

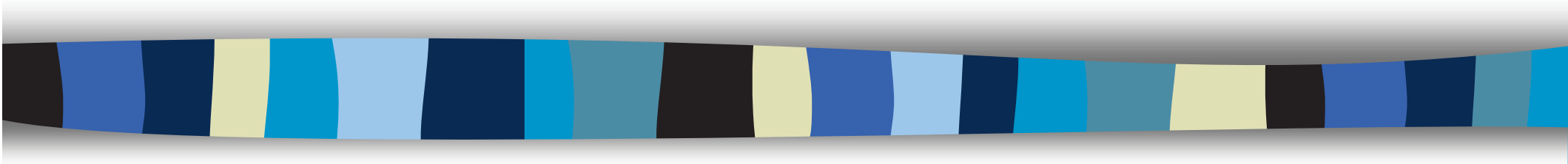
# Do's and Dont's for NRIs under FEMA

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# Important definitions under FEMA



def·i·ni·tion

\dē-fə'-nī-shən\  
meaning of a word;  
can be subjective

# Definition - Residence

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

### • Individuals

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

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

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

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

# Definition – Non-Resident Indian (NRI) ; Overseas Citizen of India (OCI)

## ❖ Comparison of NRI definition between different Regulations

Definition	Regulation
Means a person resident outside India who is a citizen of India	FEM (Borrowing & Lending in Rupees) Regulation, 2000
	FEM (Deposits) Regulations, 2000 Superceded by FEM (Deposits) Regulations, 2016
	FEM (Remittance of Assets) Regulations, 2000 Superceded by FEM (Remittance of Assets) Regulations, 2016
	FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017
Means a person resident outside India who is a citizen of India or <b>is a person of Indian Origin</b> as defined in the said regulation	FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000

## ❖ Insertion of definition of OCI

FEMA 20(R) : ‘Overseas Citizen of India (OCI)’ means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955

# Definition – Persons of Indian Origin (PIO)

## ❖ Comparison of PIO definition between different Regulations

Definition	Regulation
Means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan, or such other country as may be specified by the Central Government, satisfying the following conditions :	FEM (Borrowing & Lending in Rupees) Regulation, 2000
(a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or	FEM (Deposits) Regulations, 2000 Superceded by FEM (Deposits) Regulations, 2016
(b) Who belonged to a territory that became part of India after the 15th day of August, 1947; or	
(c) Who is a child or grandchild or a <b>great grandchild</b> of a citizen of India or of a person referred to in clause (a) or (b)	
(d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)	FEM (Remittance of Assets) Regulations, 2000 Superceded by FEM (Remittance of Assets) Regulations, 2016
Explanation: for the purpose of this sub-regulation, the expression ‘Person of Indian Origin’ includes an ‘Overseas Citizen of India’ cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.	

# Definition – Persons of Indian Origin (PIO)

## ❖ Comparison of PIO definition between different Regulations

Definition	Regulation
<p>Means a citizen of any country other than Bangladesh or Pakistan or Sri Lanka, if</p> <p>(a) he at any time held Indian passport; or</p> <p>(b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or</p> <p>(c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b)</p>	<p>FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000</p>
<p>Means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who</p> <p>(a) at any time held Indian passport; or</p> <p>(b) who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);</p>	<p>FEM (Acquisition and Transfer of Immovable property in India) regulations, 2000</p>

# Deposits and Accounts by Non-Residents



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

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



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

## ❖ NRE & FCNR (B) account

### • Permitted Credits

- a) Inward remittances from o/s India thru banking channels
- b) Personal cheques of FCA outside India / travellers cheques / bank drafts deposited by the account holder in person during his temporary visit to India
- c) Tender of foreign currency / bank notes during his temporary visit to India
- d) Transfers from other NRE/ FCNR(B) accounts
- e) Interest accruing on the funds held in the account
- f) Current income in India due to the account holder, subject to payment of applicable taxes in India (like rent, dividend, pension, interest) **(no qualification of earlier investment account source i.e. original investment could have been made from either NRE or NRO a/c)**
- g) Maturity or sale proceeds of any permissible investment in India which was originally made from NRE/FCNR(B) a/c or out of inward remittances from o/s India thru banking channels  
*(FEMA Notf. 21/2000 - 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

