



Overview of FEMA & Investment opportunities in India for NRIs

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Scope –Overview of FEMA

- Introduction to FEMA
- A person resident in India under FEMA and its importance.
- “Current Account transaction” and “Capital Account Transaction”

Historical Background

- Exchange control was introduced as a temporary measure in 1939.
- Placed on statutory basis in 1947 (FERA 1947)
- FERA 1947 replaced by FERA 1973.
- FERA 1973 replaced by FEMA 1999.
- Under FERA , a person was presumed guilty unless he proves himself innocent.
- FERA has controversial 27 years stint during which many bosses of the Indian corporate world found themselves at the mercy of Enforcement Directorate.

Preamble to FEMA

- Following the liberalization ushered in 1991 some amendments were made to FERA in 1993 there was a lot demand to bring certain major changes in FERA in the light of economic changes took place
- Accordingly, on June 1, 2000, the Foreign Exchange Management Act, 1999 (FEMA) brought in force to replace the then existing FERA.
- It is an act to manage the foreign exchange of India as opposed to FERA which was enacted to regulate/control the foreign exchange.
- Enactment of FEMA also brought with it Prevention of Money Laundering Act 2002 which came into effect from 1 July 2005.

FEMA, 1999-Objectives

- FEMA, 1999 came into effect from 01.06.2000.
- To consolidate 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.

Structure of FEMA

- FEMA has in all 49 sections of which 9 (**section 1 to 9**) are **substantive** and the rest are procedural/administrative.
- Section 46 of the Act grants power to Central Government to make rules and section 47 of the Act grants power to RBI to make regulations to implement its provisions and the rules made thereunder.
- RBI is entrusted with the administration and implementation of FEMA

Salient features...

- Shift in object.
- Govt. / RBI – powers clearly demarcated.
- FX transactions categorised – Current / Capital
- Provisions dependant on residential status.
- Residential status on the basis of stay as well as purpose.
- Civil Law .
- No arrest.
- Prosecution to prove charges against accused.
- Investigation and adjudication segregated.
- A new concept - Compounding introduced.
- Compounding in a definite time-frame (180 days)

