Overview of FEMA

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Framework of FEMA

Framework of FEMA

Overview of Foreign Exchange Management Act

- **Statement of Objects of FEMA:**

An Act to consolidate and amend the law relating to foreign exchange with the objective of *facilitating external trade and payments* and for *promoting the orderly development and maintenance of foreign exchange market* in India.

- **Jurisdiction of FEMA:**
  - Whole of India (including J&K)
  - Extra-territorial jurisdiction (since it applies even to branches, offices and agencies o/s India owned & controlled by a PRI)
- **Policy Instruments under FEMA:**
  - Notifications by RBI + CG for making / revising Regulations and Rules
  - A.P.(Dir Series) Circular by RBI
  - Press Notes by DIPP
  - Master Directions by RBI
  - FDI Policy by DIPP
- **Overall Scheme of FEMA:**
  - All current account transactions are freely permitted. However, CG can impose reasonable instructions.
  - Capital account transactions are permitted to the extent allowed by RBI/CG
  - RBI authorizes 'Authorized Persons' to deal in foreign exchange.

Framework of FEMA

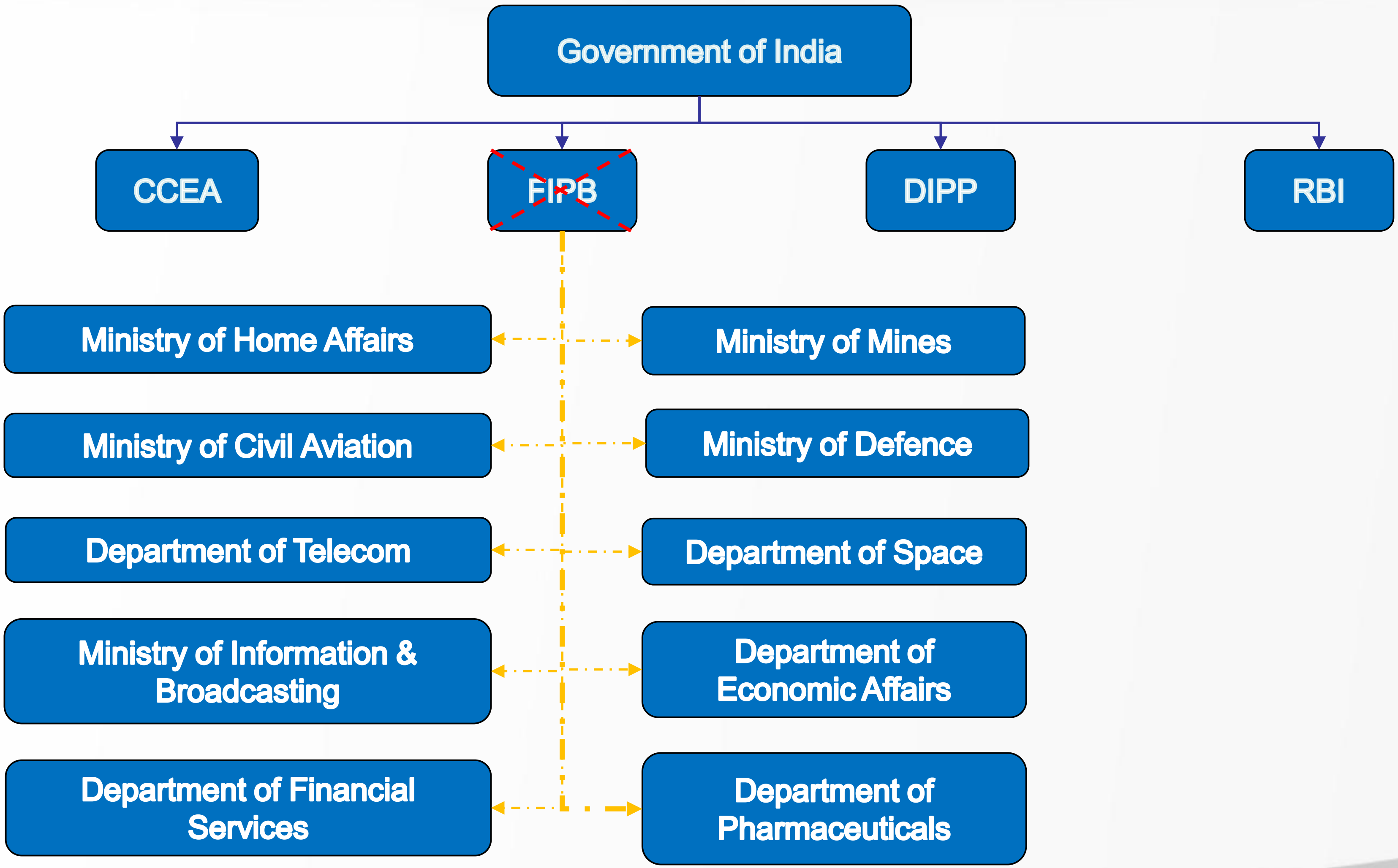
Overview of Foreign Exchange Management Act

- **Structure of FEMA:**

Chapter	Chapter title	Subject	Sections
I	Preliminary	Jurisdiction, Definitions	1-2
II	Regulation & Management of Forex	• Restriction on dealing with PROI • Holding of forex • Current a/c transactions • Capital a/c transactions • Export of goods & services • Realisation and repatriation of forex with exemptions	3-9
III	Authorised Persons	Provisions relating to Authorised Persons	10-12
IV	Contravention and Penalties	Provisions relating to Contravention, its consequences and Compounding	13-15
V	Adjudication and Appeal	• Provisions relating to terms of service, composition, appointment of Adjudicating Authority, Members to Appellate Tribunal • Provisions relating to Appeal to Special Director (Appeals), Appellate Trubunal and High Court	16-35
VI	ED	Provisions relating to Appointment & Powers (*37A*)	36-38
VII	Miscellaneous	Power to make Rules and Regulations, etc	39-49

Framework of FEMA

Administration of FEMA



Important definitions - Residence

- **Sec 2(u) - Person:**
  - Individual
  - Hindu undivided family,
  - Company,
  - Firm
  - AOP/BOI
  - Artificial juridical person
  - any agency, office or branch owned or controlled by such person
- **Sec 2(v) – Person Resident in India:**
  - **Individuals**
    - ***Basic Rule:*** > 182 days in preceding FY
    - ***Exception 1 to Basic Rule:*** Gone 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:*** Come 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

Framework of FEMA

Important definitions – Residence & Others

- **Sec 2(v) – Person Resident in India:**
  - **Other than Individuals**
    - any person or body corporate registered or incorporated in India
    - an office, branch or agency in India owned or controlled by PROI
    - an office, branch or agency outside India owned or controlled by PRI

- **Sec 2(l) – Export:**
  - the taking out of India to a place outside India any goods,
  - provision of services from India to any person outside India

- **Sec 2(p) – Import:**
  - means bringing into India any goods or services

- **Sec 2(ze) – Transfer:**
  - includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien

Framework of FEMA

Capital a/c transactions vs. Current a/c transactions

- **Sec. 2(e) – Capital a/c transaction:**
  - transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6

Vs.

- **Sec 2(j) – Current a/c transaction:**
  - transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,
    - payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
    - payments due as interest on loans and as net income from investments,
    - remittances for living expenses of parents, spouse and children residing abroad, and
    - expenses in connection with foreign travel, education and medical care of parents, spouse and children;

Capital Account vs. Current Account Transactions

Capital a/c transactions vs. Current a/c transactions

FEMA Notf. 1 – Permissible Capital a/c transactions

❖ **Schedule I – For PRI:**

a) Investment by a person resident in India in foreign securities
b) Foreign currency loans raised in India and abroad by a person resident in India
c) Transfer of immovable property outside India by a person resident in India
d) Guarantees issued by a person resident in India in favour of a person resident outside India
e) Export, import and holding of currency/currency notes
f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India
g) Maintenance of foreign currency accounts in India and outside India by a person resident in India
h) Taking out of insurance policy by a person resident in India from an insurance company outside India
i) Loans and overdrafts by a person resident in India to a person resident outside India.
j) Remittance outside India of capital assets of a person resident in India
k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India

Capital a/c transactions vs. Current a/c transactions

FEMA Notf. 1 – Permissible Capital a/c transactions

❖ **Schedule II – For PROI:**

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;

   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.

Capital a/c transactions vs. Current a/c transactions

Permissible Capital a/c transactions

- **Sec. 6(4) – PRI:** Assets abroad
- **Sec. 6(5) – PROI:** Assets in India
- **LRS and Capital account transactions:**
  - Opening of foreign currency a/c abroad with a bank;
  - Purchase of property abroad;
  - Making investments abroad – acquisition & holding shares of both listed and unlisted overseas company or debt instruments;
  - Acquisition of qualification shares of an overseas company for holding the post of Director;
  - Acquisition of shares of a foreign company towards professional services rendered or in lieu of Director's remuneration;
  - Investment in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes;
  - Outbound investment;
  - Extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 1956

Capital a/c transactions vs. Current a/c transactions

GSR 381(E) – Current a/c transactions

- **Schedule I – Transactions which are prohibited**
- **Schedule II – Transactions which require prior approval of Central Government**
- **Schedule III – Transactions requiring RBI approval above certain limits**
  - **LRS transactions for Individuals**
    - Private visits
    - Gift/donation
    - Going abroad on employment
    - Emigration
    - Maintenance of close relatives abroad
    - Business trip
    - Medical treatment abroad
    - Facilities available to students for pursuing their studies abroad (Also see Circular 45 of 2003)

Capital a/c transactions vs. Current a/c transactions

GSR 381(E) – Current a/c transactions

- **Schedule III – Transactions requiring RBI approval above certain limits**
  - **Other facilities for persons other than individuals**
    - Donations
      - » Creation of chair
      - » Contribution to funds promoted by educational institution
      - » Contribution to technical institution
    - Commission to foreign agents for sale of residential/commercial plots in India
    - Remittances for consultancy services procured from outside India
    - Remittance for re-imbursement of pre-incorporation expenses

Setting up of Office in India

Overview

Governing Provisions for Establishing LO/BO/PO in India by Foreign Entities

- FEMA Notification No. 22(R)/RB-2016 dated March 31, 2016 amended from time to time
- FED Master Direction No. 10/2015-16 – Establishing of LO/BO/PO of foreign entities in India updated as on 10/05/2018
- FAQs on LO/BO/PO of foreign entities in India as on 26/12/2016

As per section 2(v)(iii) of FEMA,1999, an office, branch or agency owned or controlled by a person resident outside India will be treated as a person resident in India.

