FEMA

(An Overview from perspective of International Tax)

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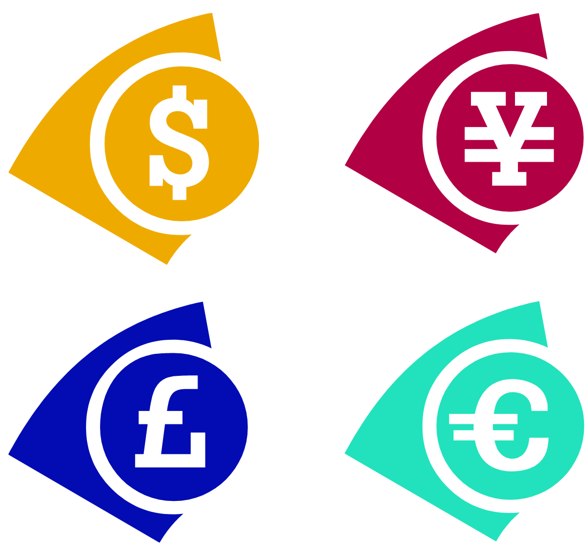
Framework of FEMA



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

- Government of India
  - CCEA
  - ~~FIPB~~
    - Ministry of Home Affairs
    - Ministry of Mines
    - Ministry of Civil Aviation
    - Ministry of Defence
    - Department of Telecom
    - Department of Space
    - Ministry of Information & Broadcasting
    - Department of Economic Affairs
    - Department of Financial Services
    - Department of Pharmaceuticals
  - DIPP
  - RBI

Framework 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 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)

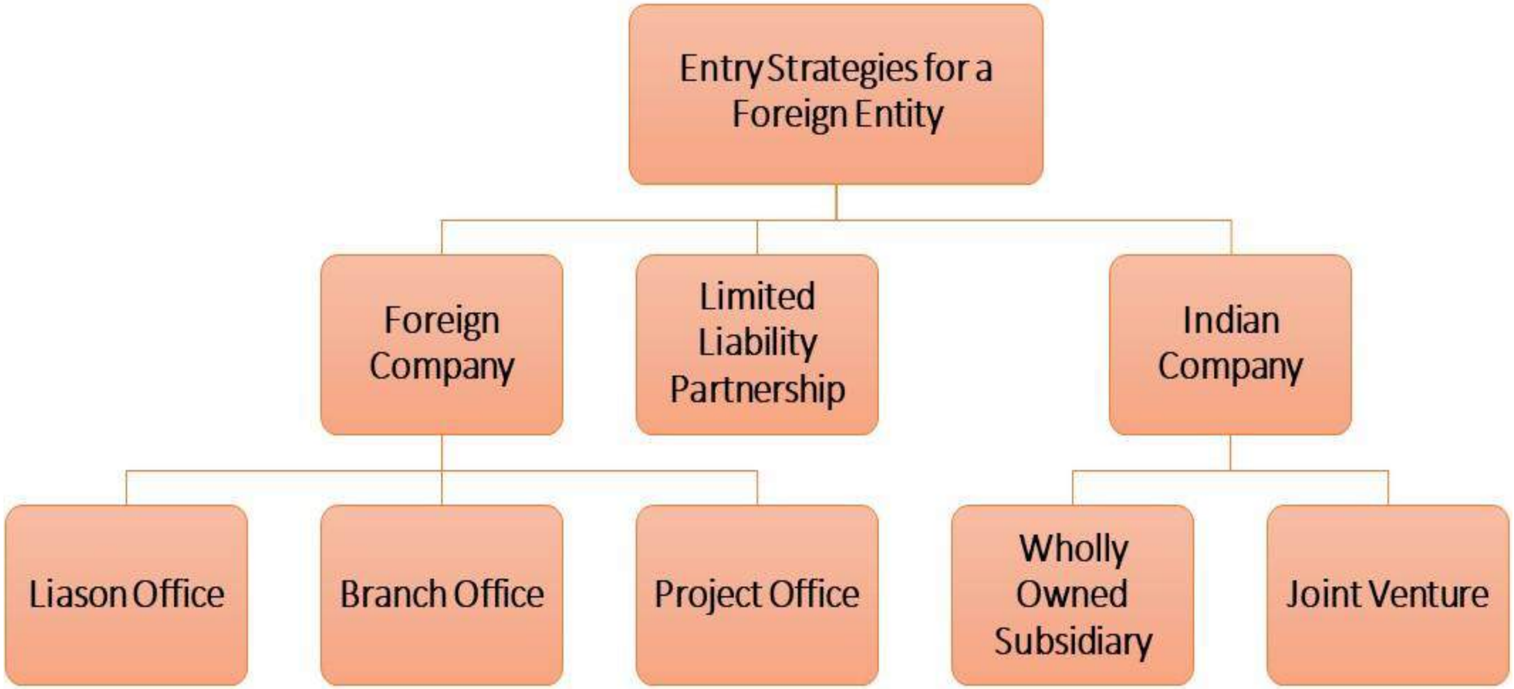
Capital a/c transactions vs. Current a/c transactions

