO accounts
  - e) Rupee gift / loan made by a resident to a NRI / PIO relative within the limits prescribed under LRS
- Permitted Debits
  - a) All local payments in rupees including payments for investments subject to compliance with the relevant regulations made by RBI
  - b) Remittance outside India of current income in India of the account holder net of applicable taxes
  - c) Transfers to other NRO accounts (whether of account holder or other eligible person?)
  - d) Balances in the NRO account cannot be repatriated abroad except by NRIs and PIOs up to USD 1 million, subject to conditions (Limit of \$1 million over and above current income repatriation – FAQ 3 of Accounts in India by NR) (Undertaking from remitter for own funds)
  - e) Funds can be transferred to NRE account within this USD 1 Million facility
  - f) Settlement of charges on International Credit Cards issued by AD in India to NRIs or PIOs, upto USD 1 Million per financial year

# NRE Account vs. FCNR(B) Account vs. NRO Account

Particulars	NRE Account	FCNR(B) Account	NRO Account
<b>Repatriability</b>	<ul style="list-style-type: none"> <li>• Repatriable</li> </ul>	<ul style="list-style-type: none"> <li>• Repatriable</li> </ul>	<ul style="list-style-type: none"> <li>• Not repatriable except for all current income.</li> <li>• <b>Individual:</b> Balances in an NRO account of NRIs/ PIOs are remittable up to USD 1 (one) million per financial year (April-March) along with their other eligible assets.</li> <li>• <b>Entities:</b> RBI permission</li> </ul>
<b>Taxability</b>	<ul style="list-style-type: none"> <li>• Exempt</li> </ul>	<ul style="list-style-type: none"> <li>• Exempt</li> </ul>	<ul style="list-style-type: none"> <li>• Taxable</li> </ul>
<b>Joint account</b>	<ul style="list-style-type: none"> <li>• Jointly with two or more NRIs/ PIOs</li> <li>• Jointly with resident relative on ‘former or survivor’ basis (relative as defined in Companies Act, 2013)</li> <li>• The resident relative can operate the account as a Power of Attorney holder during the life time of the NRI/ PIO account holder.</li> </ul>		

# NRE Account vs. FCNR(B) Account vs. NRO Account

Particulars	NRE Account	FCNR(B) Account	NRO Account
<b>Operations by resident POA holder</b>	<p><u>Permitted</u></p> <ul style="list-style-type: none"> <li>• Withdrawal for local payments</li> <li>• Make investments in India</li> <li>• Remittance to account holder himself thru banking channels</li> </ul> <p><u>Prohibited</u></p> <ul style="list-style-type: none"> <li>• Remittance outside India to other than account holder himself</li> <li>• Make payment by gift to resident</li> <li>• Transfer funds to other NRE account</li> </ul>		<p><u>Permitted</u></p> <ul style="list-style-type: none"> <li>• Withdrawal for local payments</li> <li>• Make investments in India</li> <li>• Remittance outside India of current income, net of taxes</li> </ul> <p><u>Prohibited</u></p> <ul style="list-style-type: none"> <li>• Remittance outside India to other than account holder himself</li> <li>• Make payment by gift to resident</li> <li>• Transfer funds to other NRO a/c</li> </ul>
<b>Loans outside India (Secured)</b>	<ul style="list-style-type: none"> <li>• AD may allow their branches/ correspondents o/s India to grant loans to NRI/PIO or to Third Parties for bona fide purpose against the security of funds held in the NRE/ FCNR (B) accounts in India, subject to usual margin requirements.</li> <li>• The term “loan” shall include all types of fund based / non-fund based facilities</li> </ul>		<ul style="list-style-type: none"> <li>• <b>Not permitted</b></li> </ul>

# NRE Account vs. FCNR(B) Account vs. NRO Account

Particulars	NRE Account	FCNR(B) Account	NRO Account
<b>Loans in India</b>	<ul style="list-style-type: none"> <li>AD can sanction loans in India to NRI/PIO/ third parties without any limit, subject to usual margin requirements.</li> <li><b>These loans cannot be repatriated outside India</b></li> <li>Should be used <b>only for personal purposes</b> or <b>business purposes</b> (excluding relending, carrying on agricultural/ plantation activities or investment in real estate business)</li> <li>In case of loans sanctioned to a third party, there should be no direct/indirect forex consideration for NRI/PIO agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities</li> <li>In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from o/s India thru banking channels or out of self NRO a/c</li> <li>The facility for premature withdrawal of deposits not be available in such cases</li> <li>The <u>term “loan” includes all types of fund based/non-fund based facilities</u></li> </ul>		<ul style="list-style-type: none"> <li>Loans against the deposits can be granted in India to the account holder or third party subject to usual norms and margin requirement. The loan amount should be used <b>only for personal purposes or business purposes</b> (excluding relending, carrying on agricultural/ plantation activities or investment in real estate business)</li> <li>The <u>term “loan” includes all types of fund based/ non-fund based facilities</u></li> </ul>