Setting Up Procedures

Establishment of LO/BO/PO – General permission

- Foreign Insurance companies prior approval → IRDA
- Foreign Banks prior approval → DBOD
- BO in SEZ to undertake manufacturing and service activities no approval required provided →
  - ✓ such BOs are functioning in those sectors where 100% FDI is permitted;
  - ✓ such BOs comply with Chapter XXII of the Companies Act, 2013; and
  - ✓ such BOs function on a stand-alone basis (viz. no business activity / transaction to be allowed outside SEZ)

Eligibility Criteria for setting up BO/LO

Branch Office

- Profit making track record of the foreign entity during the immediately preceding 5 Financial Years
- Net worth of not less than USD 1,00,000/- or its equivalent

Liaison Office

- Profit making track record of the foreign entity during the immediately preceding 3 Financial Years
- Net worth of not less than USD 50,000/- or its equivalent

- *Provided that a person resident outside India that is not financially sound and are subsidiaries of other companies may submit a Letter of Comfort from their parent company subject to the condition that the parent company satisfies the prescribed criterion for net worth and profit.*

Establishment of LO/BO/PO – Approval by AD

- **<u>To set up LO & BO:</u>**
  - Prior approval → <u>AD Bank (Form FNC)</u>

- **<u>To set up PO:</u>**
  - Prior approval → <u>AD Bank (Form FNC)</u> provided:
    - Foreign company has secured a contract from an Indian company to execute a project in India; *and*

      I. the project is funded directly by inward remittance from abroad; <u>or</u>

      II. the project is funded by a bilateral or multilateral International Financing Agency; <u>or</u>

      III. the project has been cleared by an appropriate authority; <u>or</u>

      IV. a company or entity in India awarding the contract has been granted term loan by a Public Financial Institution or a bank in India for the Project.
    - Foreign company has been awarded a contract for a project by a Government authority / PSU

Establishment of LO/BO/PO – Prior RBI Approval

In the following cases for setting up of LO/BO/PO in India, prior approval of RBI is required:

- ***Nation Specific:*** Applicant is a citizen of or is registered/incorporated in Pakistan.

- ***Region Specific:*** Applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau **and** the application is for opening a LO/BO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands.

- ***Sector Specific:*** The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting.

- ***Organizational Specific:*** The applicant is a Non-Government Organization, Non-Profit Organization, Body/ Agency/ Department of a foreign government.

Permissible Activities

Permitted activities - BO

- Export/Import of goods
- Rendering Professional / Consultancy Services
- Research work in which parent company is engaged
- Promoting Technical/ Financial Collaborations
- Acting as an agent
- Rendering IT & Software services
- Representing a Foreign Airline/ Shipping Company
- Rendering technical support to products supplied by parent/ group companies

Permitted activities - LO & PO

Liaison Office :

- Representing Parent/ Group Company
- Promoting Export & Import from / to India
- Promoting Technical/ Financial Collaborations between Parent/ Group Companies & Companies in India
- Acting as communication channel between Parent Company & Indian Company.

Project Office :

- Execute a contract / project in India and activities relating to execution of project

Comparison – Regulatory Aspects

LO/BO/PO – Regulatory Aspects

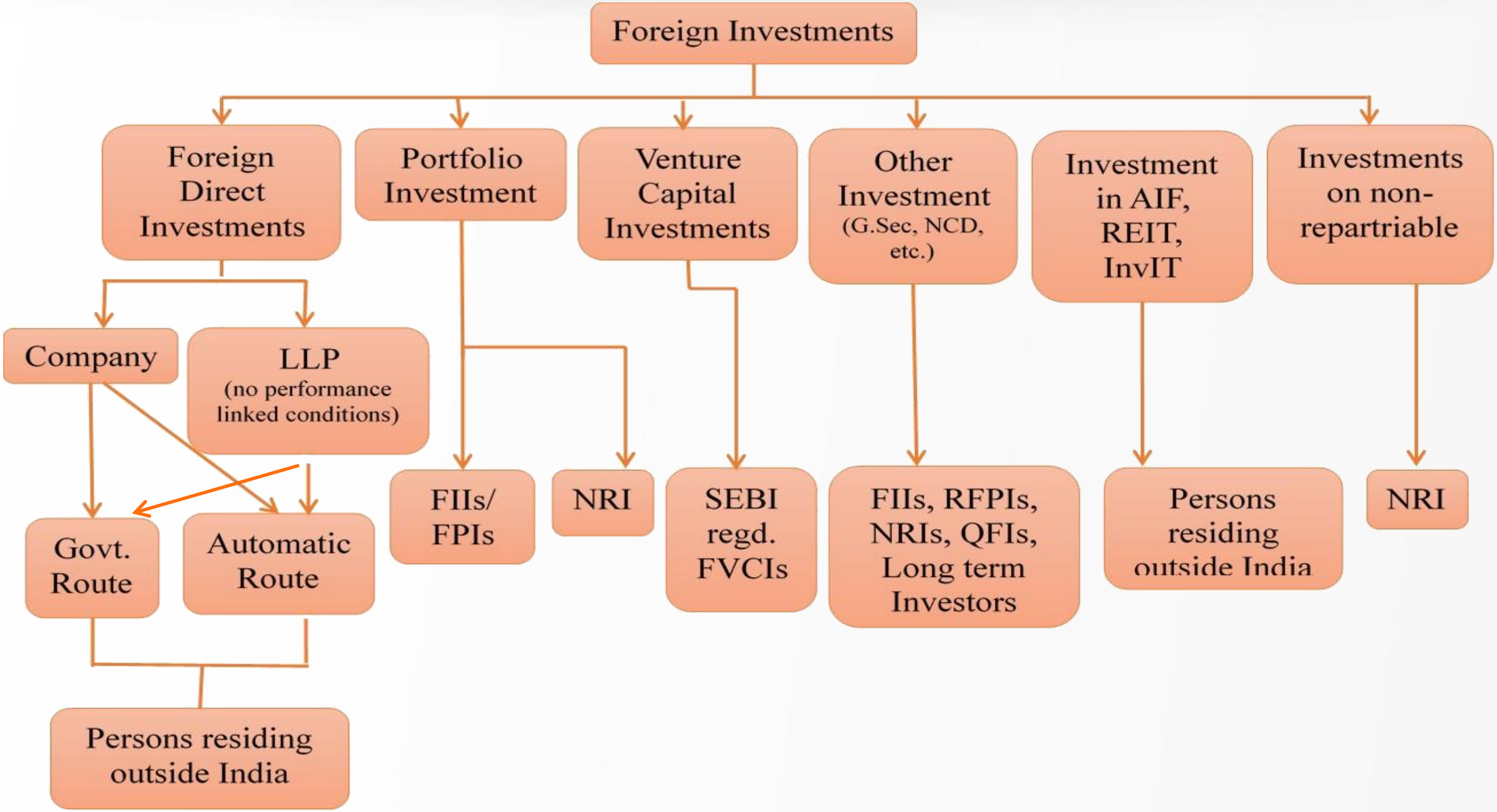
Basis	Project Office (PO)	Branch Office (BO)	Liaison Office (LO)
Regulatory Approvals (FEMA)	Intimation to AD Bank	• Application in Form FNC to be made to obtain permission to establish BO • UIN allotted by RBI	• Application in Form FNC to be made to obtain permission to establish LO • UIN allotted by RBI • File for extension after completion of 3 years
Company Law Registration	• Application in prescribed form to be made to ROC in 30days of the establishment • ROC shall issue 'Certificate of Establishment of place of Business in India'		
Income Tax Act, 1961	• Tax registrations for PO/ BO/ LO – PAN and TAN • In respect of deployed employees – PAN		
Indirect Tax Registrations	• GST (If Applicable) • Customs registration (If Applicable)		
Other allied Registrations	• Registration under Employees Provident Fund Account • Shop and Establishment registration		

LO/BO/PO – Regulatory Aspects

Basis	Project Office (PO)	Branch Office (BO)	Liaison Office (LO)
Compliance Requirements	RBI → Annual Activity Certificates (AAC) to be filed within six months from the end of the financial year Companies Act → Annual Filing of Audited Accounts Indirect Taxes → Filing of Periodical Tax returns wherever required		
Basis of Taxation	• Taxable presence • Taxed on income pertaining to Indian Operations • Taxed as Foreign company		• Non-taxable presence • Not permitted to carry out business/ commercial activities in India
Income Tax Compliances	• Income Tax Return to be filed • Transfer Pricing Audit report in Form 3CEB • TDS / WHT compliances in prescribed form		• Form 49C filed electronically with Digital Signature • Copy of the AAC (filed with RBI) to be filed with Income Tax Authorities • TDS / WHT Compliances in prescribed form

Inbound Investments

Inbound Investments
Notification No. FEMA 20(R)/2017-RB dated November 7, 2017



Foreign Investment - Important Definitions

- **<u>Foreign Investment</u>**

  '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;

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

- **<u>Foreign Direct Investment (FDI)</u>**

  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;

  - **<u>Note:</u>** 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 - Important Definitions (Cont)

- **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 - Important Definitions (Cont)

- **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 - Important Definitions (Cont)

- **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;

Entry Routes for Inbound Investments
(Regulation 10 of FEMA 20(R))