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

Entry Strategies into India

Entry Strategies into India



Direct Presence – LO / BO / PO

Notification No. FEMA 22(R)/RB-2016 dated March 31, 2016

- **To set up LO & BO:**
  - Prior approval → AD Bank followed by registration with ROC
  - Foreign Insurance companies prior approval → IRDA
  - Foreign Banks prior approval → DBOD

- **To set up PO:**
  - No approval from RBI to open PO
  - Other conditions to be satisfied
  - Intimation within 2 months to AD Bank

Establishment of LO & BO in India

AD Bank Approval

- Where principle business of foreign entity eligible for 100% FDI under automatic route → AD Bank to consider application
- The AD Bank to forward Form FNC along with the details of the proposed approval to RBI for allotment of UIN to each BO/LO
- After receiving the UIN, the AD Bank shall issue the approval

RBI Approval

- Where principal business of foreign entity not eligible for 100% FDI under automatic route → prior approval of RBI
- Certain specified cases → covered in later slide

Establishment of PO in India

A foreign company may open project office/s in India provided it has

- ➢ secured a contract to execute project in India from an Indian company, a contract to execute a project in India,
- ➢ and -
  - the project funded directly by inward remittance from abroad; <u>or</u>
  - the project funded by a bilateral or multilateral International Financing Agency; <u>or</u>
  - the project has been cleared by an appropriate authority; <u>or</u>
  - 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
- ➢ Approval Route → Certain specified cases (covered in later slide)

Establishment of LO/BO/PO – Prior Approval

Prior approval of RBI required for Opening of BO/PO/LO

- Citizen of or Registered or Incorporated in:
  - Pakistan
  - Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau
    - For setting up office in : Jammu and Kashmir, North East region and Andaman and Nicobar Islands
- Principal Business: Defence, Telecom, Private Security and Information & Broadcasting
- NGO, NPO or a Body / Agency / Department of a Foreign Government

Permitted Activities – LO/BO/PO

Liaison Office

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

Branch Office

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

Project Office

- Execute a contract/ project in India & activities relating to execution of project
- Rendering services during warranty period and after sale service as per Contract terms