# NRE Account vs. FCNR(B) Account vs. NRO Account

Particulars	NRE Account	FCNR(B) Account	NRO Account
<b>Change in residential status from Non-resident to resident</b>	<ul style="list-style-type: none"> <li>NRE accounts should be designated as resident accounts <b>or</b></li> <li>Funds held in these accounts may be transferred to the RFC accounts <b>immediately</b> upon change of residential status</li> </ul>	<ul style="list-style-type: none"> <li>FCNR (B) deposits <b>allowed to continue</b> till maturity at the contracted rate of interest</li> <li>AD should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts <b>or</b> RFC account</li> </ul>	<ul style="list-style-type: none"> <li><u>From PROI to PRI:</u> <b>Immediately</b> designated as resident accounts</li> <li><u>From PRI to PROI:</u> <b>Immediately</b> designated as NRO account</li> </ul>

# Deposits from NRI / PIO

## ❖ Deposit from NRI/PIO on repatriation basis:

- A Indian company including NBFC registered with the Reserve Bank **cannot accept fresh deposits on repatriation basis**. It can, however, renew the deposits it had accepted in accordance with terms and conditions mentioned in Schedule 6 of Foreign Exchange Management (Deposit) Regulations), 2016.

## ❖ Deposit from NR towards Directorship:

- Keeping deposits with an Indian company by persons resident outside India, in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from Reserve Bank. All refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty five percent votes, shall be treated similarly.

# Deposits from NRI / PIO

## ❖ Deposit from NRI/PIO on non-repatriation basis:

Particulars	Deposit on non-repatriation basis
Who can accept the deposit	Proprietorship concern, firm, Indian company (including NBFC)
Mode	Private arrangement or public deposit scheme
Credit rating	If NBFC, then credit rating is required
Maturity	< 3 years
Interest	As prescribed under Companies (Acceptance of Deposits) Rules, 2014
Investment	<b>Debit to NRO a/c only.</b> Inward remittance and transfer from NRE/FCNR(B) a/c prohibited.
End use restriction	Amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate or investment in any other entity engaged in above
Repatriability	Not allowed

❖ Indian companies can also accept deposits from NRIs or PIOs by issue of a commercial paper subject to conditions

# Resident bank account maintained by residents in India - Joint holder -liberalization

- Individuals resident in India are permitted to include non-resident Indian (NRI) close relative (s) (NRI as defined in regulation 2(vi) of Notification No FEMA 5/ 2000-RB dated May 3, 2000, as amended from time to time and relative as defined in Section 6 of the Companies Act, 1956 as a joint holder(s) in their resident savings bank accounts on “**Either or Survivor**” basis subject to the following conditions:
- Such account will be treated as resident bank account for all purposes and all regulations applicable to a resident bank account shall be applicable.
- **Cheques, instruments, remittances, cash, card or any other proceeds belonging to the NRI close relative shall not be eligible for credit to this account.**
- The NRI close relative shall operate such account only for and on behalf of the resident for domestic payment and not for creating any beneficial interest for himself.
- Where the NRI close relative becomes a joint holder with more than one resident in such account, such NRI close relative should be the close relative of all the resident bank account holders.
- **Where due to any eventuality, the non-resident account holder becomes the survivor of such an account, it shall be categorized as Non-Resident Ordinary Rupee (NRO) account as per the extant regulations.**
- Onus will be on the non-resident account holder to keep AD bank informed to get the account categorized as NRO account and all such regulations as applicable to NRO account shall be applicable.
- The above joint account holder facility may be extended to all types of resident accounts including savings bank account.

# Acquisition of Immovable Property in India



# Immovable Property in India

## ❖ Applicable to NRIs / OCIs

Particulars	NRI / OCI
<b><u>Acquisition</u></b>	
Purchase (other than agricultural land/ farmhouse/ plantation etc) <b>from</b>	Resident/ NRI/ OCI [Reg. 3(a)]
Acquire as gift (other than agricultural land/ farmhouse/ plantation etc) <b>from</b>	Resident/ NRI/ OCI [Reg. 3(b)] who is a relative
<b><u>Inheritance</u></b>	
Acquire (any IP) as inheritance <b>from</b>	a. Any person who has acquired it under laws in force [Reg. 3(c)]; b. Resident [Reg. 3(c)]
<b><u>Sale</u></b>	
Sell (other than agricultural land / farmhouse / plantation etc) <b>to</b>	Resident/ NRI/ OCI [Reg. 3(d) & Reg. 3(e)]
Sell (agricultural land / farmhouse / plantation etc) <b>to</b>	Resident [Reg. 3(d)]
<b><u>Gift</u></b>	
Gift (other than agricultural land / farmhouse / plantation etc) <b>to</b>	Resident/ NRI/ OCI [Reg. 3(d) & Reg. 3(e)]
Gift (agricultural land / farmhouse / plantation etc) <b>to</b>	Resident [Reg. 3(d)]

# Immovable Property in India

## ❖ Payment for Acquisition of Immovable Property

- Out of funds received in India through normal banking channels by way of inward remittance from any place outside India or by debit to his NRE / FCNR (B) / NRO account;
- Payments cannot be made by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above

## ❖ Repatriation of sale proceeds of immovable property

- Property acquired by way of Sec 6(5) or his successor cannot repatriate outside India the sale proceeds of such immovable property without the prior permission of the RBI except by NRIs and PIOs up to USD 1 million
- Sale of IP (other than agricultural land/ farm house/ plantation property) in India by a NRI/ OCI resident outside India provided:
  - IP acquired by the seller in accordance with FEMA
  - The amount to be repatriated does not exceed the amount paid for acquisition of IP
  - In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties

# Immovable Property in India

## ❖ DOs for NRIs / OCIs

- **Can** acquire property for holding/self-use
- **Can** only inherit agricultural land, plantations & farm houses
- **Can** sell the property & repatriate sale proceeds abroad, most of the times
- **Can** give property on rent & repatriate funds abroad post payment of taxes
- Spouse of foreign origin of NRI / OCI **Can** jointly acquire IP subject to conditions
- No limit on number of properties acquired in India

## ❖ DON'Ts for NRIs / OCIs

- **Can not** purchase agricultural land, plantations & farm houses
- **Can not** do Real Estate Trading, or trade in Transferable Development Rights
- Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong and Democratic People's Republic of Korea **cannot**, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than on lease, not exceeding five years. (**Prohibition does not apply to OCI**)



# Remittance of Assets O/s India



# Remittance of Assets o/s India by NRI/PIO

- ❖ AD Bank may allow to remit upto \$ 1 million per year (popularly known as \$1 million scheme):
  - out of :
    - balances in NRO
    - sale proceeds of assets
    - assets acquired in India by way of inheritance/ legacy;
  - in respect of assets acquired under a deed of settlement made by either of his / her parents or a relative as defined in Companies Act, 2013. The settlement should take effect on the death of the settler;
  - in case settlement is done without retaining any life interest in the property i.e. during the lifetime of the owner/ parent, it would tantamount to regular transfer by way of gift and remittance of sale proceeds of such property would be guided by instructions on remittance of balance in the NRO account mentioned above
- ❖ NRI/PIO to give declaration that
  - Remittance is out of balances held in the account arising from his / her legitimate receivables in India
  - Remittance is not by borrowing from any other person
  - Remittance is not a transfer from any other NRO account

# Borrowing and Lending between NRI / OCI & PRI

**[FEMA Notf. 3(R)/2018 dt. 17.12.2018]**



# Borrowing and Lending in Forex

## ❑ Borrowing in forex by **Indian companies**:

- Schedule I: Lenders - The lender should be resident of FATF or IOSCO compliant country as defined in the ECB policy, including on transfer of ECBs. Further, Reserve Bank, in consultation with the Government of India may specify any other lender/set of lenders under the schedule or amend the existing provisions. **Does this mean that Indian companies can now avail ECB in forex from NRIs/OCIs?**

## ❑ Borrowing by resident individual in forex:

- ❖ **Individual resident** in India can borrow **from his/her relatives outside India** a sum not exceeding \$ 2,50,000/- or its equivalent, subject to terms and conditions as may be specified by RBI in consultation with GOI
- ❖ **Individual resident** in India **studying abroad may raise loan outside India** for the purposes of payment of education fees abroad and maintenance, not exceeding USD 250,000/- or its equivalent, subject to terms and conditions as may be specified by RBI in consultation with GOI

## ❑ **Borrowing by NRI / PIO close relative in forex is prohibited under LRS**

# Borrowing and Lending in Forex

❖ 'Relative' means a 'relative' as defined under the Companies Act, 2013

## Act of 2013

U/s 2(77) "relative", with reference to any person, means anyone who is related to another, if—

- (i) they are members of HUF; or
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed.

## Act of 2013 (As prescribed)

Father (including step-father)

Mother (including step-mother)

Son (including step-son)

Son's wife

Daughter

Daughter's husband

Brother (including step-brothers)

Sister (including step-sisters)

# Borrowing and Lending in Rupees

## □ Persons Resident in India borrowing in INR from NRIs/OCIs:

### ❖ Borrowing in INR by persons **other than Indian companies:**

- PRI (other than India company) can borrow in INR **from NRI/OCI relatives** subject to terms and conditions as may be specified by RBI in consultation with GOI. **[Still does not cover LLP as borrower.]**
- Borrower cannot use borrowed funds for restricted end uses:
  - Business of Chit fund or Nidhi company;
  - Investment in capital market including margin trading and derivatives;
  - Agricultural / plantation activities;
  - Real estate activity or construction of farm houses; and
  - Trading in transferable development rights.

(“Real Estate Activity” means any activity involving own or leased property for buying, selling and **renting of commercial and residential properties** or land and also includes activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling, letting or managing real estate. However, this would not include development of integrated township, purchase/ long term leasing of industrial land as part of new project/modernisation or expansion of existing units or any activity under ‘infrastructure sub-sectors’ as given in the Harmonised Master List of Infrastructure sub-sectors approved by the Government of India vide Notification F. No. 13/06/2009-INF, as amended/ updated from time to time)

# Borrowing and Lending in Rupees

## □ Persons Resident in India borrowing in INR from NRIs/OCIs:

### ❖ Borrowing in INR by **Indian companies:**

- Schedule I: Lenders - The lender should be resident of FATF or IOSCO compliant country as defined in the ECB policy, including on transfer of ECBs. Further, Reserve Bank, in consultation with the Government of India may specify any other lender/set of lenders under the schedule or amend the existing provisions. **Does this mean NRIs/OCIs can now lend in Rupee denominated ECB?**

## □ Lending by authorised dealers in INR to NRIs/OCI:

- AD in India may grant loan to a NRI/OCI Cardholder for meeting the borrower's **personal requirements / own business purposes / acquisition of a residential accommodation in India / acquisition of motor vehicle in India / or for any purpose as per the loan policy** laid down by the Board of Directors of the AD and in compliance with prudential guidelines of Reserve Bank of India.
- Borrowed funds cannot be used for **restricted end uses**.