Sch. No.	Reg.	Particulars
1	5(1)	Purchase / Sale of Capital Instruments of an Indian company by a person resident outside India
2	5(2)	Purchase / Sale of Capital Instruments of a listed Indian company on a recognized stock exchange in India by FPI
3	5(3)	Purchase/ Sale of Capital Instruments of a listed Indian company on a recognised stock exchange in India by NRI or OCI on repatriation basis
4	5(4)	Investment on non-repatriation basis by NRI or OCI
5	5(5)	Purchase and sale of securities other than capital instruments by a person resident outside India
6	5(6)	Investment in a LLP
7	5(7)	Investment by FVCI
8	5(8)	Investment by a person resident outside India in an Investment Vehicle
9	5(9)	Investment in Depository Receipts by PROI
10	5(10)	Issue of Indian Depository Receipts

Exit Routes for Inbound Investments
(Regulation 10 of FEMA 20(R))

Reg.	Seller	Buyer	Mode of Transfer
10(1)	PROI (Other than NRI / OCI / OCB)	Any PROI (including NRI / OCI) (on Repatriation or Non Repatriation basis)	Sale / Gift
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
10(8)	OCB	▪ NRI ▪ PRI	▪ Sale / Gift ▪ Sale
10(9)	PRI / PROI	PROI / PRI	Sale (deferred consideration)

Acquisition through Rights Issue or Bonus Issue

- PROI having investment in Indian company may acquire capital instruments (other than share warrants) issued by such company as a rights issue or a bonus issue provided that:
  - The offer is in compliance with the provisions of the Companies Act, 2013:
  - Such issue shall not result in a breach of the sectoral cap applicable to Indian company;
  - Original shareholding must have been acquired and held as per the provisions of FEMA 20/20(R);
  - For listed Indian company: Rights issue to persons resident outside India shall be at a price determined by the company;
  - For unlisted Indian company: Rights issue to persons resident outside India shall not be at a price less than the price offered to persons resident in India.
  - The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.
  - If the original investment has been made on a non-repatriation basis, the amount of consideration may also be paid by debit to the NRO account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.
- An individual who is a person resident outside India exercising a right which was issued when he/ she was a person resident in India can hold the capital instruments so acquired on exercising the right on a non-repatriation basis.

Renunciation of entitlement + Issue of ESOP

Renunciation of rights

- PRI & PROI can subscribe for additional shares over and above the shares offered on rights basis by the company and also renounce the shares offered either in full or part thereof in favour of a person named by them.
- Pricing guidelines to be followed
- Rights shares shall be subject to the same conditions including restrictions in regard to repatriability as applicable to the original shareholding.

Issue of Employees' Stock Options Scheme (ESOP) and Sweat Equity Shares

An Indian company is permitted to issue "employees' stock option" and/ or "sweat equity shares" to its employees/ directors or employees/ directors of its holding company or joint venture or wholly owned overseas subsidiary/ subsidiaries who are resident outside India, subject to the following conditions:

- Compliance with SEBI Regulations or the Companies (Share Capital and Debentures) Rules, 2014;
- Compliance with the sectoral cap applicable to the said company;
- Issue of "employee's stock option"/ "sweat equity shares" in a company where investment by a person resident outside India is under the approval route requires prior Government approval.

Merger / Demerger / Amalgamation of Indian companies

Issue of Capital Instruments upon Merger / Amalgamation / Demerger:

Upon approval by National Company Law Tribunal (NCLT)/ Competent Authority, the transferee company or the new company, as the case may be, can issue capital instruments to the existing holders of the transferor company who are resident outside India, subject to the following conditions:

- The transfer or issue should comply with entry routes, sectoral caps or investment limits, as the case may be, and the attendant conditionalities of foreign investment;
- In case the foreign investment is likely to breach the Sectoral caps or the attendant conditionalities, the transferor company or the transferee or the new company should obtain necessary Government approval;
- The transferor company or the transferee company or the new company should not be in a sector prohibited for foreign investment.

Issue of Redeemable NCPS / Redeemable NCD as bonus in Scheme of Arrangement:

Upon approval by National Company Law Tribunal (NCLT)/ Competent Authority, the Indian company can issue such instruments to shareholders who are resident outside India, out of its general reserves by way of distribution as bonus, subject to the following conditions:

- The original investment made in the Indian company by a person resident outside India is in accordance with FEMA 20(R) and the conditions specified therein;
- The said issue is in accordance with the provisions of the Companies Act, 2013 and the terms and conditions, if any, stipulated in the scheme approved by National Company Law Tribunal (NCLT)/ Competent Authority;
- The Indian company is not engaged in any activity/ sector in which foreign investment is prohibited.

Cross Border Merger – Inbound Merger

Company Law:

•**Position under Companies Act, 1956** [Section 394(4)(b)]: "*a "transferee company" does not include any company other than a company within the meaning of this Act, but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.*" Accordingly, "transferee company" could only be an Indian company while a "transferor company" could include foreign companies as well. Therefore, only inbound cross-border mergers were possible and not outbound mergers.

•**Companies Act, 2013:** MCA notified Sec. 234 w.e.f. 13.04.2017 enabling inbound as well as outbound mergers.

Foreign Exchange Management (Cross Border Merger) Regulations, 2018

[Notification No. FEMA.389/2018-RB Dated: March 20, 2018]

•'Inbound merger' means a cross border merger where the resultant company is an Indian company;

•The resultant company may issue or transfer any security and/or a foreign security, as the case may be, to a person resident outside India in accordance with the pricing guidelines, entry routes, sectoral caps, attendant conditions and reporting requirements for foreign investment as laid down in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017.

•Any transaction on account of a cross border merger undertaken in accordance with these Regulations shall be deemed to have prior approval of the Reserve Bank as required under Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016.

Downstream Investment

Downstream Investment:

- Total Foreign investment in a company = Direct + Indirect Foreign Investment
- 'Downstream investment' means indirect foreign investment, by an eligible Indian entity, into another Indian company /LLP, by way of subscription or acquisition.
- 'Ownership' shall mean:
  - A **Company** shall be considered as owned by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens.
  - A **Limited Liability Partnership** will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/ or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share.
- 'Control' shall include:
  - **Company** – Right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

Downstream Investment (Cont.)

Downstream Investment:

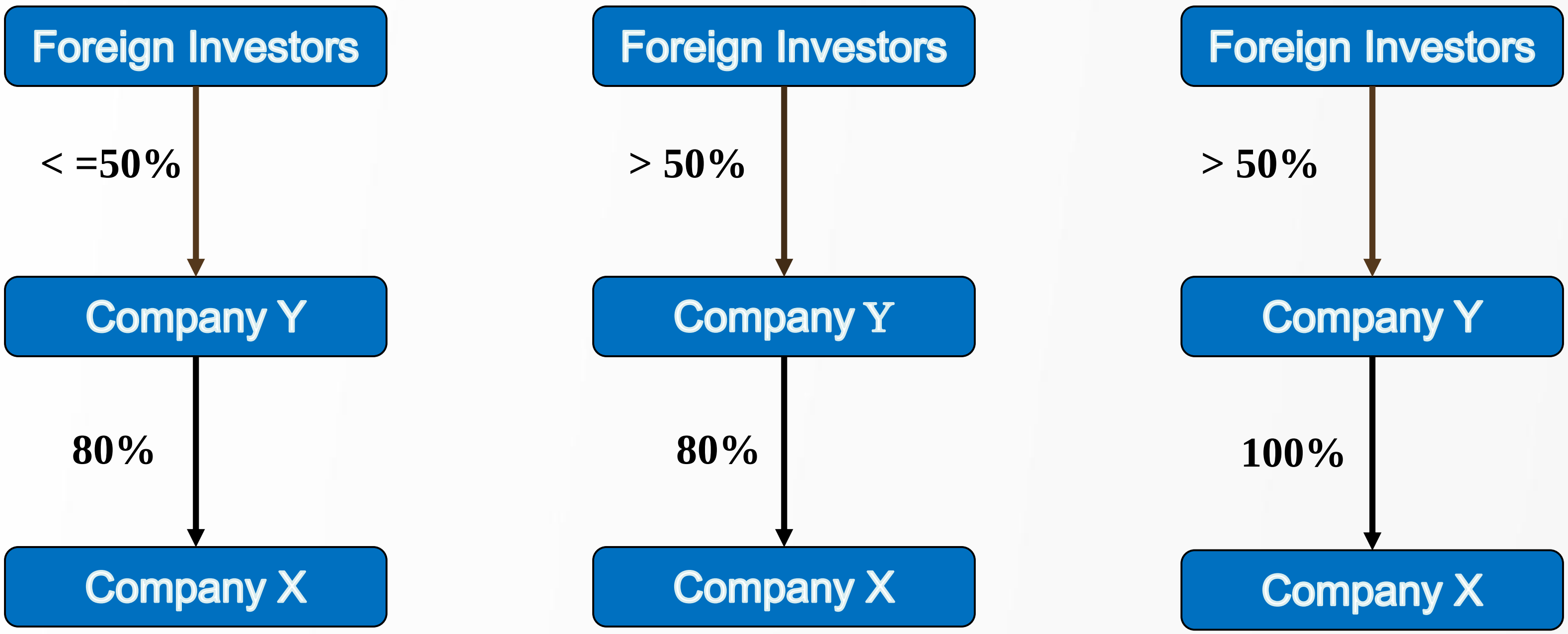
- 'Control' shall include:
  - **Limited Liability Partnership** – Right to appoint majority of the designated partners, where such designated partners, with specific exclusions to others, have control over all the policies of Limited Liability Partnership.
- If the investing company / LLP is owned *or* controlled by 'non-resident entities', the entire investment by the investing company /LLP into the subject Indian Company / LLP would be considered as indirect foreign investment. Otherwise, indirect foreign investment would be taken as the percentage of downstream investment.
- Downstream investments which is treated as Indirect Foreign Investment for the investee Indian entity can be made through by bringing in requisite funds from abroad or through internal accruals. For this purpose, internal accruals will mean profits transferred to reserve account after payment of taxes.
- Foreign investment in investing companies registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank, will be under 100% automatic route.
- When Indian investing company does not have any operations at the time of downstream, investment and subsequently commences business(s), it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

Downstream Investment (Cont.)

Downstream Investment:

- Examples:

Indian Company Y has received foreign investment from non-resident investors. Company Y makes further investment into Indian Company X.