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

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

## ❖ NRO account

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

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

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

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

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

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

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

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

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

# Deposits from NRI / PIO

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

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

## ❖ Deposit from NR towards Directorship:

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



# Deposits from NRI / PIO

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

Particulars	Deposit on non-repatriation basis
Who can accept the deposit	Proprietorship concern, firm, Indian company (including NBFC)
Mode	Private arrangement or public deposit scheme
Credit rating	If NBFC, then credit rating is required
Maturity	< 3 years
Interest	As prescribed under Companies (Acceptance of Deposits) Rules, 2014 → 12.5 %
Investment	<b>Debit to NRO a/c only.</b> Inward remittance and transfer from NRE/FCNR(B) a/c prohibited.
End use restriction	Amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate or investment in any other entity engaged in above
Repatriability	Not allowed

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

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

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

# Acquisition of Immovable Property in India



# Immovable Property in India

## ❖ Applicable to Non-resident Indians (NRIs) / Persons of Indian Origin (PIOs)

Particulars	NRI	PIO
<b><u>Acquisition</u></b>		
Purchase (other than agricultural land/ farmhouse / plantation etc) <b>from</b>	Resident / NRI Reg 3(a) & 4(d)	Resident / NRI Reg 4(a) & 4(d)
Acquire as gift (other than agricultural land/ farmhouse/ plantation etc) <b>from</b>	Resident / NRI Reg 3(a) & 4(e)	Resident / NRI / PIO Reg 4(b)
Acquire as gift (residential or commercial property) <b>from</b>	Resident / NRI / PIO Reg 3(a) & 4(f)	Resident / NRI / PIO Reg 4(b) & 4(f)
<b><u>Inheritance</u></b>		
Acquire (any IP) as inheritance <b>from</b>	a) Any <u>person resident outside</u> who has acquired it under laws in force b) under section 6(5) of FEMA Reg 3(a) & Reg 4(c)	

### ❖ Points to be Noted:

- **Reg 4(d):** NRI cannot purchase IP from PIO; Nor PIO can purchase from another PIO
- **Reg 3(a) & Reg 4(c):** NRI / PIO cannot acquire agriculture land / farmhouse / plantation etc; Can only receive through inheritance;
- **Reg 3(b) & Reg 4(e):** Once acquired by way of inheritance, they can only sell to Resident

# Immovable Property in India

## ❖ Applicable to Non-resident Indians (NRIs) / Persons of Indian Origin (PIOs)

Particulars	NRI	PIO
<b><u>Sale</u></b>		
Sell (other than agricultural land / farmhouse / plantation etc) to	Resident / NRI / PIO Reg 3(b) & 3(c)	Resident Reg 4(d)
Sell (agricultural land / farmhouse / plantation etc) to	Resident Reg 3(b)	Resident who is a citizen of India Reg 4(e)
<b><u>Gift</u></b>		
Gift (other than agricultural land / farmhouse / plantation etc) to	Resident / NRI/ PIO Reg 3(b) & 3(c)	Resident / NRI/ PIO Reg 4(f)
Gift (agricultural land / farmhouse / plantation etc) to	Resident Reg 3(b)	Resident who is a citizen of India Reg 4(e)
Gift residential / commercial property to	Resident / NRI/ PIO Reg 3(b) & 3(c)	Resident / NRI/ PIO Reg 4(f)

### ❖ **Points to be Noted:**

- Transfer includes inheritance ?
- **Reg 4(e):** PIO can transfer by way of sale / gift of agricultural land / farmhouse / plantation etc only to Resident who is citizen of India;
- **Reg 3(b):** Whereas NRI can transfer to resident in India irrespective of citizenship

# Immovable Property in India

## ❖ Payment for Acquisition of Immovable Property

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

## ❖ Repatriation of sale proceeds of immovable property

- Property acquired by way of Sec 6(5) or his successor cannot repatriate outside India the sale proceeds of such immovable property without the prior permission of the RBI except by NRIs and PIOs up to USD 1 million
- Sale of IP (other than agricultural land/ farm house/ plantation property) in India by a NRI/ PIO resident outside India provided:
  - IP acquired by the seller in accordance with FEMA
  - The amount to be repatriated does not exceed the amount paid for acquisition of IP
  - In case an immovable property in India has been purchased by an NRI/ PIO out of housing loans availed in terms of Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000, and the repayments for such loans are made out of remittances received from abroad through banking channels or by debit to the NRE/ FCNR(B) account of the NRI, such repayments may be treated as equivalent to foreign exchange received.
  - In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties

# Immovable Property **in India**

## ❖ DOs for NRIs / PIOs

- Can acquire property for holding/self-use
- Can sell the property & repatriate sale proceeds abroad, most of the times
- Can give the property on rent & repatriate funds abroad after payment of taxes
- No limit on number of properties acquired in India

## ❖ DONT's for NRIs / PIOs

- Can not buy agricultural property, plantations & farm houses
- Can not do Real Estate Trading, or trade in Transferable Development Rights

# Remittance of Assets O/s India





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

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

# Borrowing and Lending between NRI / PIO & PRI



# Borrowing and Lending in Forex

## ❖ Borrowing by resident individual in forex:

- An individual resident in India may borrow a sum not exceeding US\$ 250,000/- or its equivalent from his **close relative outside India**, subject to the conditions:
  - the minimum maturity period of the loan is **one year**;
  - the loan is **free of interest**; and
  - the amount of loan is received by **inward remittance** in free foreign exchange through normal banking channels or by **debit to the NRE/FCNR account** of the non-resident lender.

## ❖ Borrowing by NRI / PIO close relative in forex under LRS??

## ❖ ‘Relative’ means a ‘relative’ as defined under the Companies Act, 1956 / 2013??

Act of 1956	Act of 2013
<p>U/s 6: MEANING OF "RELATIVE"</p> <p>A person shall be deemed to be a relative of another, if, and only if,</p> <p>(a) they are members of HUF; or</p> <p>(b) they are husband and wife ; or</p> <p>(c) the one is related to the other in the manner indicated in Schedule IA.</p>	<p>U/s 2(77) “relative”, with reference to any person, means anyone who is related to another, if—</p> <p>(i) they are members of HUF; or</p> <p>(ii) they are husband and wife; or</p> <p>(iii) one person is related to the other in such manner as may be prescribed.</p>

# Borrowing and Lending in Forex

❖ 'Relative' means a 'relative' as defined under the Companies Act, 1956 / 2013??

Act of 1956 (Schedule IA)	Act of 2013 (As prescribed)
Father	Father (including step-father)
Mother (including step-mother)	Mother (including step-mother)
Son (including step-son)	Son (including step-son)
Son's wife	Son's wife
Daughter (including step-daughter)	Daughter
Father's father	Daughter's husband
Father's mother	Brother (including step-brothers)
Mother's mother	Sister (including step-sisters)
Mother's father	-
Son's son	-
Son's son's wife	-
Son's daughter	-
Son's daughter's husband	-
Daughter's husband	-
Daughter's son	-
Daughter's son's wife	-
Daughter's daughter	-
Daughter's daughter's husband	-
Brother (including step-brothers)	-
Brother's wife	-
Sister (including step-sister)	-
Sister's husband	-

# Borrowing and Lending in Rupees

## □ Persons Resident in India borrowing in INR from NRIs/PIOs

❖ **Borrowing in INR by Indian companies:** A Indian company may borrow in INR, on **repatriation** or **non-repatriation basis**, from NRIs/PIOs subject to following:

- i. Borrowing company **does not and shall not:**
  - Carry on agricultural/plantation/real estate business; or
  - Trade in transferable development rights; or
  - Act as Nidhi or Chit fund company.
- ii. Borrowing is by issuance of **NCDs** and made by **public offer**;
- iii. The rate of interest is **not more than PLR of SBI + 3%**;
- iv. Period of loan should **> 3 years**;
- v. If the borrowing is on **repatriation basis**, then the **ratio of % of NCDs issued to NRIs/PIOs : total paid up value of all NCDs issued shall not > FDI ceiling** for Indian company. Further, the funds towards borrowing should be received through **inward remittance** from outside India or by **debit to NRE/FCNR (B) a/c**;
- vi. If the borrowing is on **non-repatriation basis**, then the amount of loan should be received either by **inward remittance** from outside India or by **debit to NRE/NRO/FCNR(B) a/c**. Payment of **interest and repayment of principal** shall be made only to the **NRO a/c**.