LO/BO/PO – Regulatory Aspects

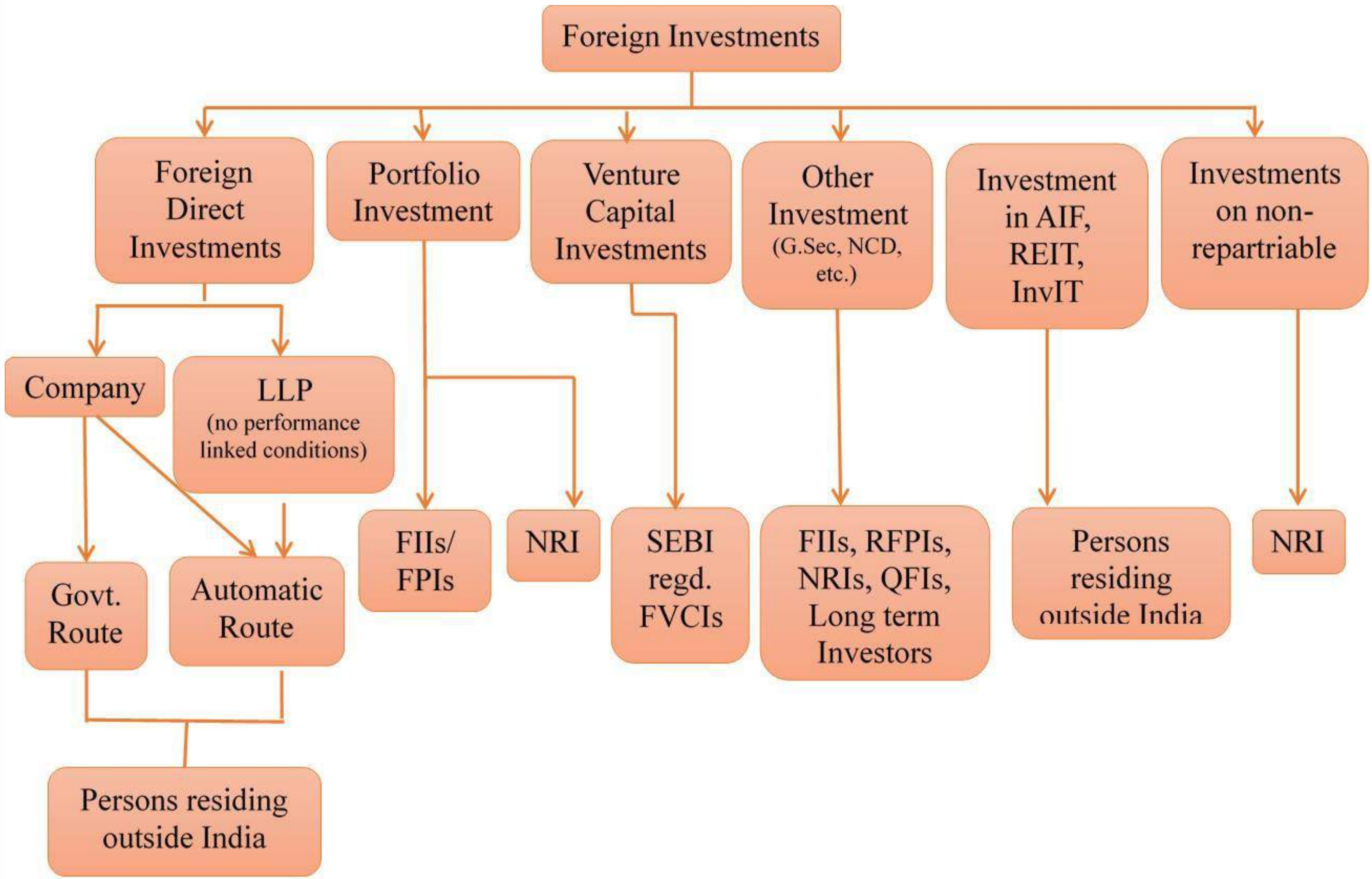
Basis	Project Office (PO)	Branch Office (BO)	Liaison Office (LO)
Regulatory Approvals (FEMA)	Intimation to AD Bank	• Application in Form FNC to be made to obtain permission to establish BO • UIN allotted by RBI	• Application in Form FNC to be made to obtain permission to establish LO • UIN allotted by 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

Notification No. FEMA 20/2000-RB dated May 3, 2000



Inbound Investments
Investment Routes

Schedule 1 :	FDI Scheme
Schedule 2 :	Purchase/Sale of Shares or Convertible Debentures or warrants by FIIs under Portfolio Investment Scheme (PIS) [Redundant]
Schedule 2A :	Purchase/Sale of Shares or Convertible Debentures or warrants by RFPI under Foreign Portfolio Investment (FPI) Scheme
Schedule 3 :	Investment by NRI under Portfolio Investment Scheme
Schedule 4 :	Investment by NRI on Non-Repatriation Basis
Schedule 5 :	Investment in securities other than Shares or CCDs or warrants
Schedule 6 :	Investment by Registered Foreign Venture Capital Investor (FVCI)
Schedule 7 :	Indian Depository Receipts
Schedule 8 :	Scheme for Investment by Qualified Foreign Investors in Equity Shares [Redundant]
Schedule 9 :	Investment in Limited Liability Partnership (LLP)
Schedule 10 :	Issue of eligible securities to a Foreign Depository for the purpose of Issuance of Global Depository
Schedule 11 :	Investment by a Person Resident Outside India in a Investment Vehicle

Inbound Investments

Schedule 1 – FDI Scheme

- **Eligible Investors:**
  - PROI (Other than citizen of Bangladesh or Pakistan) or entity Incorporated outside India (Other than entity incorporated in Bangladesh or Pakistan)
  - For Citizens or Entities of Bangladesh or Pakistan : Government Route
  - OCBs - not permitted
  - NRIs holding OCI Card - permitted
- **Eligible Instruments:**
  - Shares – Equity & Preference
  - Convertible Debentures
  - Warrants
- **Investee Entity:**
  - Indian Company
  - Indian LLP – FDI in LLP – As per Schedule 9