Verdict for Total Indirect Investment in Company X:

0% since Co. Y owned by Resident Indian citizens	80% since Co. Y is not owned by Resident Indian citizens	100% of FDI in Co. Y since mirror image

Downstream Investment (Cont.)

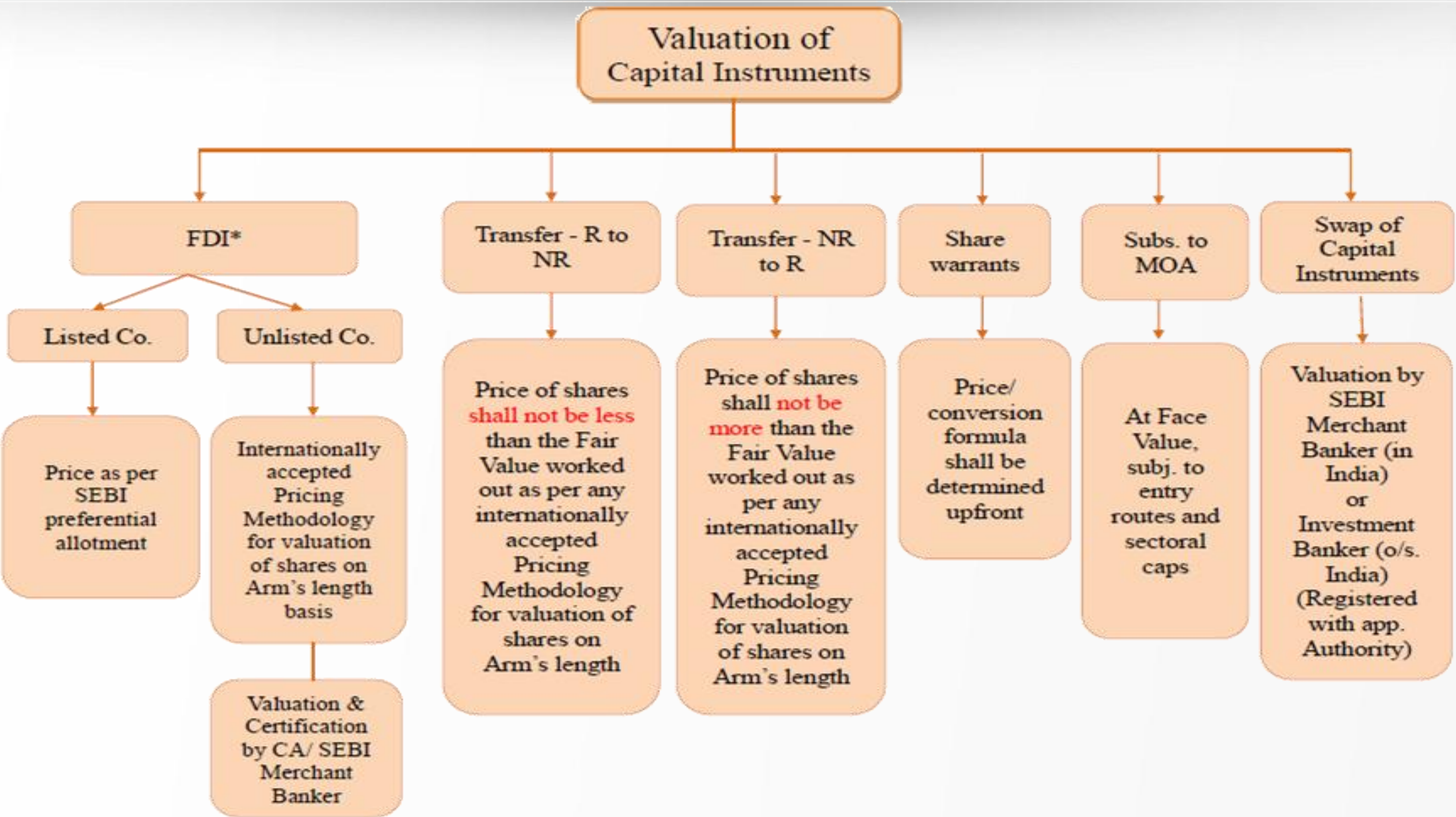
Transfer of Downstream Investment:

Transferor	Transferee
First level IndCo / LLP	PROI
First level IndCo / LLP	PRI
First level IndCo / LLP	Comparable first level IndCo / LLP

Compliance Obligation:

- First level Indian company making downstream investment to be responsible for ensuring compliance with provisions of these regulations for the downstream investment made by it at second level and so on and so forth.
- Such first level company to obtain a certificate to this effect from its statutory auditor on an annual basis.
- Such compliance of these regulations to be mentioned in the Director's report in the Annual Report of the Indian company.
- In case statutory auditor has given a qualified report, the same needs to be immediately brought to the notice of the Regional Office of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the RO.

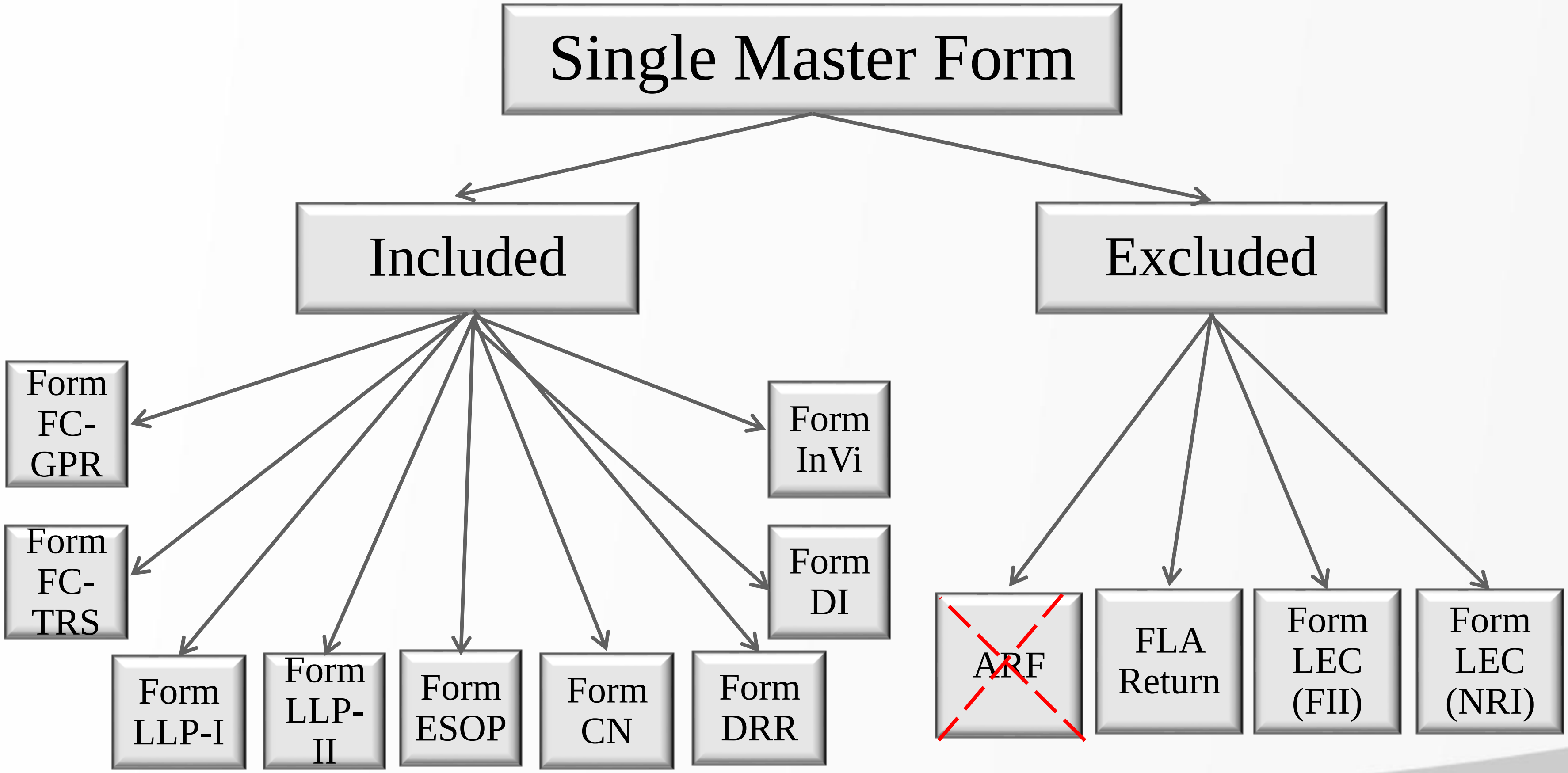
Pricing Guidelines



*For Convertible capital instruments, price / conversion formula to be determined upfront. Further, price at the time of conversion cannot be < fair value determined at the time of issuance.

Comprehensive Reporting Requirment

- With the objective of integrating the extant reporting structures of various types of foreign investment in India, a Single Master Form (SMF) for reporting of foreign investments by companies/LLPs/Start-ups in India has been prescribed. It is a single stop form for all reporting relating to foreign investment subsuming all previously notified forms. The SMF is to be filed online.



Comprehensive Reporting Requirment

- **Salient features of SMF:**
  - Unlike Entity Master credentials which is entity specific, business user credentials can be obtained by any individual / entity which is required to make filing in SMF essentially making it transaction type specific.
  - Pre-transaction values in Shareholding Pattern are fetched from details entered previously in Entity Master.
  - ARF is no longer required to be filed.
  - Substantial stakeholder responsibility placed on AD bank for processing all forms in SMF.

- **Issues in filing SMF**
  - Before completion of processing of previous form filing in SMF, additional forms cannot be filed.
  - If for any reason form is rejected after filing, entire form needs to be filed again since there is no resubmission option.
  - Forms submitted on e-biz and not processed now need to be filed physically as per informal guidance.
  - Late fees need to be paid even if forms have been approved with delay.

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**

Schedule 1 to FEMA 20(R)

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 (SAST) 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.

Schedule 1 to FEMA 20(R) (Cont.)