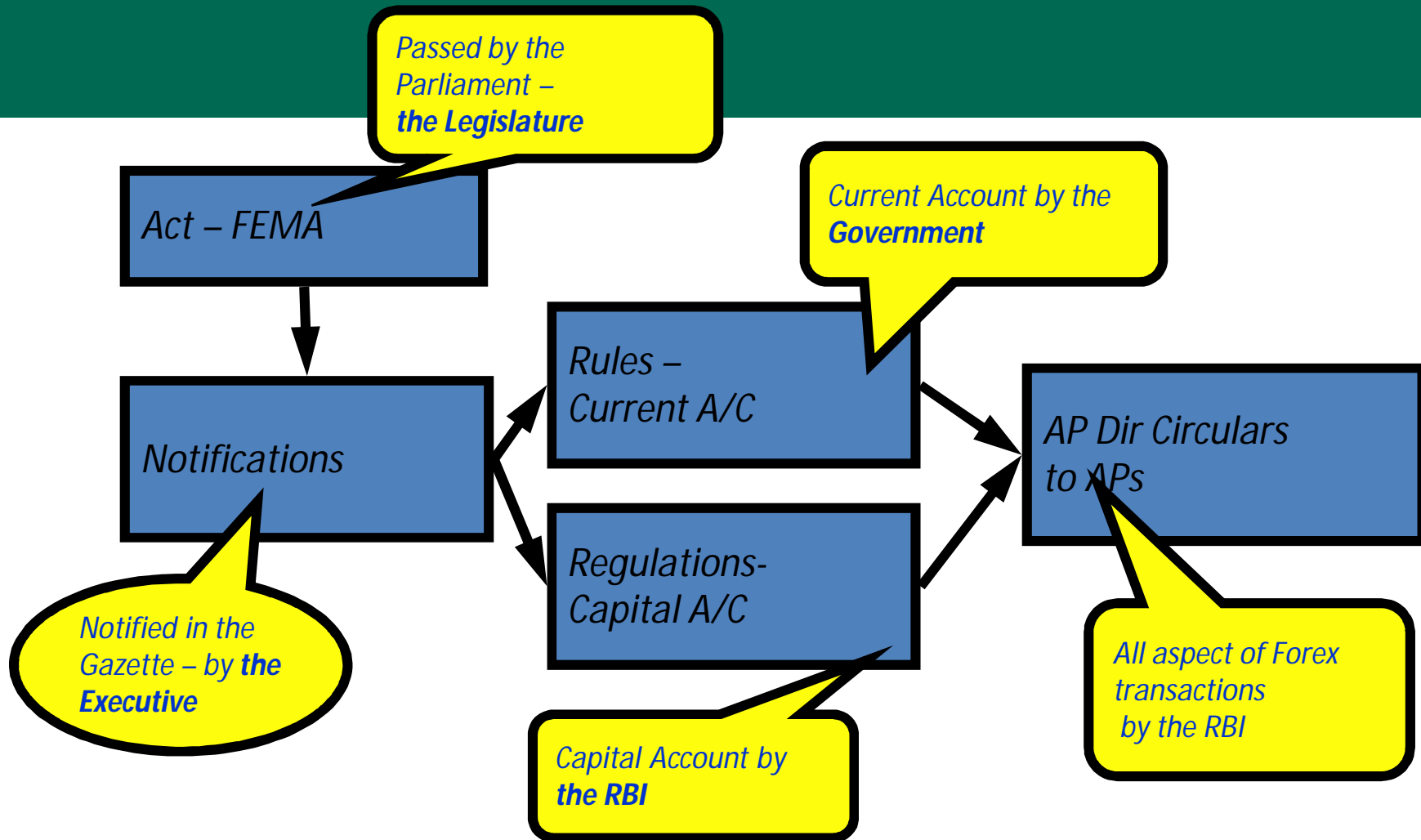
Important Sections

- Main sections are :
 - Sec.2 : Definitions.
 - Sec.3 : Dealing in FE.
 - Sec.4 : Holding of FE.
 - Sec.5 : Current Account.
 - Sec.6 : Capital Account
 - Sec.7 : Export of Goods and Services.
 - Sec.8 : Realisation / repatriation of FE.
 - Sec.9 : Exemption from Sec.8
 - Sec.10(5): Declaration
 - Sec.10(6): Freedom to utilize forex
 - Sec 11 – RBI's powers to issue directions to authorised person
 - Sec 12 – Power of RBI to inspect authorised person
 - Sec 13 to 15 : Penal provisions

Legal Framework

- RBI has been empowered under section 47 of the FEMA to make regulations under FEMA, by way of notifications, to carry out the provision of FEMA and the rules made thereunder.
- The procedural instructions under FEMA are issued by RBI vide A. P. Dir. Circulars.
- Press Notes / Press Releases are issued by DIPP to regulate the flow of Foreign Direct Investment in India which are notified by RBI by way of amendment to FEMA regulations. Such notifications take effect from the date of issue of Press Notes / Press Releases unless specified otherwise.
- Thus, regulatory framework consist of Acts, Regulations, Circulars / Directions, Press Notes and Press Releases.

Mechanism under FEMA



Regulating Authorities

The FEMA is administered by

- a) The Central Government of India through **“Rules”** on Current Account Transactions & other matters such as compounding proceedings etc.
- b) Reserve Bank of India through **“Notifications”** on Capital Account Transactions in general and Directions [**AP (Dir) Circulars**] , **Master Circulars issued every year on 1st July**
- c) **FDI Policy by DIPP**

The Role of a Chartered Accountant

- Chartered Accountants can act as Presenters before the Compounding Authorities (S. 32)
- Certification as to end use of funds when ECB returns are filed with the RBI
- Valuation of shares of a company which attracts FDI
- Certification of the net-worth of the Indian entity investing outside India.

Applicability of FEMA- Section 1(2) / 1(3)

- **Extraterritorial Jurisdiction:** FEMA extends to the whole of India. It also applies to the branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contraventions there under committed outside India by any person to whom the Act applies.
- E.g. Infosys has a branch in USA. If USA Branch borrows outside India , RBI permission is required.

Residential Status

- Under FEMA residential status is of two types:
 - Person resident in India and
 - Person resident outside India
- FEMA's predecessor Foreign Exchange Regulation Act (FERA) considered citizenship as the deciding factor
- FEMA lays emphasis on 'residing' and "intention to stay in India".

Residential Status...contd....

Section 2(v)(i)-A person **residing** in India for more than **one hundred and eighty-two days** during the course of the **preceding financial year** but does not include:—

(A) A person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) A person who has come to or stays in India, in either case, otherwise than—

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India (Branch in India),
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India (Branch outside India);

Explanation of definition: Two Conditions must to become Resident

- He should be residing in India for at least 183 days during the preceding financial year **and**
- He should have come to India or is staying in India either for
 - taking up employment or
 - carrying on business or vocation in India or
 - for any other purpose, that would indicate his intention to stay in India for an uncertain period.