## □ Other Lending transactions in INR to NRIs/OCI:

- ❖ Lending by NBFC / HFC / other FI towards **housing loan / vehicle loan. (Restricted end uses).**
- ❖ Lending by Indian Company / LLP to NRI / OCI employee. **(Restricted end uses).**

# Borrowing and Lending in Rupees

- ❑ **INR Loans by Resident Individual to NRI / OCI relative:** A resident individual may grant INR loan to a NRI / OCI subject to within the overall limit under LRS (\$ 2,50,000/-) subject to terms and conditions as may prescribed by RBI. (Restricted end uses).
  
- ❑ **Change in Residential Status:**
  - ❖ **Loan from AD to PRI || Change of status of borrower from PRI to PROI:** AD may allow continuance of loan subject to terms and conditions as may prescribed by RBI.
  
  - ❖ **Loan from PRI to PRI || Change of the status of the lender from PRI to PROI:** Repayment of the loan by the resident borrower should be made by credit to the NRO account of the lender.
  
  - ❖ **Loan from NRI/OCI to PRI || Change of the status of the lender from PROI to PRI:** Repayment of the loan by the resident borrower should be made to resident bank account of the lender in India.
  
  - ❖ **Loan taken overseas by PROI || Change of status of borrower from PROI to PRI:** PRI allowed to service such loans subject to terms and conditions and limits as may prescribed by RBI.



# Foreign Investment in India



# Routes for Foreign Investment in India by a NRI / OCI

Schedule No.	Regulation	Particulars
1	5(1)	Purchase / Sale of <b>capital instruments</b> of an <b>Indian company</b> by a person resident outside India
3	5(3)	Purchase/ Sale of Capital Instruments of a <b>listed Indian company</b> on a recognised stock exchange in India by NRI or OCI <b>on repatriation basis</b>
4	5(4)	Investment on <b>non-repatriation basis</b> by NRI or OCI
5	5(5)	Purchase and sale of securities <b>other than capital instruments</b> by a person resident outside India
6	5(6)	Investment in a <b>LLP</b>
8	5(8)	Investment by a person resident outside India in an <b>Investment Vehicle</b>
9	5(9)	Investment in <b>Depository Receipts</b> by PROI
10	5(10)	Issue of <b>Indian Depository Receipts</b>

# Foreign Investment by NRI / OCI - Important Definitions

## ❖ Foreign Investment

‘Foreign Investment’ means any investment made by a person resident outside India on a **repatriable basis** in capital instruments of an Indian company or to the capital of an LLP;

- **Note:** A PROI may hold foreign investment either as Foreign Direct Investment or as Foreign Portfolio Investment in any particular Indian company.

## ❖ Foreign Direct Investment (FDI)

FDI means investment through capital instruments by a person resident outside India in an **unlisted Indian company**;

**or**

in **10 percent or more** of the post issue paid-up equity capital on a fully diluted basis of a **listed Indian company**;

- **Note:** In case, an existing investment by a PROI in capital instruments of a listed Indian company falls to a level below 10% of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI.

# Foreign Investment by NRI / OCI - Important Definitions

## ❖ Capital Instruments

### Capital Instruments means:

- **Equity shares:** Equity shares issued in accordance with the provisions of the Companies Act, 2013 shall include equity shares that have been **partly paid**. Partly paid shares that have been issued to a person resident outside India shall be fully called-up within twelve months of such issue. Twenty five percent of the total consideration amount (including share premium, if any), shall be received upfront.
- **Debentures:** ‘Debentures’ means fully, compulsorily and mandatorily convertible debentures.
- **Preference shares:** ‘Preference shares’ means fully, compulsorily and mandatorily convertible preference shares.
- **Share warrants:** Share Warrants are those issued by an Indian Company in accordance with the Regulations issued by the SEBI. In case of share warrants at least twenty five percent of the consideration shall be received upfront and the balance amount within eighteen months of issuance of share warrants.

# Foreign Investment by NRI / OCI - Important Definitions

## ❖ Capital Instruments

- Capital instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.
- Capital instruments shall include:
  - non-convertible/ optionally convertible/ partially convertible preference shares issued as on and up to April 30, 2007 and optionally convertible/ partially convertible debentures issued up to June 7, 2007 till their original maturity.
  - Non-convertible/ optionally convertible/ partially convertible preference shares issued after April 30, 2007 shall be treated as debt and shall conform to External Commercial Borrowings guidelines regulated under Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000

# Foreign Investment by NRI / OCI - Important Definitions

## ❖ Foreign Portfolio Investment

‘Foreign Portfolio Investment’ means any investment made by a person resident outside India through capital instruments where such investment is **less than 10 percent** of the post issue paid-up share capital on a fully diluted basis of a **listed Indian company** or less than 10 percent of the paid up value of each series of capital instruments of a listed Indian company;

## ❖ Foreign Portfolio Investor (FPI)

FPI means a person registered in accordance with the provisions of Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.