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**
- **<u>Mode of Payment</u> → Inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ Escrow account**
- **<u>Remittance of sale proceeds</u> → 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]**

Schedule 4 to FEMA 20(R)

Schedule 4 – Investment on Non-Repatriable Basis

- Non-Repatriable means -
  - Only Dividend / Interest can be sent back abroad
  - Principal + Gains cannot be repatriated

A. **<u>Purchase/ sale of capital instruments or convertible notes or units or contribution to the capital of an LLP</u>**

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

Schedule 4 to FEMA 20(R) (Cont.)

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]

Schedule 4 to FEMA 20(R) (Cont.)

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]

Schedule 6 to FEMA 20(R)

Schedule 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. [E.g. FS, Real Estate, Single Brand Retail]
- 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
- FPI

❖ **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

Schedule 6 to FEMA 20(R) (Cont.)

Schedule 6 – Investment in LLP

❖**Pricing**

- Capital Contribution ≥ 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 ≥ FMV & vice versa

❖ **Payment**

- Only Cash Consideration (no CoC as allowed for FDI)
- 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 :**

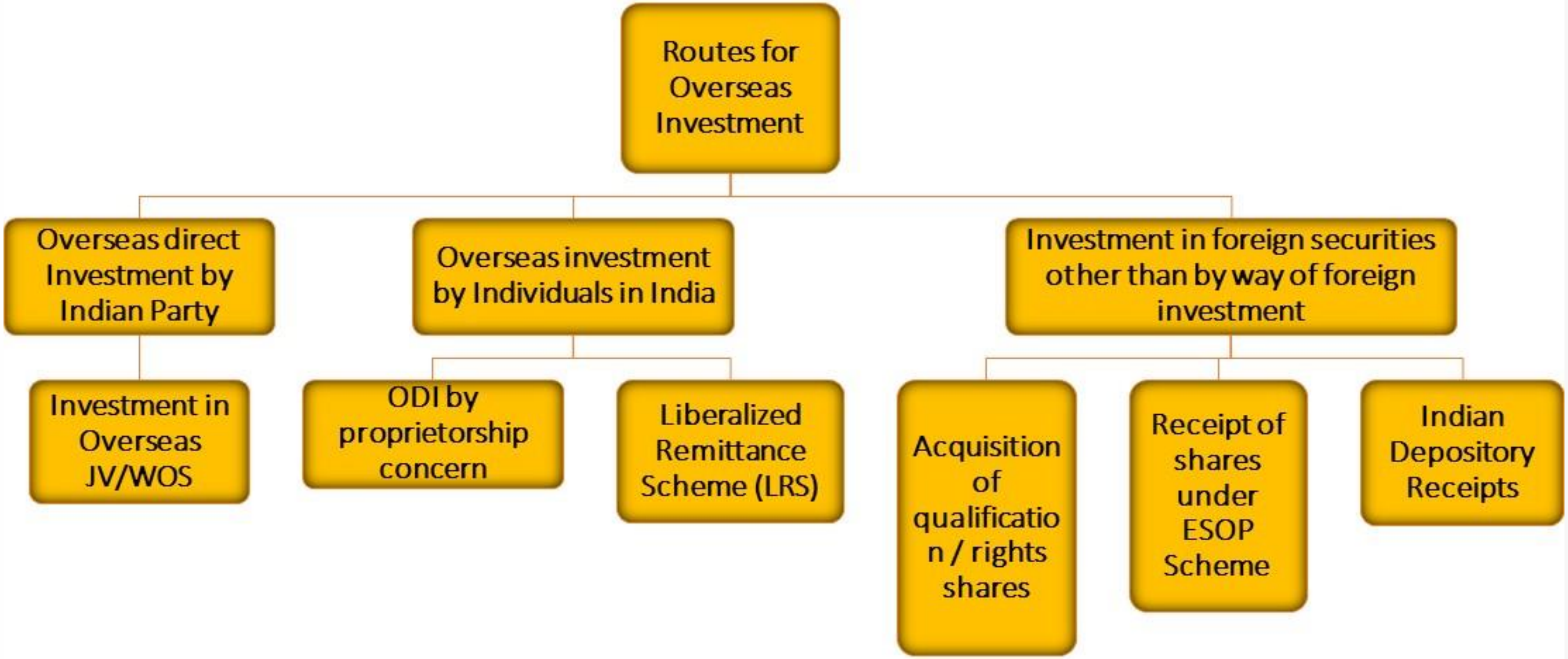
- Sector where FDI up to 100% in Automatic Route
- No FDI linked Performance Conditions

❖**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
- LLPs cannot avail ECBs

Outbound Investments

Outbound Investments



Outbound Investments

- **Eligible Investors:**
  - An **Indian Party** who is -
    - A company incorporated in India; or
    - A body created under an Act of Parliament; or
    - A Partnership Firm registered under the Indian Partnership Act, 1932
    - Any other entity in India as may be notified by the Reserve Bank
  - **Resident Individual**
  - **Proprietary / Unregistered Firm**
  - **Trust / Society**
  - **Un-incorporated Entities**

Approval Route

Outbound Investments

Important definitions

➢ **<u>Direct Investment Outside India:</u>**

- Investment by way of contribution to the Capital or Subscription to Memorandum of Association of a Foreign entity; OR
- Investment by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange but does not include portfolio investment

➢ **<u>Joint Venture (JV):</u>**

A foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian party makes a direct investment

➢ **<u>Wholly Owned Subsidiary (WOS):</u>**

A foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian party

No specific % of investment specified for regarding a foreign entity as JV – therefore, even nominal investment may result in foreign entity being regarded as JV

Outbound Investments

Approval Route and Automatic Route

- **Automatic Route**
  - ODI upto 400% of net-worth
  - ODI by Indian Party engaged in financial services sector (subject to prescribed conditions)
  - ODI in Oil Sector (subject to prescribed conditions
- **Approval Route**
  - ODI not meeting conditions prescribed for automatic route
  - ODI by Registered Trusts/ Societies
  - ODI by Proprietary Concerns/ Unregistered Partnership Firms

Outbound Investments

➢ **Criteria for ODI under Automatic Route:**

- Financial Commitment up to 400% of Net worth (covered in later slide)
- Valuation requirements (covered in later slide)
- All transactions relating to a JV / WOS routed through one branch of an AD bank
- Indian Party not on RBI's caution list / under investigation by enforcement agency
- Indian subsidiary is required to report its investments in form ODI to the AD bank (covered in later slide)
- Submission of APR by December each year in respect of all overseas investments

Outbound Investments

➢**Total <u>Financial Commitment</u> in all JV/WOS includes :**

a. 100% of the amount of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS);

b. 100% of the amount of other preference shares;

c. 100% of the amount of loan;

d. 100% of the amount of guarantee (other than performance guarantee) issued by the Indian Party;

e. 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian Party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian Party.

f. 50% of the amount of performance guarantee issued by the Indian Party provided that if the outflow on account of invocation of performance guarantee results in the breach of the limit of the financial commitment in force, prior permission of the Reserve Bank is to be obtained before executing remittance beyond the limit prescribed for the financial commitment.

➢The Indian Party may extend loan / guarantee only to an overseas JV / WOS in which it has equity participation – Pre-requisite for loan

Outbound Investments

Total Financial commitment of Indian party in JV/ WOS abroad $\leq$ **400% of Net-worth of Indian party as on date of last audited balance sheet**

Earlier Position	Intermediate Position	Current Position
Total financial commitment by an Indian Party in JV/WOS (Indian Company investing in the overseas unincorporated entities in the energy and natural resources sectors) not to exceed 400% of its net worth as on date of last audited B/S under Automatic Route	• Reduction the existing limit of 400% to 100% of net worth of Indian party (Indian Company investing in the overseas unincorporated entities in the energy and natural resources sectors) under Automatic Route. • <u>Any ODI in excess of 100% of the net worth to be considered under Approval Route by RBI</u>. (Exception: ECB funded ODI)	• A.P. (DIR Series) Circular No. 1 dated 3rd July 2014 • Restoration of Limit to 400% of net worth. • Any financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year would <u>require prior approval of the RBI</u> even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet)

Ceiling of 400% not to apply in case of ODI out of balances held in EEFC account

Outbound Investments

➢**Business Activity of Overseas JV/WOS:**

- ODI ***prohibited*** from making direct investment in foreign entity engaged in business of –
  - –***Real estate***
  - –***Banking***
- ODI in ***financial services sector*** by an Indian Party permissible subject to *conditions*
- All other ***bonafide business activities*** permissible

➢ **Valuation of Investments in shares of existing company:**

Investment Amount	Valuation requirement
If investment exceeds USD 5 mn	• Category I Merchant Banker registered with SEBI; or • Investment banker / Merchant banker outside India registered with appropriate authority in the host country
In all other cases	• Chartered Accountant; or • Certified Public Accountant

Outbound Investments

- **<u>Reporting of Form ODI</u>**

Part I – Application for allotment of Unique Identification Number (UIN) and reporting of Remittances / Transactions:

Section A – Details of the IP / RI.

Section B – Capital Structure and other details of JV/ WOS/ SDS.

Section C - Details of Transaction/ Remittance/ Financial Commitment of IP/ RI.

Section D – Declaration by the IP/ RI.

Section E – Certificate by the statutory auditors of the IP/ self-certification by RI.

Part II - Annual Performance Report (APR)

Part III – Report on Disinvestment by way of

- Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of overseas JV / WOS;
- Sale/ Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident;
- Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of IP; and
- Buy back of shares by the overseas JV/ WOS of the IP / RI.