# Borrowing and Lending in Rupees

## □ Persons Resident in India borrowing in INR from NRIs/PIOs

❖ **Borrowing in INR by persons other than Indian companies:** PRI (other than India company) can borrow in INR from NRIs/PIOs subject to following:

- Borrowing shall be only on a **non-repatriation basis**;
- The amount of loan should be received either by **inward remittance** from outside India or by **debit to NRE/NRO/FCNR(B)** account of the lender;
- Period of loan should be **< 3 years**;
- Rate of interest on the loan shall not be **more than two per cent above Bank Rate** prevailing on the date of availment of loan;
- Payment of **interest and repayment of principal** shall be made only to **NRO a/c** of lender.

## ❖ **Restriction on use of borrowed funds:**

- The proceeds shall be **utilised only for the own business of the borrower** other than
  - Agricultural / plantation activities / real estate business / construction of farm houses; or
  - Trading in transferable development rights; or
  - Business of Nidhi or Chit fund company.
- The proceeds **shall not be used for investment or for on-lending in any manner whatsoever**. RBI may, however, permit use of borrowed amount for on-lending to infrastructure sector or to keep them in fixed deposits with banks in India, pending utilisation for permissible end-uses.

# Borrowing and Lending in Rupees

❑ Lending by authorised dealers in INR to NRIs for own requirements or own business purposes: AD can grant INR loans to a NRI against security of shares and other securities or against the security of immovable property (other than agricultural or plantation land or farm house) subject to following:

- **Restriction on use of borrowed funds** given in *Slide 30*. Loan proceeds cannot be used for any other activity where foreign investment is not allowed.
- The **loan amount shall not be remitted outside India or credited to NRE/FCNR(B) a/c;**
- The **repayment of loan** should be either by **inward remittance** from outside India or by **debit to NRE/NRO/FCNR(B) a/c** and/or **out of sale proceeds realised through securities offered for the loans**. Further, these **loans can also be repaid by any relative** (as defined under Companies Act) of the borrower in India through account to account transfer;
- AD may also grant INR loans to NRI **for any other purpose** provided it is as per the board approval policy of AD and **loan proceeds are not used for investment in capital market including margin trading and derivatives**. Repayment of the loan shall happen by remittance from outside India or by debit to NRE/FCNR(B)/NRO account.

❑ Other borrowing and lending transactions

- ❖ Lending by authorised dealers in INR to NRIs for acquiring shares under ESOP
- ❖ Lending in INR by an authorised dealer or a housing finance institution to NRI/PIO for housing purpose
- ❖ INR loans by Indian body corporate to its NRI/PIO employees

# Borrowing and Lending in Rupees

- ❑ **INR Loans by Resident Individual to NRI relative:** A resident individual may grant INR loan to a NRI relative by way of crossed cheque/electronic transfer subject to following:
  - The loan is **free of interest** and the **minimum maturity of the loan is one year**;
  - The loan amount should be **within LRS limits per year**;
  - **Restrictions on utilisation** of loans as given in *Slide 30*;
  - The loan **shall not be remitted outside India** but be **credited to the NRO a/c**;
  - **Repayment of loan** shall be made by way of **inward remittances** from outside India or by **debit to the NRO/NRE/FCNR(B) account** of the borrower.
  
- ❑ **Change of status of borrower from PRI to PROI:** **AD may allow continuance** of loan/overdraft till its original maturity subject to its satisfaction of its commercial judgment. So long as the borrower continues to remain a person resident outside India, the **repayment shall be out of inward remittance** from outside India or from NRE/FCNR(B)/NRO a/c of the borrower.
  
- ❑ **Change of the status of the lender from PRI to PROI:** Repayment of the loan by the resident borrower should be made by **credit to the NRO account of the lender**.



# Foreign Investment in India



# Routes for Foreign Investment in India by a NRI

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

# Foreign Investment by NRI - Important Definitions

## ❖ Foreign Direct Investment (FDI)

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

or

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

- Note: In case, an existing investment by a PROI in capital instruments of a listed Indian company falls to a level below 10% of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI.
- Explanation: Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised

## ❖ Foreign Investment

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

- Explanation: If a declaration is made by persons as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.
- Note: A PROI may hold foreign investment either as Foreign Direct Investment or as Foreign Portfolio Investment in any particular Indian company.