Section 2(w) " person resident outside India" means a person who is not resident in India;

An Example

- Mr. Paul came to India on 1 Sep 07 for taking up an **employment** in India.
 - For the Financial Year 2006-2007, he was not in India. As such, for the financial year 2007-2008 he is not resident of India.
 - For the Financial Year 2007-2008, he was in India for more than 182 days. As such, he is resident of India for the financial year 2008-2009.

An Example

- Mr. Paul came to India on 1 Sep 07 as a tourist and since then he is in India till today.
 - For the Financial Year 2006-2007, he was not in India. As such, for the financial year 2007-2008 he is not resident of India.
 - For the Financial Year 2007-2008, he was in India for more than 182 days. However, he is not in India for any of the purposes listed in the second condition. As such, he is not a resident of India for the financial year 2008-2009 too.

An Example

- Mr. Ashok, born and brought up in India, goes to the USA for taking up an employment on 15-5-2007. Determine his residential status under the Act for the F.Y. 2007-2008.
- **Ans:** Mr. Ashok shall be treated a Resident of India till 14-5-2007. But, w.e.f. 15-5-2007, he shall be treated a Non-Resident as he is covered by one of the **exceptions listed in sub-clause (A) to section 2(v)**.

An Example

- Mr. Bharat, born and brought up in India, goes to USA on 10-4-2007 to look after his mother, who is suffering from a chronic disease, with the intention to stay in the USA till his mother recovers. Determine his residential status under the Act for the financial year 2007-2008 and 2008-2009.

An Example

- Mr. Bharat is going to USA (on 10.04.07) neither for employment nor for business nor for any purposes which indicate his intention to stay there for an uncertain period. Thus, his physical presence in India during the preceding F. Y.; i.e., 2006-2007 shall have to be considered and as he was in India for 365 days during the F. Y. 2006-2007 he would be treated Resident of India for the financial year 2007-2008.
- If he continues to stay in USA, say, till 31-3-2009, his stay in India during the preceding financial year; i.e., 2007-2008 would be less than 183 days and hence he would be treated Non-Resident for the financial year 2008-2009 as the first condition of the physical stay in India is not fulfilled.

Not Permanently Resident

Means a person resident in India for the employment of a **specified duration** (irrespective of length thereof) or **for a specific job or assignment, the duration of which does not exceed three years.**

Not Permanently Resident (NPR)- Facilities enjoyed

- Remittance for maintenance of close relatives abroad, exceeding net salary (after deduction of taxes, contribution to provident fund and other deductions) provided he is a citizen of a foreign state other than Pakistan. [Practical Issue faced by Expatriate in India]
- Can acquire or sale any foreign security without any procedures or formalities or permission out of his foreign currency resources outside India
- He can possess without limit, foreign currency in the form of currency notes, bank notes and traveller's cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and has been brought into India in accordance with the regulations made under the Act.

FAQs on Accounts opened by Foreign Nationals and Foreign Tourists

1. Does QA 22 Account under the erstwhile FERA continue under Foreign Exchange Management Act, 1999 ?
2. Can foreign nationals resident in India open resident account ?
3. Should banks have a separate system to monitor resident accounts maintained by foreign nationals in the absence of QA 22 account ?
4. Can ADs (banks) remit proceeds of such accounts on closure ?
6. Can foreign tourists open a bank account in India during their short visit ?

Yes. Foreign tourists during their short visit to India can open a Non-Resident (Ordinary) Rupee (NRO) account with any bank dealing in foreign exchange. Such account can be open upto a maximum period of 6 months.

Restrictions on dealing in Foreign Exchange

- Section 3 of FEMA provides for a blanket restriction on dealing in foreign exchange by any person unless it is permitted
 - Under the provisions of the Act
 - Under the provisions of the Rules made under the Act
 - Under the provisions of the Regulations framed under the Act
 - By General or special permission of RBI

Restrictions on dealing in Foreign Exchange

Clause (a) prohibits any person

- ✓ To deal in foreign exchange or foreign security
- ✓ To transfer any foreign exchange security to any person other than an authorised person.

Clause (b) prohibits every person for making any payment to or to the credit of a person resident outside India in any manner.

Restrictions on dealing in Foreign Exchange

Clause (c) prohibits every person for receiving any payment from or on behalf of a person resident outside India except by way of an inward remittance, from a place outside India through an authorised person.