## ❖ Sectoral Cap

Sectoral cap’ means the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in capital instruments of a company or the capital of an LLP, as the case may be, and indirect foreign investment, unless provided otherwise. This shall be the composite limit for the Indian investee entity;

# Prohibited Activities (Reg 15 to FEMA 20(R))

❖ **Lottery Business including Government/ private lottery, online lotteries**

❖ **Gambling and betting including casinos**

❖ **Chit funds**

❖ **Nidhi company**

❖ **Trading in Transferable Development Rights (TDRs)**

❖ **Real Estate Business or Construction of Farm Houses**

Explanation: For the purpose of this regulation, “real estate business” shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

❖ **Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes**

❖ **Activities/ sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations**

❖ **Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities**

# Foreign Investment by NRI / OCI

## Schedule 1 – Purchase/ Sale of capital instruments of an Indian company by a person resident outside India

### ❖ An Indian company may **issue** capital instruments to PROI subject to Reg. 16 viz.:

- Entry Routes → Automatic or Government Approval
- Sectoral Caps and Attendant Conditionality(s) → Sector wise- caps on foreign investment permitted under automatic / approval route; In sectors/ activities not listed in Reg 15 or 16, foreign investment is permitted up to 100 percent on the automatic route

### ❖ PROI may **purchase** capital instruments of a **listed Indian company** on a stock exchange in India provided that:

- PROI making the investment has already acquired control of such company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and continues to hold such control;
- Amount of consideration may be paid as per the mode of payment prescribed in this Schedule or out of the dividend payable by Indian investee company

### ❖ WOS can issue capital instruments against **pre-incorporation / preoperative expenses** incurred by **NR entity** for lower of (a) limit of 5% of authorized capital & (b) USD 500,000:

- WOS operates in sector with 100% FDI under Automatic Route and no FDI linked performance conditions;
- Compliance of reporting requirement;
- Statutory Auditor utilization certification for pre-incorporation / preoperative expenses.



# Foreign Investment by NRI / OCI

## Schedule 1 – Purchase/ Sale of capital instruments of an Indian company by a person resident outside India (cont...)

- ❖ An Indian company may **issue** capital instruments to a PROI **under automatic route**, if the Indian investee company is engaged in sector under automatic route against:
  - Swap of capital instruments,
  - Import of capital goods/ machinery/ equipment (excluding second-hand machinery),
  - Pre-operative/ pre-incorporation expenses (including payments of rent etc.)
- ❖ An Indian company may **issue** equity shares **against any funds payable by it** to PROI, the remittance of which is permitted under FEMA
- ❖ Mode of Payment → Inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ Escrow account
- ❖ Remittance of sale proceeds → Sale proceeds (net of taxes) of the capital instruments may be remitted outside India or may be credited to the NRE/ FCNR(B) [i.e. Repatriable]

# Foreign Investment by NRI / OCI

## Schedule 3 – PIS by NRIs/OCIs

- ❖ NRIs / OCIs can purchase or sell Capital Instruments of a **listed Indian company**:
  - ❖ **On repatriation basis** & On a recognized stock exchange in India
  - ❖ Total holding of **individual NRI/OCI shall not exceed 5%** of the total paid-up equity capital on a fully diluted basis or should not exceed 5% of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company
  - ❖ Total holdings of **all NRIs and OCIs put together shall not exceed 10%** of the total paid-up equity capital on a fully diluted basis or shall not exceed 10% of the paid-up value of each series of debentures or preference shares or share warrants
  - ❖ Aggregate ceiling of 10% may be raised to 24% by a special resolution
- ❖ Mode of Payment → Inward remittance from abroad through banking channels or out of funds held in a Non-Resident External (NRE) account; NRE account shall be designated as **NRE(PIS) A/c** for buying under PIS
- ❖ **Delivery based** buying / selling
- ❖ Sale Proceeds from such PIS also credited to this A/c. Sale proceeds may be remitted outside India after taxes
- ❖ Bank must report all PIS transactions by NRIs to RBI

# Foreign Investment by NRI / OCI

## Schedule 4 – Investment on Non-repatriable Basis

❖ Non-repatriable means -

- ❖ Only Dividend / Interest can be sent back abroad
- ❖ Principal + Gains cannot be repatriated

### A. Purchase/ sale of capital instruments or convertible notes or units or contribution to the capital of an LLP

❖ Eligible Investor:

NRI

OCI

a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs [*Owned & Controlled not defined in Sch.4, therefore as per Reg.14 Ownership shall mean beneficial holding of 50% + of Share Capital / LLP and major profit share & Control shall mean right to appoint majority of Directors / Partners / DPs with NRIs*]

❖ Investment in:

- Capital instruments i.e. shares / CDs / warrants etc without any limit **either on the stock exchange or outside it**
- Units issued by an investment vehicle without any limit, either on the stock exchange or outside it.
- The capital of a Limited Liability Partnership without any limit.
- Convertible notes issued by a startup company in accordance with these Regulations.