Inbound Investments

Schedule 1 – FDI Scheme

- **Annex A to Schedule 1 : Prohibited Sectors:**
  - Lottery Business including Government/ private lottery, online lotteries, etc
  - Gambling & Betting including casinos etc
  - Chit Funds
  - Nidhi Company
  - Trading in Transferable Development Rights (TDR)
  - Real Estate Business or Construction of Farm Houses
  - Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
  - Activities/ Sectors not open to private sector investments e.g. (I) Atomic energy; (II) Railway
- **Annex B to Schedule1 : Investment Caps and Entry Routes**
  - Automatic or Approval Route
  - Sector / Activity wise investment caps
  - Various conditions prescribed

- **Activity not prohibited under Annex A and not listed in Annex B – permitted under automatic route**

Inbound Investments

Schedule 1 – FDI Scheme - Downstream Investment:

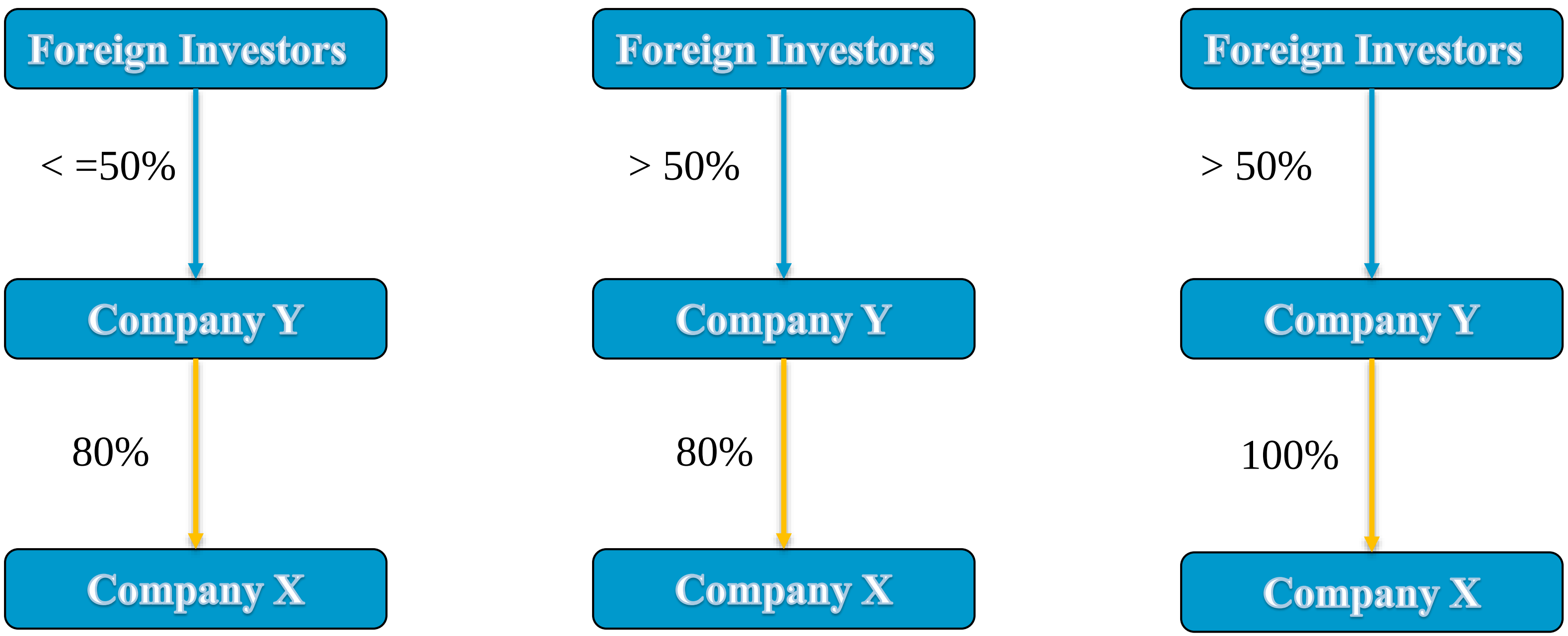
- Total Foreign investment in a company = Direct + Indirect Foreign Investment
- 'Downstream investment' means indirect foreign investment, by an eligible Indian entity, into another Indian company /LLP, by way of subscription or acquisition.
- 'Ownership' shall mean and include:
  - A **Company** shall 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.
  - Explanation: For the purpose of **Limited Liability Partnership**, 'control' shall mean 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 is owned or controlled by 'non-resident entities', the <u>entire investment by the investing company /LLP into the subject Indian Company would be considered as indirect foreign investment</u>.