# Foreign Investment by NRI - Important Definitions

## ❖ Capital Instruments

**Capital Instruments means:**

- equity shares,
- debentures,
- preference shares and
- share warrants

- Explanation:
- Equity shares issued in accordance with the provisions of the Companies Act, 2013 shall include equity shares that have been **partly paid**. The expression '**Debentures**' means fully, compulsorily and mandatorily convertible debentures. '**Preference shares**' means fully, compulsorily and mandatorily convertible preference shares. Share **Warrants** are those issued by an Indian Company in accordance with the Regulations issued by the SEBI. **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.**
- 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.
- 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.
- Capital instruments shall include non-convertible/ optionally convertible/ partially convertible preference shares issued as on and up to April 30, 2007 and optionally convertible/ partially convertible debentures issued up to June 7, 2007 till their original maturity. Non-convertible/ optionally convertible/ partially convertible preference shares issued after April 30, 2007 shall be treated as debt and shall conform to External Commercial Borrowings guidelines regulated under Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000

# Foreign Investment by NRI - Important Definitions

## ❖ Foreign Portfolio Investment

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

- Explanation: The 10 percent limit for foreign portfolio investors shall be applicable to each foreign portfolio investor or an investor group as referred in Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014

## ❖ 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.**

- Explanation: Any Foreign Institutional Investor (FII) or a sub account registered under the Securities Exchange Board of India (Foreign Institutional Investors) Regulations, 1995 and holding a valid certificate of registration from Securities and Exchange Board of India shall be deemed to be a FPI till the expiry of the block of three years from the enactment of the Securities Exchange Board of India (FPI) Regulations, 2014.

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

- **Lottery Business including Government/ private lottery, online lotteries**
- **Gambling and betting including casinos**
- **Chit funds**

Explanation: The Registrar of Chits or an officer authorised by the state government in this behalf, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Non-resident Indians and Overseas Citizens of India who shall be eligible to subscribe, through banking channel and on non- repatriation basis, to such chit funds, without limit subject to the conditions stipulated by the Reserve Bank of India from time to time

- **Nidhi company**
- **Trading in Transferable Development Rights (TDRs)**
- **Real Estate Business or Construction of Farm Houses**

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

- **Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes**
- **Activities/ sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations**
- **Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities**

# Foreign Investment by NRI

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

- ❖ **An Indian company may **issue** capital instruments to PROI subject to Reg 16 viz.:**
  - Entry Routes → Automatic or Government Approval
  - Sectoral Caps and Attendant Conditionality(s) → Sector wise- caps on foreign investment permitted under automatic / approval route; In sectors/ activities not listed in Reg 15 or 16, foreign investment is permitted up to 100 percent on the automatic route
- ❖ **PROI may **purchase** capital instruments of a **listed Indian company** on a stock exchange in India provided that:**
  - PROI making the investment has already acquired control of such company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and continues to hold such control;
  - Amount of consideration may be paid as per the mode of payment prescribed in this Schedule or out of the dividend payable by Indian investee company
- ❖ **Against **pre-incorporation / preoperative expenses** incurred by **NR entity** up to a limit of five percent of its authorised capital or USD 500,000 whichever is less, subject to :**
  - Sectors having 100% FDI under Automatic Route and no FDI linked performance conditions
  - Reporting requirement;
  - Statutory Auditor certification

# Foreign Investment by NRI

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



# Foreign Investment by NRI

## Schedule 3 – PIS by NRIs/OCIs

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

# Foreign Investment by NRI

## Schedule 4 – Investment on Non-repatriable Basis

❖ Non-repatriable means -

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

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

❖ Eligible Investor:

- NRI
- OCI

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

❖ Investment in:

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

# Foreign Investment by NRI

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

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

# Foreign Investment by NRI

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

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

- ❖ NRIs / OCI can investment on Non-Repatriation basis under Automatic Route
- ❖ AOP covered for first time – Permissible with RBI Permission [Reg 4 to FEMA 20(R)]
- ❖ Earlier Express Permission Now removed:
- ❖ NRIs / PIOs on Repatriation basis with RBI + GoI permission
- ❖ Other Foreign residents with RBI + GoI permission
- ❖ Restricted Sectors for NRIs/ OCI:
  - ❖ Agricultural / Plantation / Real Estate Business / Print Media
- ❖ **Mode of Payment** → inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account
- ❖ **Sale/ maturity proceeds** →
  - ❖ Credited **only to the NRO account** of the investor, irrespective of the type of account from which the consideration was paid
  - ❖ Amount invested + capital appreciation shall not be allowed to be repatriated abroad [ **NRI may avail USD \$ 1 Million scheme** ]