Outbound Investments

- **Methods of Funding :**

- Investment (or financial commitment) in an overseas JV / WOS may be funded out of one or more of the following sources:
  - Drawal of foreign exchange from an AD bank in India;
  - Capitalisation of exports;
  - Swap of shares;
  - Proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
  - In exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued thereunder from time to time by the Government of India;
  - Balances held in EEFC account of the Indian Party and
  - Proceeds of foreign currency funds raised through ADR / GDR issues.
- General permission to persons resident in India for purchase/ acquisition of securities :
  - Out of funds held in RFC account;
  - As bonus shares on existing holding of foreign currency shares; and
  - When not permanently resident in India, out of their foreign currency resources outside India

Outbound Investments

Setting up JV / WOS outside India by Resident Individuals

- **<u>Overseas Direct Investments by Resident Individuals:</u>**
- Resident individual (single or in association with another resident individual or with an 'Indian Party' may make overseas direct investment in the *equity shares and compulsorily convertible preference shares* of JV/WOS outside India subject to following :
  - JV or WOS should **not be engaged** in the **real estate business** or **banking business** or in the **business of financial services activity.** Only **bonafide business activity**.
  - JV/WOS **cannot be located in "non co-operative countries & territories"** as identified by FAFT
  - Resident individual **cannot be on the RBI's Exporters Caution List** or **List of defaulters to the banking system** or **under investigation** by any investigation / enforcement agency or regulatory body
  - Permissible **ceiling limit is permissible amount under LRS** from time to time**. No exception** for investment out of **EEFC/RFC A/c** under this ceiling limit.
  - Only **operating JV/WOS**. **No further step down entity** permitted.
  - **Valuation norms** as applicable to ODI transactions applicable here.
  - Investment only in equity shares covered under ODI. (No Loan, Guarantee, etc)

Outbound Investments

Setting up JV / WOS outside India by Resident Individuals

➢ **Post Investment Changes:**

- Any alteration in shareholding pattern of JV or WOS to be **reported to the designated AD within 30 days** as well as reported in **APR**

➢ **Disinvestment by Resident Individuals:**

- Resident individual may disinvest (partially or fully) by way of **transfer** / **sale** or by way of **liquidation** / **merger** of the JV or WOS
- Disinvestment to be **allowed after one year from the date of making first remittance** for setting up or acquiring the JV or WOS abroad
- **Disinvestment proceeds** to be **repatriated to India immediately** (not later than 60 days from the date of disinvestment) and the same may be reported to the designated AD
- **No write off** shall be allowed

➢ **Reporting Requirements:**

- Submit Form ODI within 30 days of making remittance to designated AD
- Submit APR by 31st December
- Disinvestment to be reported in Form ODI within 30 days of receipt of disinvestment proceeds

Outbound Investments

➢ Obligations of Indain Party / Resident Individual:

- Receive share certificates or any other document as an evidence of investment in the foreign entity → within six months of remittance
- Repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due
- Submit Annual Performance Report (APR) in Part II of Form ODI every year on or before December 31, an in respect of each JV or WOS outside India
- An annual return on Foreign Liabilities and Assets (FLA) is required to be submitted directly by all the Indian companies / LLPs which have received FDI and/or made FDI abroad (i.e. overseas investment) by 15th July each year

External Commercial Borrowings

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

Track I	:	Medium term foreign currency denominated ECB with MAM of 1/3/5 years.
Track II	:	Long term foreign currency denominated ECB with MAM of 10 years.
Track III	:	Indian Rupee denominated ECB with MAM of 1/3/5 years.

Track I	Track II	Track III
Forms of ECB		
i. Loans including Bank loans; ii. Securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares / debentures); iii. Buyers' credit; iv. Suppliers' credit; v. Foreign Currency Convertible Bonds (FCCBs); vi. Financial Lease; vii. Foreign Currency Exchangeable Bonds (FCEBs)		

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

Track I	Track II	Track III
Minimum Average Maturity (MAM) Period		
i. 1 year for ECB up to USD 50 million or its equivalent for companies in manufacturing sector only. ii. 3 years for ECB upto USD 50 million or its equivalent. iii. 5 years for ECB beyond USD 50 million or its equivalent iv. 3 years for eligible borrowers under para vi below, irrespective of the amount of borrowing v. 5 years for Foreign Currency Convertible Bonds (FCCBs)/ Foreign Currency Exchangeable Bonds (FCEBs) irrespective of the amount of borrowing. The call and put option, if any, for FCCBs shall not be exercisable prior to 5 years.	10 years irrespective of the amount	Same as under Track I

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

Track I	Track II	Track III
Eligible Borrowers		
i. Companies in - Manufacturing - Software Development ii. Shipping and Airline Cos. iii. SIDBI iv. Units of SEZs v. EXIM (approval route) vi. Companies in infrastructure sector, NBFC-IFCs, NBFC-AFCs, Holding Companies and CICs. Also, HFC's and Port Trust	i. All entities listed in Track I ii. Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) coming under the regulatory framework of the Securities and Exchange Board of India (SEBI)	i. All entities in Track II ii. All NBFCs - under the regulatory purview of the Reserve Bank iii. Entities engaged in micro-finance activities iv. Companies engaged in R&D, training (other than educational institutes), companies supporting infrastructure, logistics services. Also, companies engaged in maintenance, repair and overhaul and freight forwarding v. Developers of SEZ & NMIZ

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

Track I	Track II	Track III
Recognised Lenders/ Investors		
i. International banks ii. International capital markets iii. Multilateral financial institutions iv. Export credit agencies v. Suppliers of equipment vi. Foreign equity holders vii. Overseas long term investors such as: - prudentially regulated financial entities - Pension funds - Insurance companies - Sovereign wealth funds - Financial institutions in IFSC viii. Overseas branches / subsidiaries of Indian banks	All entities listed under Track I except for overseas branches / subsidiaries of Indian banks	i. All entities listed under Track I except for overseas branches / subsidiaries of Indian banks ii. In case of NBFCs-MFIs, other eligible MFIs, not for profit companies and NGOs, ECB can also be availed from overseas organizations and individuals satisfying prescribed conditions

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

Track I	Track II	Track III
All – in – Cost		
i. 450 basis points per annum over 6 month LIBOR or applicable benchmark for the respective currency. ii. Penal interest should not be more than 2%	i. The maximum spread over the benchmark of 6 month LIBOR or applicable benchmark for the respective currency will be 450 basis points per annum. ii. Remaining conditions will be as given under Track I	i. The maximum spread will be 450 basis points per annum over the prevailing yield of the Government of India securities of corresponding maturity. ii. Same as Track I.

Definition of all – in – cost now includes guarantee fees whether paid in FCY or INR

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

End-Use Prescription

The **negative list** for **all Tracks** would include the following:

1. Investment in real estate or purchase of land except when used for affordable housing as defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India, construction and development of SEZ and industrial parks/integrated townships.
2. Investment in capital market.
3. Equity investment.

Additionally for Tracks I and III, the following negative end uses will also apply except when raised from Direct and Indirect equity holders or from a Group company, and provided the loan is for a minimum average maturity of five years:

4. Working capital purposes.
5. General corporate purposes.
6. Repayment of Rupee loans.

Finally, for all Tracks, the following negative end use will also apply:

7. On-lending to entities for the above activities from (1) to (6) above.

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

Individual Limits:

➢ The individual limits of ECB that can be raised by eligible entities under the automatic route per financial year for all the three tracks are set out as under:

- Up to USD 750 million or equivalent for the companies in infrastructure and manufacturing sectors, NBFC-IFCs, NBFC-AFCs, Holding Companies and CICs;
- Up to USD 200 million or equivalent for companies in software development sector;
- Up to USD 100 million or equivalent for entities engaged in micro finance activities; and
- Up to USD 500 million or equivalent for remaining entities

❖ ECB proposals beyond aforesaid limits will come under the approval route.

ECB Liability to Equity Ratio:

- For ECB raised under the automatic route → 7:1
- For ECB raised under the approval route → 7:1.
- This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent

Hedging requirements: 100% hedging subject to specifications & exceptions

Deposits and Accounts by Non-Residents

Deposits and Accounts by Non-Residents

- NRE Account vs. FCNR(B) Account vs. NRO Account
- SNRR Account
- Escrow Account
- Deposit from NRI/PIO on repatriation basis
- Deposit from NRI/PIO on non-repatriation basis
- Deposit from NR towards Directorship
- Other Accounts / Deposits
  - AD / branch
  - Foreign Shipping / Airline Company
  - UJV of foreign entity(ies) with Indian entity(ies)

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

Particulars	NRE Account	FCNR(B) Account	NRO Account
Who can open an account	• NRIs and PIOs (Individual of Pakistan & Bangladesh require prior approval of RBI)	• NRIs and PIOs (Individual of Pakistan & Bangladesh require prior approval of RBI)	• Any person resident outside India (including NRI/PIO) (Individual/Entities of Pakistan & Bangladesh require prior approval of RBI)
Who is authorized to open	• Authorised Dealer • Authorised Banks (including co-op bank other than AD)	• Authorised Dealer	• Authorised Dealer • Authorised Banks (including co-op bank other than AD)
Currency	• INR	• Forex (Any foreign currency which is freely convertible)	• INR
Type of Account	• Savings • Current • Recurring/Fixed Deposit	• Term Deposit only	• Savings • Current • Recurring/Fixed Deposit
Period for fixed deposits	• From 1 to 3 years (However, banks are allowed to accept NRE deposits > 3 years from their AL point of view)	• Between 1 to 5 years	• As applicable to resident accounts (eg: even 6 months)
Rate of Interest	• As per guidelines issued by the Reserve Bank of India from time to time		

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)/2000 - Sale of immovable property in India: Credit to NRE a/c restricted to 2 properties during lifetime and also restricted to investment amount from NRE a/c)

a) 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 of the account holder or out of inward remittances from o/s India thru banking channels

b) 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), was paid from NRE / FCNR(B) a/c of the account holder 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**

- <u>Permitted Debits</u>

  a) Local disbursements

  b) Remittances outside India

  c) Transfer to NRE/ FCNR(B) accounts of the <u>account holder</u> *or* <u>any other person eligible to maintain such account</u>

  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

  e) Any other transaction if covered under general or specific 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
Repatriability	• Repatriable	• Repatriable	• Not repatriable except for all current income. • Individual*: 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. • Entities: RBI permission
Taxabilty	• Exempt	• Exempt	• Taxable[1]
Joint account	• Jointly with two or more NRIs/ PIOs • Jointly with resident relative on 'former or survivor' basis (relative as defined in Companies Act, 2013) • The resident relative can operate the account as a Power of Attorney holder during the life time of the NRI/ PIO account holder.		