Inbound Investments

Schedule 1 – FDI Scheme - 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% since mirror image

Inbound Investments

Schedule 1 – FDI Scheme

- **Reporting for FDI:**

ARF

- Filing of Advance Remittance Form* (ARF) within 30 day of receipt of funds from NR

Issue of Shares

- Issue of shares to NR within 180 days of receipt of funds
- However, Sec. 42 of Companies Act 2013 allows only 60 days

FC-GPR

- Filing for Form FC-GPR* within 30 days of issue of shares by the Indian Company

*To be filed online on the E-Biz platform

Form FLA – Annual Return of Foreign Assets and Liabilities to be filed with RBI by Indian Company / LLP by 15th July

Inbound Investments

Schedule 3 – Investment by NRI under Portfolio Investment Scheme

Notification No.FEMA.361/2016-RB dated 20th May 2016

- **Definition of NRI amended:** Non-Resident Indian (NRI) means an individual resident outside India who is citizen of India or is an 'Overseas Citizen of India' cardholder within the meaning of section 7 (A) of the Citizenship Act, 1955

- **Schedule 3 Amended** :
  - Non-repatriable inbound investment under this schedule no longer permitted
  - Schedule amended to include convertible preference shares, warrants and units of any investment vehicles
  - Inbound investments under schedule 3 shall be subject to sectoral caps of FDI Policy and schedule 1
  - Reporting of investments under schedule 3 by AD banks to RBI amended
  - Concept of NRO(PIS) Account removed. All NRO(PIS) Accounts to be re-designated as NRO Account

Inbound Investments

Schedule 4 – Investment by NRI on Non-Repatriation Basis

Notification No.FEMA.361/2016-RB dated 20th May 2016

- **Schedule 4 Amended :**
  - Permission to purchase: Company, trust or partnership firm incorporated outside India and **owned and controlled** by NRI now permitted to invest under non – repatriable basis under schedule 4
  - Schedule amended to include convertible preference shares and units of any investment vehicles
  - Investments under schedule 4 will be deemed to be domestic investment at par with investments by residents
  - Without loss of generality, schedule 4 states that:
    - An NRI may acquire, on non-repatriation basis, any security issued by a company without any limit either on the stock exchange or outside it.
    - An NRI may invest, on non-repartition basis, in units issued by an investment vehicle without any limit, either on the stock exchange or outside it.
    - An NRI may contribute, on non-repatriation basis, to the capital of a partnership firm, a proprietary firm or a Limited Liability Partnership without any limit.

Inbound Investments

Schedule 6 – Investment by Registered Foreign Venture Capital Investor (FVCI)

Notification No.FEMA.363/2016-RB dated 28th April 2016

- Investment in Equity or equity linked instruments or debt instruments by an unlisted Indian company engaged in following sectors:
  - Biotechnology
  - IT related to hardware and software development
  - Nanotechnology
  - Seed research and development
  - Research and development of new chemical entities in pharmaceutical sector
  - Dairy industry
  - Poultry industry
  - Production of bio-fuels
  - Hotel-cum-convention centres with seating capacity of more than three thousand.
  - Infrastructure sector.
- Investment in equity or equity linked instruments or debt instruments issued by a startup;
- Investment in units of VCF or of Cat-I AIF or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF
- A registered FVCI may purchase the securities / instruments mentioned above either from the issuer of these securities / instruments or from a recognized stock exchange.