# Foreign Investment by NRI

## Schedule 5 – Other Investments by NRI / OCI

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

- ❖ Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds;
- ❖ Bonds issued by a Public Sector Undertaking (PSU) in India;
- ❖ Shares in Public Sector Enterprises being disinvested by the Central Government, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids;
- ❖ Bonds/ units issued by Infrastructure Debt Funds;
- ❖ Listed non-convertible/ redeemable preference shares or debentures
- ❖ Derivatives
- ❖ Perpetual Debt Instruments by Banks – Tier I & Tier II subject to limits
- ❖ National Pension Scheme governed by PFRDA

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

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

# Foreign Investment by NRI

## Schedule 5 – Other Investments by NRI

❖ NRIs cannot invest in **PPF / NSC**

### PPF

- ❖ Not allowed to contribute to Old PPF opened earlier when status was Resident
- ❖ If Resident who had a PPF becomes an NRI, PPF A/c is deemed to be closed w.e.f. the day he becomes an NRI
- ❖ Interest w.e.f. that date shall be paid at Post Office interest rate i.e. @ 4% p.a. up to the last day of the month preceding the one in which A/c is actually closed

### NSC

- ❖ NSC is deemed to be encashed on the day the holder becomes an NRI
- ❖ Interest w.e.f. that date shall be paid at Post Office interest rate i.e. @ 4% p.a. up to the last day of the month preceding the one in which A/c is actually encashed.

# Foreign Investment by NRI

## Sch. 6 – Investment in LLP

- ❖ **Contribute to the capital of an LLP operating in sectors/ activities where**
  - ❖ Foreign investment up to 100% is permitted under automatic route
  - ❖ There are no FDI linked performance conditions
  - ❖ Investment in compliance of LLP Act, 2008
- ❖ **No FDI in LLP in following cases:**
  - ❖ Sectors with performance linked conditions Eg. NBFC, Housing, Trading
  - ❖ Sectors eligible to receive less than 100% FDI under Automatic Route
  - ❖ Sectors where FDI possible only with Govt. permission
  - ❖ Agriculture / Plantation / Print Media / Private Security
  - ❖ Sectors not opened up for FDI – Tobacco / Railways
- ❖ **Foreign Investors not allowed to Invest in LLP:**
  - ❖ Pakistani / Bangladeshi entity / citizen
  - ❖ FVCI
  - ❖ RFPI

# Foreign Investment by NRI

## Sch. 6 – Investment in LLP

### ❖ Pricing

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

### ❖ Payment

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

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

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

### ❖ Other Conditions

- ❖ Designated Partner – must be an Indian Company / Indian Resident
- ❖ Resident DP u/s. 7 of LLP Act must be a Resident u/s. 2 of FEMA, 1999
- ❖ DP responsible for all compliances and penalties on LLP
- ❖ LLPs cannot avail ECBs



# Foreign Investment by NRI

## Sch. 8 – Investment Vehicle (IV)

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

# Foreign Investment by NRI

## Sch. 9 – Investment in Depository Receipts

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

# Foreign Investment by NRI

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

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

# Foreign Investment by NRI

## Transfer of Shares To / By PROI

Seller	Buyer	Automatic Route	Remarks
PROI other than NRI / OCI	Any PROI	Sale / Gift No Pricing G/L	Prior Government approval required in a sector which requires Government approval
NRI / OCI (on repatriation basis)	Any PROI	Sale / Gift No Pricing G/L	Prior Government approval required in a sector which requires Government approval
PROI	PRII	Sale / Gift Pricing G/L applicable (Not applicable in case of Sch 4)	To comply with documentation and reporting requirements