[1]NRO deposits constitute 'Foreign Exchange Assets' u/s 115C of Income Tax Act and therefore interest earned can benefit from 20% tax rate under Chapter XII-A of ITA – V Ravi Narayanan (2008) 168 Taxman 65 (AAR)

*Where a/c is opened by a foreign tourist visiting India, AD may convert INR to forex at the time of departure provided a/c < 6 months and not credited with any local funds, other than interest accrued thereon.

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

<table>
<tr><th>Particulars</th><th>NRE Account</th><th>FCNR(B) Account</th><th>NRO Account</th></tr>
<tr><td>Operations by resident POA holder</td><td colspan="2"><u>Permitted</u>
• Withdrawal for local payments
• Make investments in India
• Remittance to account holder himself thru banking channels

<u>Prohibited</u>
• Remittance outside India to other than account holder himself
• Make payment by gift to resident
• Transfer funds to other NRE account</td><td><u>Permitted</u>
• Withdrawal for local payments
• Make investments in India
• Remittance outside India of current income, net of taxes

<u>Prohibited</u>
• Remittance outside India to other than account holder himself
• Make payment by gift to resident
• Transfer funds to other NRO a/c</td></tr>
<tr><td>Change in residential status from Non-resident to resident</td><td>• NRE accounts should be designated as resident accounts
or
• Funds held in these accounts may be transferred to the RFC accounts
immediately upon change of residential status</td><td>• FCNR (B) deposits allowed to continue till maturity at the contracted rate of interest
• AD should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account</td><td>• <u>From PROI to PRI:</u> Immediately designated as resident accounts
• <u>From PRI to PROI:</u> Immediately designated as NRO account</td></tr>
</table>

Foreign Currency Accounts by Indian Residents

Foreign Currency Accounts by Indian Residents

- **FCA in India**
  - ❖ EEFC Account vs. RFC(D) Account vs. RFC Account
  - ❖ Diamond Dollar Account Scheme
  - ❖ Other Accounts by:
    - ➢ Indian agent of foreign shipping / airline company
    - ➢ Ship-manning / crew managing Indian agency
    - ➢ Project Office in India
    - ➢ Organizer of International Seminar / Conferences / Conventions in India
    - ➢ Exporter for Project Exports and Service Exports
    - ➢ FDI Investee Company
    - ➢ SEZ Unit

EEFC Account vs. RFC(D) Account vs. RFC Account

Particulars	Exchange Earners Foreign Currency (EEFC) Account	Resident Foreign Currency (Domestic) [RFC(D)] Account	Resident Foreign Currency (RFC) Account
Who can open the account	• Exchange Earners (including individuals, companies, etc.)	• Individuals	• Individuals
Joint account	• Jointly with eligible persons; or With resident relative(s) on former or survivor' basis	• Jointly with eligible persons	• Same as EEFC
Type of Account	• Current only	• Current only	• Current • Savings • Term deposits
Interest	• Non-interest earning	• Non-interest earning	• De-regulated (As decided by the AD bank)

<u>A. P. (DIR Series) Circular No. 124 dated 10th May 2012:</u> The facility of EEFC scheme is intended to enable exchange earners to save on conversion/transaction costs while undertaking forex transactions in future. This facility is not intended to enable exchange earners to maintain assets in foreign currency, as India is still not fully convertible on Capital Account.

EEFC Account vs. RFC(D) Account vs. RFC Account

Particulars	Exchange Earners Foreign Currency (EEFC) Account	Resident Foreign Currency (Domestic) [RFC(D)] Account	Resident Foreign Currency (RFC) Account
Permitted Credits	• 100% of forex received on account of export transactions • Advance remittance towards export of goods or services • Repayment of loans given to foreign importers • Professional earnings like director's/ consultancy/ lecture fees, honorarium and similar other earnings received by a professional by rendering services in his individual capacity • Re-credit of unutilized foreign currency earlier withdrawn from the account	• Foreign exchange received as payment for services/ gift/ honorarium while on visit abroad or from a non-resident who is on a visit to India • Unspent amount of foreign exchange acquired from AD for travel abroad • Gift from close relative • Earning through export of goods/ services, royalty, honorarium • Disinvestment proceed on conversion of shares into ADR/ GDR	• 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

EEFC Account vs. RFC(D) Account vs. RFC Account

Particulars	Exchange Earners Foreign Currency (EEFC) Account	Resident Foreign Currency (Domestic) [RFC(D)] Account	Resident Foreign Currency (RFC) Account
Permitted Credits	• Disinvestment proceeds on conversion of ADR/ GDR • Interest earned on the funds held in the account • Payments received in forex by 100% EOU / unit in EPZ/STP/EHTP • Payment received in forex by DTA unit from SEZ unit • Payment received by exporter for purpose of counter trade • Payments received in forex by an Indian startup arising out of sales / export made by the startup or its overseas subsidiaries	• Foreign exchange received as proceeds of Life Insurance claims/ maturity/ surrendered value settled in forex from an Indian insurance company	• Foreign exchange received as proceeds of Life Insurance claims/ maturity/ surrendered value settled in forex from an Indian insurance company • Balances in NRE/ FCNR(B) accounts on change in residential status

EEFC Account vs. RFC(D) Account vs. RFC Account

Particulars	EEFC Account	RFC(D) Account	RFC Account
Permitted Debits	• Any permissible current / capital account transaction • Payment for Cost of goods purchased in forex from 100% EOU / unit in EPZ/STP/EHTP • Payment of Customs duty • Giving Trade related loans & advances to account holder's importer customer (Reg 5(4) of FEMA Notf 3) • Payment in forex to PRI for airfare/hotel expd booking	• Any permissible current / capital account transaction	• No restrictions on utilization in / outside India
Tenure	Balance to be converted into INR by end of succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments (A. P. (DIR Series) Circular No. 12 dt. 31st July 2012)		No time limitation
Change of Residential Status	Balances of EEFC a/c and RFC(D) a/c can be credited to NRE/FCNR(B) a/c		Balance from NRE/FCNR(B) a/c can be credited to RFC A/c

RFC vs. RFC(D): RFC by returning Indian who was NRI/PIO earlier whereas RFC(D) by resident individual even if not NRI/PIO previously but only in form of currency notes, bank notes and TC

Foreign Currency Accounts by Indian Residents

- **FCA o/s India**
  - Accounts by:
    - AD and its branch
    - Indian shipping / airline company
    - Insurance / reinsurance companies
    - Indian entity having foreign office / branch / representative abroad
    - Exporter for Project Exports and Service Exports
    - Student gone abroad for studies
    - PRI on visit to foreign country
    - PRI participating in an exhibition / trade fair abroad
    - Resident Individual under LRS
    - Employees of Foreign entity / Indian entity for Salary payments
    - Indian entity raising ECB / funds through ADR/GDR
    - Indian party for Outbound Investment
    - Indian Startup

Borrowings and Lending in Indian Rupees between NRI / PIO and PRI

Borrowing in Indian Rupee

- **Borrowing by Indian Company in INR from NRI/PIO [Reg.5]**
- PRI being an Indian company can borrow from NRI on repatriation or non-repatriation only if the borrowing in INR is by issuance of non-convertible debentures (NCDs) made by public offer. This is the only route under which Indian companies can borrow from NRI / PIO in INR.
- Though deposit can be accepted by Indian proprietorship concern/ firm or company (including NBFC) on non-repatriation basis from existing NRO funds, under Schedule 7 to FEMA Notf. 5(R)/2016 dated 01/04/2016.
- Apart from satisfaction of other conditions, another important condition is that the borrowed funds should be utilised for own business purpose other than blacklisted business purposes.

- **Borrowing by PRI other than an Indian Company in INR from NRI/PIO [Reg.4]**
- PRI other than an Indian company (essentially partnership firms, LLPs and individuals) can also borrow from NRI / PIO provided it is availed on non-repatriation basis.
- Apart from satisfaction of other conditions, the business purpose utilisation condition is similar to above. Hereunder, the individuals availing loan from NRI /PIO need not be their close relatives.

Lending in Indian Rupee

- **Lending in INR to NRI**
- Lending by authorised dealers in INR to NRIs for own requirements or own business purposes subject to conditions.

- Lending in INR by an authorised dealer or a housing finance institution to NRI / PIO for housing purpose subject to conditions wherein repayment of the loan is allowed by even resident relatives of NRI / PIO.

- Resident Individuals can lend to their NRI / PIO close relative in INR under Liberalised Remittance Scheme of US$ 2,50,000. Apart from satisfaction of other conditions, such rupee loans should be given by way of crossed cheque / electronic transfer for credit to their NRO a/c only.

Restrictions on use of Borrowed Funds

- **<u>Restriction on use of borrowed funds</u>**

1. No person resident in India who has borrowed in rupees from a person resident outside India shall use it for its business purpose only except for following business-
   1. the business of chit fund, or
   2. as Nidhi Company, or
   3. agricultural or plantation activities or real estate business; or construction of farm houses, or
   4. 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:

   Provided that the RBI may permit such resident entities/companies to use such borrowed funds: **(a)** for on lending/re-lending to the infrastructure sector; or **(b)** for keeping in FD with banks in India pending utilization by them for permissible end use.

Explanation: For the purpose of sub-clause (iii) of clause (1), real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges.

Remittance of Assets o/s India

Remittance of Assets o/s India

❖ **Remittance by Foreign nationals**

- After retirement from employment
- Out of assets inherited from PROI referred to u/s 6(5)
- Out of assets inherited from deceased Indian national resident spouse (upto $ 1 million per FY)
- By foreign student after completion of studies (out of inward remittances and stipend/scholarship received from India)

❖ **Remittance by NRI/PIOs**

- $ 1 million scheme per year

❖ **Remittance by Companies**

- As a result of liquidation / voluntary winding up

❖ **Winding up proceeds of branch office / liaison office**

Acquisition of Immovable Property in India & o/s India

Immovable property o/s India by PRI

❖ **Modes of acquiring by Individual**

- Sec 6(4)
- Gift or inheritance from person referred to u/s 6(4)
- Out of RFC funds
- LRS

❖ **Acquisition by Indian company**

- Only if having overseas office
- for its business and for residential purposes of its staff
- Total remittance does not exceed 15 % of avg annual sales / income or turnover during last 2 FY or up to 25 % of net worth, whichever is higher for initial expenses
- Total remittance does not exceed 10 % of avg annual sales / income or turnover during last 2 FY for recurring expenses

Immovable property in India by PROI

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

- ❖ **Payment has to come from inward remittances or debit to NRE/ FCNR (B) / NRO a/c**

***(NRI)' means a person resident outside India who is a citizen of India.**

****Overseas Citizen of India (OCI)' means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.**

Immovable property in India by PROI

- It is important to note that NRI / OCI cannot purchase any agricultural land / farm house / plantation property in India. They can only inherit such properties.