Inbound Investments

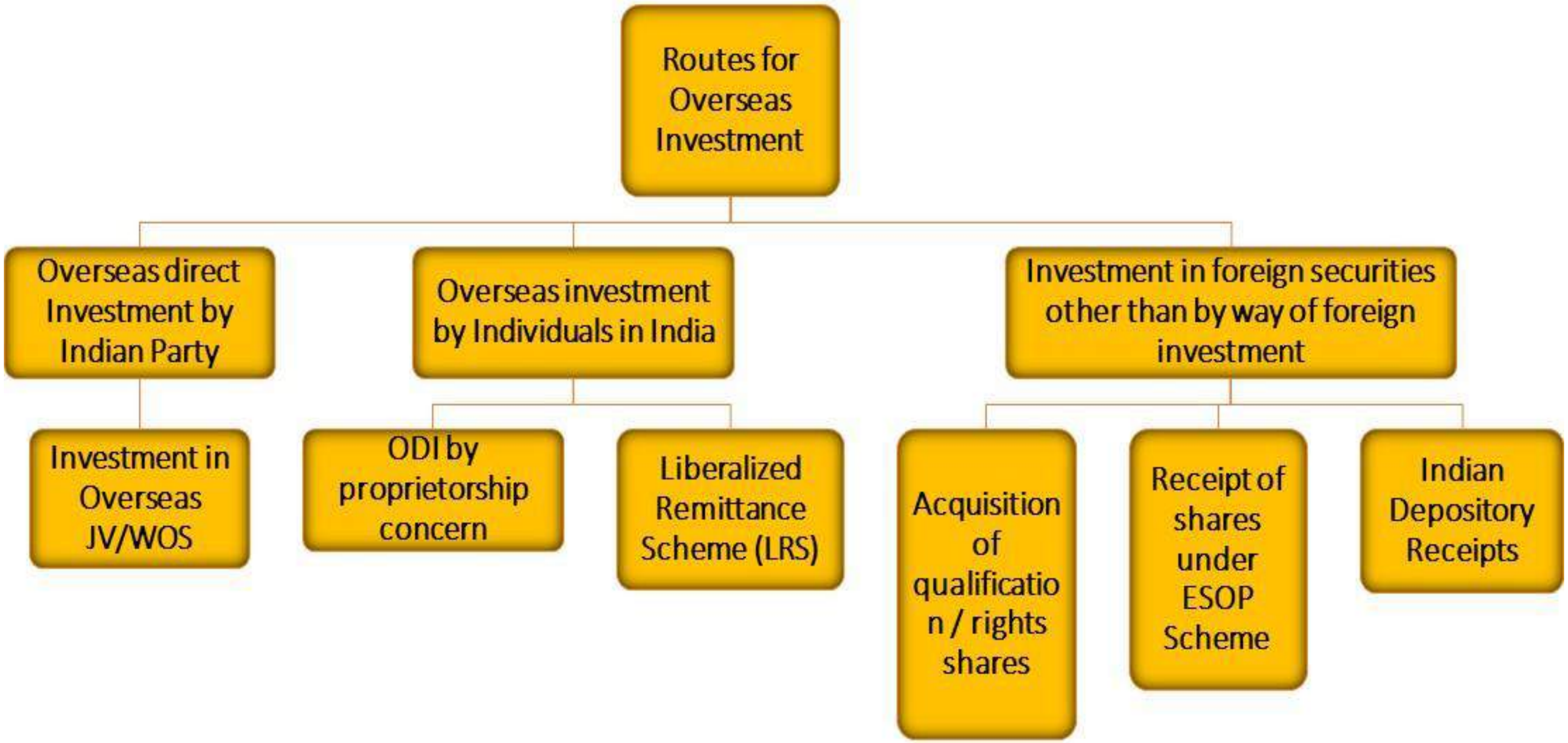
Schedule 9 – Investment in Limited Liability Partnership (LLP)

Notification No.FEMA.385/2016-RB dated 3rd March 2017

- Investment by way of:
  - Contribution to the capital of an LLP
  - Acquisition / transfer of profit shares in the capital structure of an LLP
- FDI is permitted under the automatic route in LLPs operating in sectors / activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions.
- An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP engaged in sectors in which 100% FDI is allowed under the automatic route and there are no FDI linked performance conditions.
- Pricing to conform to fair price as worked out with any valuation norm which is internationally accepted / adopted as per market practice

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 / Firm**
  - **Trust / Society**
  - **Un-incorporated Entities**

Approval Route

Outbound Investments

Important definitions

- **Direct Investment Outside India:**
  - 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

- **Joint Venture (JV):**
  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

- **Wholly Owned Subsidiary (WOS):**
  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 ≤ **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. • Any ODI in excess of 100% of the net worth to be considered under Approval Route by RBI. (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 require prior approval of the RBI 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

➢ **Reporting of Form ODI**

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

a. Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of overseas JV / WOS;

b. Sale/ Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident;

c. Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of IP; and

d. 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

➢ **Overseas Direct Investments by Resident Individuals:**

- 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 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 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. 3 years for ECB upto USD 50 million or its equivalent. ii. 5 years for ECB beyond USD 50 million or its equivalent iii. 5 years for eligible borrowers under para vi below, irrespective of the amount of borrowing iv. 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	i. All entities listed in Track I ii. Companies in Infra sector iii. Holding Cos. iv. Core Investment Cos. (CIC) v. REITs & INVITs registered under 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 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. MAM 3 to 5 years – 300 bps over 6m LIBOR ii. More than 5 years – 450 bps over 6m LIBOR iii. Penal interest should not be more than 2%	i. The maximum spread over the bench mark will be 500 basis points per annum ii. Remaining conditions will be as given under Track I	i. The all-in-cost should be in line with the market conditions