# Foreign Investment by NRI / OCI

## Schedule 4 – Investment on Non-repatriable Basis (Cont...)

- ❖ Investment deemed to be domestic investment at par with the investment made by residents
- ❖ Shall not invest in capital instruments or units of a Nidhi or company engaged in agricultural/ plantation activities or Real Estate Business or Construction of Farm Houses or dealing in TDRs.
  - ❖ Real Estate Business means Dealing in land to earn profits but excludes Leasing of property / Investment in REIT units / earning of rent income
- ❖ **Mode of Payment** → inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account
- ❖ **Sale/ maturity proceeds** →
  - ❖ Credited **only to the NRO account** of the investor, irrespective of the type of account from which the consideration was paid
  - ❖ Amount invested + capital appreciation shall not be allowed to be repatriated abroad [ **NRI may avail USD \$ 1 Million scheme**]

# Foreign Investment by NRI / OCI

## Schedule 4 – Investment on Non-repatriable Basis (Cont...)

### B. Investment in a Firm or Proprietary Concern

#### ❖ Eligible Investor:

NRI

OCI

#### ❖ Investment in:

○ Capital of firm / proprietary concern

#### ❖ Restricted Sectors for NRIs/ OCI:

○ Agricultural / Plantation / Real Estate Business / Print Media

❖ **Mode of Payment** → inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account

#### ❖ **Sale/ maturity proceeds** →

❖ Credited **only to the NRO account** of the investor, irrespective of the type of account from which the consideration was paid

❖ Amount invested + capital appreciation shall not be allowed to be repatriated abroad [ **NRI may avail USD \$ 1 Million scheme** ]

# Foreign Investment by NRI / OCI

## Schedule 5 – Other Investments by NRI / OCI

### ❖ NRI / OCI can invest on Repatriation Basis

- ❖ 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;
- ❖ Shares in Public Sector Enterprises being disinvested by the Central Government, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids;
- ❖ Bonds/ units issued by Infrastructure Debt Funds;
- ❖ Listed non-convertible/ redeemable preference shares or debentures
- ❖ Perpetual Debt Instruments by Banks – Tier I & Tier II subject to limits
- ❖ National Pension Scheme governed by PFRDA

### ❖ NRI / OCI can also invest on Non-Repatriation Basis

- ❖ Dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds, units of money Market Mutual Funds, or National Plan/ Savings Certificates.
- ❖ Listed non-convertible/ redeemable preference shares or debentures
- ❖ Subscribe to the chit funds authorised by the Registrar of Chits or an officer authorised by the State Government in this behalf.

# Foreign Investment by NRI / OCI

## Sch. 6 – Investment in LLP

### ❖ **Contribute to the capital of an LLP operating in sectors/ activities where**

- Foreign investment up to 100% is permitted under automatic route
- There are no FDI linked performance conditions
- Investment in compliance of LLP Act, 2008

### ❖ **No FDI in LLP in following cases:**

- Sectors with performance linked conditions [Eg. FS, Real Estate, Single Brand Retail Trading]
- Sectors eligible to receive less than 100% FDI under Automatic Route
- Sectors where FDI possible only with Govt. permission
- Agriculture / Plantation / Print Media / Private Security
- Sectors not opened up for FDI – Tobacco / Railways

### ❖ **Foreign Investors not allowed to Invest in LLP:**

- Pakistani / Bangladeshi entity / citizen
- FVCI, RFPI

### ❖ **Meaning of FDI Linked Performance Conditions:**

- FDI linked performance conditions are the sector specific conditions stipulated in regulation 16 of FEMA 20(R) for companies receiving foreign investment

# Foreign Investment by NRI / OCI

## Sch. 6 – Investment in LLP

### ❖ Pricing

- Capital Contribution  $\geq$  FMV worked out as per any Int'l Accepted Valuation Methodology by CA / CMA / Regd. Valuer
- Transfer of Capital Contribution or profit Share from R to NR  $\geq$  FMV & vice versa

### ❖ Payment

- Only Cash Consideration (no CoC as allowed under LLP Act)
- Inward remittance / NRE / FCNR (B) Account

### ❖ Automatic Route Conversion of Co. with FDI into LLP and Conversion of LLP with FDI into Co. only if :

- Sector where FDI up to 100% in Automatic Route
- No FDI linked Performance Conditions

### ❖ Other Conditions

- Designated Partner – must be an Indian Company / Indian Resident
- Resident DP u/s. 7 of LLP Act must be a Resident u/s. 2 of FEMA, 1999
- DP responsible for all compliances and penalties on LLP



# Foreign Investment by NRI / OCI

## Sch. 8 – Investment Vehicle (IV)

- ❖ NRI's may Invest in units of an IV
- ❖ IV is an Indian Vehicle which makes Investments in Indian Companies
- ❖ IV must be Registered with and Regulated by the SEBI or any other Authority under its applicable Regulations
- ❖ NRs would invest in Units of IV which would actually invest in shares / securities of Portfolio Companies / SPVs (against swap of Capital Instruments)
- ❖ Eligible Investors
  - ❖ Any PROI ~ Non-Pakistani / Bangladeshi
  - ❖ RFPI
  - ❖ NRI/ OCI
  - ❖ FVCIs ~ But only in Cat I AIF3
- ❖ Investment terms:
  - ❖ Payment from abroad or NRE / FCNR A/c
  - ❖ Investor can sell / transfer / redeem such units
  - ❖ Subject to relevant SEBI restrictions
  - ❖ Investment is on **Repatriable basis**