Clause (d) prohibits a person to enter into any financial transaction in India as consideration for acquisition, creation or transfer of a right to acquire any asset outside India by any person. **The clause would affect a transaction in the nature of “Hawala Transaction”.**

Illustrations: Restrictions on dealing in Foreign Exchange

(1) Can Mr. Pandya, a resident of Canada, instruct his brother staying in Mumbai to make a payment of Rs. 5,000 to Mr. Joshi, his close friend.

Ans: No. Such payment is not permitted under clause (b) of section 3 of the Act

(2) Mr. Rakesh, a resident of UK asks his Chartered Accountant in India to form a Pvt. Ltd. Co. and proposes to reimburse all the expenses after the formation of the company. Whether, the Indian Chartered Accountant, can spend for the above purpose on behalf of Mr. Rakesh ?

Ans: No, as such payment is not permitted under clause (b) of section 3 of the Act.

Restrictions on Indian Resident

- **Section 4** provides for a blanket prohibition on a person resident in India to acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India **except** as permitted under the Act, Rules or Regulations made thereunder
- **Exceptions to section 4.....**

Exceptions to section 4..... Section 6(4)

- Section 6(4) of the Act permits **a person resident in India** 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 resident outside India.
- A.P. (DIR Series) Circular No. 90 dated 09 Jan 2014:
 - 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;
- .

Section 6(4)....contd...

- 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

**What do you mean by
Capital Account
transactions/Current
Account Transactions?**

Capital Account transactions (S.6)

- What is Capital Account Transaction?
“Capital account transaction” means, a transaction which
 - (a) alters the assets or liabilities, including contingent liabilities, outside India of a persons resident in India or
 - (b) alters assets or liabilities in India of persons resident outside India.
- Capital account transactions are generally regulated unless permitted.

Prohibited Capital A/c transactions

- A non resident person shall not make investment in India in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage -
 - (i) in the business of chit fund, or
 - (ii) as Nidhi Company, or
 - (iii) in agricultural or plantation activities or
 - (iv) in real estate business, or construction of farm houses or
 - (v) in trading in Transferable Development Rights (TDRs).

It is clarified that for the purpose of the Notification, "real estate business" shall not include the development of townships, construction of residential or commercial premises, roads or bridges.

Current Account Transactions

- Section 2(j) defines the term “current account transaction” as a transaction other than a capital account transaction .Such transaction includes,
 - (i) Payments due in connection with**
 - (a) foreign trade,
 - (b) other current business,
 - (c) services, and
 - (d) short-term banking and credit facilities in the ordinary course of business,
 - (ii) Payments due as**
 - (a) interest on loans and
 - (b) net income from investments,
 - (iii) Remittances for living expenses of parents, spouse and children residing abroad, and**
 - (iv) Expenses in connection with**
 - (a) foreign travel,
 - (b) education and
 - (c) medical care of parents, spouse and children;

Current Account Transactions

- Current account transactions are freely permissible unless prohibited.
- FEM (Current Account Transaction) Rules, 2000.
- ✓ Totally prohibited
- ✓ Permitted, subject to the prior approval of concerned Ministry, Central Government
- ✓ **Permitted up to certain limit** and beyond limit subject to prior approval of the RBI

Totally Prohibited Current Account Transactions (Sch. I)

Remittance out of lottery winnings.

Remittance of income from racing/riding etc. or any other hobby

Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.

Payment related to "Call Back Services" of telephones.

Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

Prior Approval of Government of India (Sch. II)

- **Illustrations:**
- Remittance of prize money/sponsorship of sports activity abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds USD 100,000 [**Ministry of Human Resources Development (Department of Youth Affairs and Sports)**]
- Remittance of hiring charges of transponders by (a) TV Channels (b) Internet Service Providers Ministry of Information and Broadcasting [**Ministry of Communication and Information Technology**]

Permitted transaction up to certain limits (Sch III)

A business trip / a Private Visit

- **A Business Trip outside India**
- Up to USD 25,000 for a business trip to any country other than Nepal and Bhutan.
- Visits in connection with attending of an international conference, seminar, specialised training, study tour, apprentice training, etc., are treated as business visits.
- **A Private Visit outside India**
- USD10,000, in any one financial year on a self-declaration basis.
- The ceiling of USD10,000 is applicable in aggregate.
- However, no foreign exchange is available for visit to Nepal and/or Bhutan for any purpose.

Medical treatment outside India

- Upto USD 100,000 on self declaration basis
- Exceeding above limit -request is to be supported by an estimate from a hospital/doctor in India/abroad.
- A person who has fallen sick after proceeding abroad is also entitled for the exchange.