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 :

Track I	Track II	Track III
Permitted End Uses		
i. ECB proceeds can be utilised for capital expenditure in the form of: - Import of capital goods - Local sourcing of capital goods - New project - Modernisation /expansion of existing units - ODI in JV/WOS - Acquisition of shares of PSU - Refinancing of existing trade credit raised for import of capital goods - Payment of capital goods already shipped / imported but unpaid - Refinancing of existing ECB provided the residual maturity is not reduced	i. ECB proceeds can be used for all purposes excluding the following: - Real estate activities - Investing in capital market - Using the proceeds for equity investment domestically; - On-lending to other entities with any of the above objectives; - Purchase of land	i. NBFCs can use ECB proceeds only for: - On-lending for any activities, including infrastructure sector - providing hypothecated loans to domestic entities for acquisition of capital goods/equipment - providing capital goods/equipment to domestic entities by way of lease and hire-purchases

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

Track I	Track II	Track III
Permitted End Uses		
ii. SIDBI can raise ECB only for the purpose of on lending to the borrowers in MSME sector iii. Units of SEZs can raise ECB only for their own requirements iv. Shipping and airlines companies can raise ECB only for import of vessels and aircrafts respectively v. ECB proceeds can be used for general corporate purpose (including working capital) provided the ECB is raised from the direct / indirect equity holder or from a group company for a minimum average maturity of 5 years	ii. Holding companies can also use ECB proceeds for providing loans to their infrastructure SPVs	ii. Developers of SEZs/ NMIZs can raise ECB only for providing infrastructure facilities within SEZ/ NMIZ iii. Micro finance entities can raise ECB only for on-lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

Track I	Track II	Track III
Permitted End Uses		
vi. NBFC-IFCs and NBFCs-AFCs can raise ECB only for financing infrastructure vii. Holding Companies and CICs shall use ECB proceeds only for on-lending to infrastructure Special Purpose Vehicles (SPVs) viii. ECBs for the following purposes will be considered under the approval route: - Import of second hand goods as per the Director General of Foreign Trade (DGFT) guidelines; - On-lending by Exim Bank		iv. For other eligible entities under this track, the ECB proceeds can be used for all purposes excluding the following: - Real estate activities - Investing in capital market - Using the proceeds for equity investment domestically; - On-lending to other entities with any of the above objectives; - Purchase of land

External Commercial Borrowings (ECBs)

Key parameters of the ECB Framework :

➢ **<u>Individual Limits:</u>**

- 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

➢ **<u>ECB Liability to Equity Ratio:</u>**

- For ECB raised under the automatic route → 4:1
- 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

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 • Regional Rural Bank	• 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 Department of Banking Regulations		

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. 21/2000 - 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

- 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**

- <u>Permitted Credits</u>

  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

- <u>Permitted Debits</u>

  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. • **<u>Indvl*:</u>** 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. • **<u>Entities:</u>** 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 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

Particulars	NRE Account	FCNR(B) Account	NRO Account
Operations by resident POA holder	Permitted • Withdrawal for local payments • Make investments in India • Remittance to account holder himself thru banking channels Prohibited • Remittance outside India to other than account holder himself • Make payment by gift to resident • Transfer funds to other NRE account		Permitted • Withdrawal for local payments • Make investments in India • Remittance outside India of current income, net of taxes Prohibited • Remittance outside India to other than account holder himself • Make payment by gift to resident • Transfer funds to other NRO a/c
Loans outside India (Secured)	• 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. • The term "loan" shall include all types of fund based / non-fund based facilities		• Not permitted

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>Loans in India</td><td colspan="2">• AD can sanction loans in India to NRI/PIO/ third parties without any limit, subject to usual margin requirements.
• These loans cannot be repatriated outside India
• Should be used only for personal purposes or business purposes (excluding relending, carrying on agricultural/ plantation activities or investment in real estate business)
• 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
• 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
• The facility for premature withdrawal of deposits not be available in such cases
• The term “loan” includes all types of fund based/non-fund based facilities</td><td>• 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 cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate business.
• The term “loan” includes all types of fund based/ non-fund based facilities</td></tr>
</table>

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

Particulars	NRE Account	FCNR(B) Account	NRO Account
Change in residential status from Non-resident to resident	• 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	• 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	• From PROI to PRI: Immediately designated as resident accounts • From PRI to PROI*: Immediately designated as NRO account