# Foreign Investment by NRI / OCI

## Sch. 9 – Investment in Depository Receipts

- ❖ Any security or unit in which a PROI is allowed to invest - eligible instruments for DR
- ❖ A person will be eligible to issue or transfer eligible instruments to a foreign depository for the purpose of **issuance of depository receipts** in accordance with the **DR Scheme, 2014 and guidelines issued by Central Government** in this regard.
- ❖ Domestic custodian may purchase eligible instruments on behalf of PROI, for the purpose of converting into depository receipts
- ❖ The aggregate of eligible instruments shall not exceed the limit on foreign holding of such eligible instruments – **Sectoral limits to apply**
- ❖ The eligible instruments shall not be issued or transferred to a foreign depository - at a price less than the price applicable to a corresponding mode of issue or transfer of such instruments to domestic investors

# Foreign Investment by NRI / OCI

## Sch. 10 – Investment in Indian Depository Receipts (IDRs)

- ❖ Foreign Companies can issue listed Indian Depository Receipts to PRII and PROI
- ❖ IDRs denominated in INR only
- ❖ If financial / banking presence in India by branches then IDR issue requires prior approval of sectoral regulator
- ❖ Proceeds of IDR issue must be repatriated by the Issuer Company
- ❖ **NRI / OCIs** and FPIs can purchase IDRs
  - ❖ **On repatriation basis**
    - ❖ 2-way fungibility possible
    - ❖ Redemption into shares only after 1 year lock-in
- ❖ Redemption/ conversion of IDRs into underlying equity shares in compliance with FEMA regulations
- ❖ E.g. Standard Chartered Plc has issued IDRs listed in India

# Foreign Investment by NRI / OCI

## Transfer of Capital Instruments By / To NRI /OCI

Reg.	Seller	Buyer	Mode of Transfer
10(2)	NRI / OCI (on Repatriation basis)	Any PROI (including NRI / OCI) (on Repatriation or Non Repatriation basis)	Sale / Gift
10(3)	PROI (including NRI / OCI) (on Repatriation or Non Repatriation basis)	PRI	Sale / Gift
10(4)	PRI / NRI / OCI on Non Repatriation basis	Any PROI (including NRI / OCI) (on Repatriation or Non Repatriation basis)	Sale
10(5)	PRI / NRI / OCI on Non Repatriation basis	Any PROI (including NRI / OCI) (only Repatriation basis)	Gift with limits (RBI Approval)
10(6)	NRI / OCI on Non- Repatriation basis	Any NRI / OCI on Non Repatriation basis	Gift

# Import and Export of Foreign Currency



# Foreign Currency

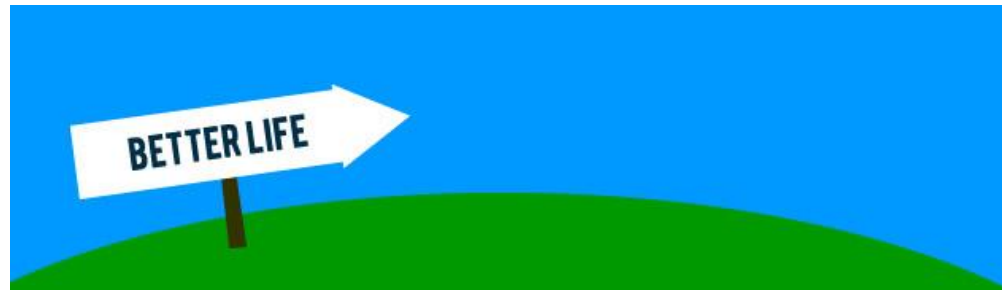
## ❖ Import into India

- **Send** into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques
- **Bring** into India from any place outside India without limit foreign exchange (other than unissued notes), provided:
  - person on arrival in India to make declaration to Custom authorities in Currency Declaration Form (CDF)
  - Declaration not required when, currency notes + bank notes + traveller's cheques at any one time  $\leq$  US\$ 10,000 or equivalent; **and**
  - Currency notes at any one time  $\leq$  US\$ 5,000 or equivalent

## ❖ Export from India

- **Any person** may take or send out of India:
  - Cheques drawn on FC Account in India
  - FC obtained from AD bank on drawal  $\rightarrow$  LRS
  - Currency in the safes of vessels or aircrafts
  - FC possessed u/reg FEM (Possession and Retention of Foreign Currency) Regulations, 2015  $\rightarrow$   $\leq$  US\$ 2,000
  - Unspent FC brought back by him to India while returning from travel abroad  $\rightarrow$   $\leq$  US\$ 2,000
- **PROI**  $\rightarrow$  take out of India unspent FC not exceeding the amount brought in by him and declared in CDF on his arrival in India

# Emigrating Indians



# Emigrating Indians

## ❖ Assets in India: Sec 6(5)

- 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.