# Foreign Investment by NRI

## Transfer of Shares To / By PROI

Seller	Buyer	Automatic Route	Remarks
R / NRI / OCI on Non Repatriation basis	Any PROI	Sale Pricing G/L applicable	Pricing G/L NA if Buyer is NR NRI / OCI under Sch. 4
R / NRI / OCI on Non Repatriation basis	Any PROI	<b>Gift – RBI Approval</b>	5% Capital Limit / To relatives only / Value < \$50,000
NRI / OCI on NR	Any NRI / OCI on NR	Gift – No Pricing G/L	Continue to hold on NR basis

# Import and Export of Foreign Currency



# Foreign Currency

## ❖ Import into India

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

## ❖ Export from India

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

# Emigrating Indians





# Emigrating Indians

## ❖ Assets in India: Sec 6(5)

- A person resident outside India may **hold, own, transfer or invest** in **Indian currency, security or any immovable property situated in India** if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

## ❖ Bank a/cs

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

## ❖ Shares and Securities

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

## ❖ Borrowings and lending

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

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

## ❖ Insurance policy

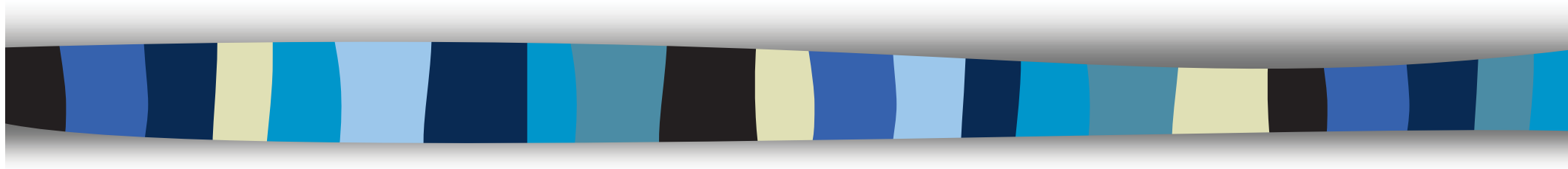
- Can continue to hold life/general insurance policy in India. No permission required for payment of premium

## ❖ Partner in firm or proprietor of concern

- Can continue to remain partner/proprietor. Intimation to be given about change in status.

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

# Returning Indians



**WELCOME BACK**

# Returning Indians

## ❖ Assets abroad: Sec 6(4)

- A person resident in India may **hold, own, transfer or invest** in **foreign currency, foreign security or any immovable property situated outside India** if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

## ❖ Bank a/cs

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

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

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

## ❖ Insurance policy

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

## ❖ Partner in firm or proprietor of concern

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

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

## Section 6(4) - Clarification

- In terms of sub-section 4 of Section (6) of FEMA, a person resident in India is free to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.
- **Sub-section 4 of Section (6)** of FEMA covers the following transactions:
  - **Foreign currency accounts** opened and maintained by such a person when he was resident outside India;
  - **Income earned through employment or business or vocation outside India** taken up or commenced while such person was resident outside India, or **from investments made** while such person was resident outside India, or **from gift or inheritance received** while such a person was resident outside India;
  - **Foreign exchange including any income arising** therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.
- A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any **fresh investments abroad without approval of Reserve Bank**, provided the cost of such investments and/ or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

# Resident Foreign Currency (RFC) Account

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

# Resident Foreign Currency (RFC) Account

## Permitted Credits

- Foreign exchange received by him as **pension/ superannuation/ other monetary benefits from overseas employer**
- **Foreign exchange 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
- Foreign exchange received as proceeds of LIP claims/ maturity/ surrendered value settled in forex from an Indian insurance company
- Balances in NRE/ FCNR(B) accounts on change in residential status

## Permitted Debits

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

# General Dos and Dont's



## DOs for NRIs

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



## DONT's for NRI

- ❖ Executing Capital Account transactions which are prohibited / not covered by a general permission
- ❖ Effecting current account transactions which are prohibited / restricted
- ❖ Instructing residents to make onward payments on their behalf (exception given under Regulation 6(2) of Notification No. FEMA 14(R)/2016-RB dated May 2, 2016 – for Medical expenses, boarding, lodging, travel within India)
- ❖ “Netting off” of transactions with residents
- ❖ Receiving gifts of property from resident relatives not expressly allowed
- ❖ Cannot open, cannot renew, cannot make additional contribution to PPF a/c in India
- ❖ Check eligibility for Aadhar

# Thank You



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