* For Foreign nationals leaving India after employment:

- AD can re-designate their resident account in India as NRO account on leaving India to enable them to receive their pending bona fide dues
- The funds credited to the NRO account to be repatriated abroad immediately, after payment of applicable taxes. Amount repatriated abroad should not exceed USD one million per financial year
- Debit to account should be only for the purpose of repatriation to the account holder's account maintained abroad.
- Account should be closed immediately after all dues have been received and repatriated as per the declaration made by the account holder when the account was designated as an NRO account

Foreign Currency Accounts by Indian Residents

Foreign Currency Accounts by Indian Residents

➢FCA in India

- EEFC Account vs. RFC(D) Account vs. RFC Account
- DDA Scheme
- Other Accounts by:
  - Indian agent of foreign shipping / airline company
  - Ship-manning / crew managing Indian agency
  - Project Office in India
  - Organiser 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)

A. P. (DIR Series) Circular No. 124 dated 10th May 2012: 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

Particular	Exchange Earners Foreign Currency (EEFC) Account	Resident Foreign Currency (Domestic) [RFC(D)] Account	Resident Foreign Currency (RFC) Account
Permitted Credits	• 100% of forex recd 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 unutilised 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 realised 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 recd in forex by 100% EOU / unit in EPZ/STP/EHTP • Payment recd in forex by DTA unit from SEZ unit • Payment recd 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 LIC claims/ maturity/ surrendered value settled in forex from an Indian insurance company	• Foreign exchange received as proceeds of LIC 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

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 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

Remittance of Assets O/s India

Remittance of Assets o/s India

- **Remittance by Foreign nationals**
  - After retirement from employment (upto $ 1 million per FY)
  - Out of assets inherited from PROI referred to u/s 6(5) (upto $ 1 million per FY)
  - 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

- **By NRI**
  - Can purchase any immovable property (other than agricultural land/ plantation property/ farm house) in India
  - Can transfer to PRI or another NRI/PIO
- **By PIO**
  - Can purchase any immovable property (other than agricultural land/ plantation property/ farm house) in India
  - Can receive such property as gift from PRI or NRI/PIO
  - Can receive such property as inheritance from PROI / PRI
  - Can transfer by way of sale immovable property in India (other than agricultural land/ farm house/ plantation property) to PRI
  - Can transfer by way of gift or sale agricultural land/ farm house/ plantation property in India to PRI
  - Can transfer by way of gift residential or commercial property in India, to PRI / NRI / PIO
- **Payment has to come from inward remittances or debit to NRE/ FCNR (B) / NRO a/c**

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 or Hong Kong cannot, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than on lease, not exceeding five years.**

- **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

➢ Amounts in Contravention

- Quantifiable → Liable to penalty upto thrice the sum involved
- Not Quantifiable → Liable to penalty upto Rs.2 lakh

➢ Power to Compound by RBI

- 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	Offence to be compounded	Regional RBI office
Paragraph 9(1)(A) of Schedule I of TISPRO	Delay in reporting inward remittance received for issue of shares	• Kochi and Panaji for amounts < Rs. 1 Cr • All other Regional RBI offices for amounts without any limits
Paragraph 9(1)(B) of Schedule I of TISPRO	Delay in filing form FC(GPR) after issue of shares	
Paragraph 9(2) of Schedule I 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 8 of Schedule I of TISPRO	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.	
Paragraph 5 of Schedule I of TISPRO	Violation of pricing guidelines for issue of shares	
Regulation 2(ii) read with Regulation 5(1) of TISPRO	Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.	
Paragraph 2 or 3 of Schedule I of TISPRO	Issue of shares without approval of RBI or FIPB respectively, wherever required	

Compounding of Contraventions & Penalties

Delegation of Powers to compound offences to Regional RBI Office

FEMA Regulation	Offence to be compounded	Regional RBI office
Regulation 10A (b)(i) r.w. paragraph 10 of Schedule I of TISPRO	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.	• Kochi and Panaji for amounts < Rs. 1 Cr • All other Regional RBI offices for amounts without any limits
Regulation 10B (2) r.w. paragraph 10 of Schedule I of TISPRO	Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident.	
Regulation 4 of FEMA 20/2000-RB dated May 3, 2000	Taking on record transfer of shares by investee company, in the absence of certified from FC-TRS.	
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] Reporting Contraventions **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

Public disclosure of guidelines on the amount imposed during compounding

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 (FEMA 20)	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</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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