## ❖ Bank a/cs

- Resident a/c into NRO a/c
- EEFC and RFC(D) balance can be credited into NRE/FCNR(B) a/c

## ❖ Shares and Securities

- Immediately intimate company, registrar, broker, depository of change in residential status to comply with FEMA Notf. 20 provisions

## ❖ Borrowings and lending

- See *Slide 32* for impact of change in residential status

## ❖ Immovable property – Covered u/s 6(5)

## ❖ Insurance policy

- Can continue to hold life/general insurance policy in India. No permission required for payment of premium

## ❖ Partner in firm or proprietor of concern

- Can continue to remain partner/proprietor. Intimation to be given about change in status. However, loan given to firm / concern to be governed as per *Slide 30*

## ❖ NRI / PIO can become karta of HUF. Residential status of HUF?



# Returning Indians



# Returning Indians

## ❖ Assets abroad: Sec 6(4)

- 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.

## ❖ Bank a/cs

- Redesignation of NRO/NRE/FCNR a/c
- Continuation of Foreign bank accounts covered under Sec 6(4)
- Can take benefit of RFC a/c

## ❖ Shares and Securities – Covered u/s 6(4)

## ❖ Immovable property – Covered u/s 6(4)

## ❖ Insurance policy

- Can continue to hold life/general insurance policy o/s India. No permission required for payment of premium. However, maturity proceeds to be repatriated within 7 days.

## ❖ Partner in firm or proprietor of concern

- Advisable to take RBI permission to continue being partner/proprietor of foreign firm/concern.

## ❖ Movable assets? – Covered u/s 6(4)?

## Section 6(4) - Clarification

- In terms of sub-section 4 of Section (6) of FEMA, a person resident in India is free to 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.
- **Sub-section 4 of Section (6)** of FEMA covers the following transactions:
  - **Foreign currency accounts** opened and maintained by such a person when he was resident outside India;
  - **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;
  - **Foreign exchange including any income arising** therefrom, 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.
- 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 therefor 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.

# Resident Foreign Currency (RFC) Account

Particulars	Resident Foreign Currency (RFC) Account
<b>Who can open the account</b>	<ul style="list-style-type: none"> <li>• Individuals</li> </ul>
<b>Joint account</b>	<ul style="list-style-type: none"> <li>• Jointly with eligible persons; or With resident relative(s) on former or survivor basis</li> </ul>
<b>Type of Account</b>	<ul style="list-style-type: none"> <li>• Current</li> <li>• Savings</li> <li>• Term deposits</li> </ul>
<b>Interest</b>	<ul style="list-style-type: none"> <li>• De-regulated (As decided by the AD bank)</li> </ul>
<b>Tenure</b>	<ul style="list-style-type: none"> <li>• <b>No time limitation</b></li> </ul>
<b>Change of Residential Status</b>	<ul style="list-style-type: none"> <li>• Balance from NRE/FCNR(B) a/c can be credited to RFC A/c</li> </ul>

# Resident Foreign Currency (RFC) Account

## Permitted Credits

- Foreign exchange received by him as **pension/ superannuation/ other monetary benefits from overseas employer**
- **Foreign exchange realized on conversion of the assets referred to in Sec 6(4) of FEMA**
- Gift/ inheritance received from a person referred to in Sec 6(4) of FEMA
- Foreign exchange acquired before the July 8, 1947 or any income arising on it held outside India with RBI permission
- Foreign exchange received as proceeds of LIP claims/ maturity/ surrendered value settled in forex from an Indian insurance company
- Balances in NRE/ FCNR(B) accounts on change in residential status

## Permitted Debits

- **No restrictions on utilization in / outside India**

# General Dos and Don'ts



## DOs for NRI / PIO / OCI

- ❖ Distinguish between PRII & PROI
- ❖ Distinguish current account transactions from capital account transactions
- ❖ Inform respective persons of the change in residential status
- ❖ Plan ahead- keep a track of investments made from rupee funds in India and funds remitted from abroad
- ❖ Understand repatriability of sale proceeds of assets located in India
- ❖ Comply with statutory guidelines for filing documents / reporting requirements for different transactions in India & abroad (e.g. FBAR, FATCA)
- ❖ Give Power of Attorney for all Indian matters to trusted persons
- ❖ Follow custom baggage rules for movable assets when transfer of residence
- ❖ Take benefit of OCI card scheme
- ❖ Accept rupee gift from close relative under LRS
- ❖ Can gift in INR to from NRO/NRE a/c to relatives & non-relatives

## DON'Ts for NRI / PIO / OCI

- ❖ Executing Capital Account transactions which are prohibited / not covered by a general permission
- ❖ Effecting current account transactions which are prohibited / restricted
- ❖ Instructing residents to make onward payments on their behalf (exception given under Regulation 6(2) of Notification No. FEMA 14(R)/2016-RB dated May 2, 2016 – for Medical expenses, boarding, lodging, travel within India)
- ❖ “Netting off” of transactions with residents
- ❖ Receiving gifts of movable property from resident relatives not expressly allowed
- ❖ Cannot open, cannot renew, cannot make additional contribution to PPF a/c in India
- ❖ Check eligibility for Aadhar
- ❖ Cannot accept cash gift in INR / forex from PRI. (Allowed only through banking channels under LRS limit – INR gift from relative and forex gift from relative as well as non-relative)
- ❖ Cannot borrow from resident relative in forex even under LRS limit



# Thank You



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