- Hitherto, spouse of foreign origin of NRI / OCI was not covered under the definition of Person of Indian Origin under erstwhile FEMA Notf. 21/2000 dated 03/05/2000 & hence could not jointly acquire immovable property in India. Now, it is permissible for them to acquire jointly subject to certain conditions.

- There is no restriction on the number of properties that NRI/ OCI can purchase in India. However, continuous churning of properties may amount to conduct of real estate business by a proprietary concern and would be prohibited in terms of Reg. 4(b)(iv) of FEMA Notf. 1/2000 dated 03/05/2000.

- Further, it may be borne in mind that sale consideration is repatriable only for two properties per lifetime provided the acquisition price would have been paid out of foreign inward remittance through banking channels or through NRE / FCNR (B) a/c maintained in India.

Immovable property in India by PROI

❖ Remittance on sale of such immovable property in India
  - $ 1 million Scheme
  - RBI permission for property acquired in accordance with Sec. 6(5)
  - Repatriation upto amount of cost of acquisition made from funds held in FCNR(B) account or NRE account for two properties in lifetime

❖ 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.

– Above prohibition shall not apply to an OCI.

❖ Foreign company can acquire immovable property in India for BO / LO which is necessary for or incidental to the activity carried on in India

Compounding of Contraventions & Penalties

Compounding of Contraventions & Penalties

- **<u>Amounts in Contravention</u>**
  - Quantifiable → Liable to penalty upto thrice the sum involved
  - Not Directly Quantifiable → Liable to penalty upto Rs.2 lakh

- **<u>Power to Compound by RBI</u>**

- Contravention of any provisions of FEMA Act, 1999 except Sec 3(a) the Act
- In case where the sum involved in such contravention is:
  - Rs 10 lakhs rupees or below → by the Assistant General Manager of RBI
  - > Rs 10 lakh but < Rs 40 lakh → by the Deputy General Manager of RBI
  - > Rs 40 lakhs but < Rs 1 crore → by the General Manager of RBI
  - > Rs 1 crore → by the Chief General Manager of RBI

Compounding of Contraventions & Penalties

Delegation of Powers to compound offences to Regional RBI Office

FEMA Regulation/Notification	Brief Description of Contravention	Authority to Compound Contraventions
Regulation 13.1(1) of TISPRO	Delay in reporting inward remittance received for issue of shares	• Kochi and Panaji Regional RBI Offices can compound for amounts < Rs. 1 Cr • All other Regional RBI Offices can compound for amounts without any limit
Regulation 13.1(2) of TISPRO	Delay in filing form FC(GPR) after issue of shares	
Regulation 13.1(3) of TSPRO	Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA Return), by all Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year	
Paragraph 2 of Schedule I of TISPRO	Delay in issue of shares/refund of share application money beyond 60 days, mode of receipt of funds, etc.	
Paragraph 11 of TISPRO	Violation of pricing guidelines for issue of shares	
Regulation 2(v) read with Regulation 5 of TISPRO	Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.	
Regulation 16.B of TISPRO	Issue of shares without approval of RBI or Government, wherever required	

Compounding of Contraventions & Penalties

Delegation of Powers to compound offences to Regional RBI Office

FEMA Regulation/Notification	**Brief Description of Contravention**	**Authority to Compound Contraventions**
Regulation 13.1(4) of TISPRO	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.	• Kochi and Panaji Regional RBI Offices can compound for amounts < Rs. 1 Cr • All other Regional RBI Offices can compound for amounts without any limit
Regulation 4 of FEMA 20(R)/2017-RB dated November 7, 2017	Receiving investment in India from non-resident or taking on record transfer of shares by investee company.	
FEMA 7/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property outside India.	FED, CO Cell, New Delhi
FEMA 21/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property in India	
FEMA 22/2000-RB, dated 3-5-2000	Contraventions relating to establishment in India of Branch office, Liaison Office or Project office	
FEMA 5/2000-RB, dated 3-5-2000	Contraventions falling under Foreign Exchange Management (Deposit) Regulations, 2000	

Compounding of Contraventions & Penalties

Public disclosure of Compounding Orders

- All compounding orders passed on or after June 1, 2016 are hosted on RBI's website
- Data to be updated on a monthly intervals in the following format:

Sr. No.	Name of Applicant	Amount imposed under the compounding order	Whether the amount imposed has been paid	Download order

Public disclosure of guidelines on the amount imposed during compounding

- Provisions of section 13 of FEMA: The amount imposed can be up to three times the amount involved in the contravention. Amount imposed to be calculated on basis of guidance note.

Type of contravention	Formula
1] <u>Reporting Contraventions</u> A) FEMA 20 Para 9(1)(A), 9(1)(B), part B of FC(GPR), FCTRS (Reg. 10) and taking on record FCTRS (Reg. 4) B) FEMA 3 Non submission of ECB statements C) FEMA 120 Non reporting/delay in reporting of acquisition/setup of subsidiaries/step down subsidiaries /changes in the shareholding pattern D) Any other reporting contraventions (except those in Row 2 below)	Fixed amount : Rs10,000/- (applied once for each contravention in a compounding application) + Variable amount as under: Upto 10 lakhs : 1,000 per year Rs.10-40 lakhs : 2,500 per year Rs.40-100 lakhs : 7,000 per year Rs.1-10 crore : 50,000 per year Rs.10 -100 Crore : 1,00,000 per year Above Rs.100 Crore : 2,00,000 per year

Compounding of Contraventions & Penalties

Type of contravention	Formula
E) Reporting contraventions by LO/BO/PO	As above, subject to ceiling of Rs.2 lakhs. In case of Project Office, the amount imposed shall be calculated on 10% of total project cost.
2] <u>AAC/ APR/ Share certificate delays</u> In case of non-submission/ delayed submission of APR/ share certificates (FEMA 120) or AAC (FEMA 22) or FCGPR (B) Returns or FLA Returns- FEMA 20 / FEMA 20(R)/ FEMA 120	Rs.10,000/- per AAC/APR/FCGPR (B) / FLA Return delayed. Delayed receipt of share certificate – Rs.10,000/- per year, the total amount being subject to ceiling of 300% of the amount invested
3] A] Allotment/Refunds Para 8 of FEMA 20/2000-RB (non-allotment of shares or allotment/ refund after the stipulated 180 days) B] LO/BO/PO (Other than reporting contraventions)	Rs.30,000/- + given percentage: 1st year : 0.30% 1-2 years : 0.35% 2-3 years : 0.40% 3-4 years : 0.45% 4-5 years : 0.50% >5 years : 0.75% (For project offices the amount of contravention shall be deemed to be 10% of the cost of project)
4] <u>All other contraventions except Corporate Guarantees but including all contraventions of FEMA 20(R)/2017-RB dated November 07, 2017 other than FLA Returns</u>	Rs.50,000/- + given percentage: 1st year : 0.50% 1-2 years : 0.55% 2-3 years : 0.60% 3-4 years : 0.65% 4-5 years : 0.70% > 5 years : 0.75%

Compounding of Contraventions & Penalties

Public disclosure of guidelines on the amount imposed during compounding

Type of contravention	Formula
5] Issue of Corporate Guarantees without UIN/ without permission wherever required /open ended guarantees or any other contravention related to issue of Corporate Guarantees	Rs.5,00,000/- + given percentage: 1st year : 0.050% 1-2 years : 0.055% 2-3 years : 0.060% 3-4 years : 0.065% 4-5 years : 0.070% >5 years : 0.075% In case the contravention includes issue of guarantees for raising loans which are invested back into India, the amount imposed may be trebled

Further points to be noted:

- **Maximum:** Amount imposed should not exceed 300% of the amount of contravention
- If amount of contravention is less than Rs. One lakh, the total amount imposed should not be more than amount of simple interest @5% p.a. calculated on the amount of contravention and for the period of the contravention in case of reporting contraventions and @10% p.a. in respect of all other contraventions
- In case of paragraph 8 of Schedule I to FEMA 20/2000 RB contraventions, the amount imposed will be further graded as under:
  - If the shares are allotted after 180 days without the prior approval of Reserve Bank, 1.25 times the amount calculated as per table above (subject to provisos at (i) & (ii) above)
  - If the shares are not allotted and the amount is refunded after 180 days with the Bank's permission: 1.50 times the amount calculated as per table above (subject to provisos above)
  - If the shares are not allotted and the amount is refunded after 180 days without the Bank's permission: 1.75 times the amount calculated as per table above (subject to provisos above)

Compounding of Contraventions & Penalties

Public disclosure of guidelines on the amount imposed during compounding

Further points to be noted:

- In cases where it is established that the contravenor has made **undue gains**, the amount thereof may be neutralized to a reasonable extent by **adding the same to the compounding** amount calculated as per chart
- If a party who has been compounded earlier applies for compounding **again for similar contravention**, the amount calculated as above may be **enhanced by 50%**
- For calculating amount in respect of reporting contraventions under para I.1 above, the period of contravention may be considered proportionately {(approx. rounded off to next higher month ÷ 12) X amount for 1 year}. The total no. of days does not exclude Sundays/holidays
- RBI has **appended examples** to this circular for further understanding
- RBI has clarified that the above guidance is meant only for the purpose of **broadly** indicating the basis on which the amount to be imposed is derived by the RBI compounding authorities. The actual amount imposed may sometimes vary, depending on the circumstances of the case taking into account the various factors

Thank you

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