Studies outside India

- USD 100,000 per academic year or the estimate received from the institution abroad, whichever is higher.
- Students going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA.
- In addition, they can receive remittances up to USD 100,000 from close relatives (as defined in Section 6 of the Companies Act, 1956) from India on self-declaration, towards maintenance, which could include remittances towards their studies also.

Other Purposes-

- **Person going abroad on employment**
USD100,000 on the basis of self-declaration.
- **Going abroad on immigration**
 - upto USD100,000 on self- declaration basis
 - This amount is only to meet the incidental expenses in the country of emigration.
- **Gift / donation to a person resident outside India**
 - Limit of USD 75000 per financial year under the Liberalised Remittance Scheme would also include remittances towards gift and donation by a resident individual.

Other Purposes-

- Remittance exceeding US\$ 1 million per project, for any consultancy service procured from outside India.
Remittance for consultancy service procured from outside India by Indian companies executing infrastructure projects can be made up to USD 10 million per project.
- Remittance of foreign exchange towards reimbursement of pre-incorporation expenses incurred in India up to 5 per cent of the investment brought into India or USD 100,000, whichever is higher, on the basis of certification from statutory auditors. .

Remittance Facilities for Non Resident Individual USD 1 million Scheme

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Remittance of assets

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

The above assets/funds are eligible for repatriation outside India.

Remittance facilities for NRIs

Mode of acquisition of a Property	Permissible amount of the remittance
Property acquired by an NRI after becoming a non-resident and out of either remittances from abroad or from NRE and FCNR deposits held with banks (Use of foreign funds).	The amount of repatriable funds used to acquire the property. However, in the case of residential properties, the facility is restricted to two such properties. Capital gain cannot be repatriated.
Sale proceeds of property acquired out of rupee sources. (Use of rupee resources)	USD 1 Million in a FY
Sale proceeds of property acquired by inheritance/legacy	USD 1 Million in a FY

Example-1:

- Mr. Desai is an NRI staying in Dubai. In the year 2007, he bought three residential flats in India by remitting from Dubai USD 3 million i.e. USD 1 million for each of the three flats. He sold all the three flats in the year 2008 which fetched him USD 1.2 Million for each of the flat.
- How much amount Mr. Desai can repatriate outside India ?

Others features of the scheme

- There is no requirement for holding the property for any minimum period.
- **This facility does not extend to citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan.**
- In case, the remittance is to be made in more than one installment, the remittances of all installments should be remitted through the same authorised dealer.

Liberalized Remittance
Scheme of
USD 75,000
for Resident Individuals

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Liberalized Remittance Scheme of USD 75000 (w.e.f. 14/08/13)

- Resident **individuals** may freely remit up to USD 75000 **per financial year** for any permissible current or capital account transaction or a combination of both.
- Under the Scheme, resident individuals **prohibited** from acquiring immovable property , directly or indirectly outside India.
- Resident individuals have now been allowed to set up Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) outside India for bonafide business activities within the limit of USD 75,000 with effect from August 5, 2013 and subject to the terms and conditions stipulated in [Notification No.FEMA 263/RB-2013 dated August 5, 2013.](#)

Surrender of Foreign Exchange

<u>Topic</u>	<u>Items</u>	<u>Time Limit for surrender</u>
Specific Receipts in foreign exchange	<ul style="list-style-type: none"> a) Remuneration for services, (may be rendered in India) b) Settlement of any lawful obligation, c) Income on assets held outside India (e.g. Interest, Dividend, Gains). d) Inheritance, Settlement or gift 	Within seven days of its receipt.
Residual category	e) All other cases	Within 90 days of its receipt
Unspent Forex acquired for purpose other than travel	Foreign Exchange acquired for a particular purpose but which can not be used or has partly remained unspent (Unspent forex can be used for other legitimate purpose within 60 days)	Within 60 days from the date of its acquisition or purchase
Unspent Forex acquired for travel	Currency notes and coins	Within 90 days from the date of return to India.
(Retention permitted up to US \$ 2000 in the aggregate)	Travelers' Cheque	Within 180 days from the date of return to India.

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Possession and Retention of Foreign Exchange

Category	Item	Limit
Authorised Dealer	Any foreign currency or coins	Up to the limit within scope of his authority
Any Person resident in India	i. Foreign coins ii. Foreign currency notes, bank notes and travelers' cheques	No limit Up to US \$ 2000 or its equivalent in the aggregate subject to fulfillment of certain conditions mentioned
Person Resident in India but not permanently resident	Foreign currency notes, bank notes and travelers cheques.	No Limit provided such currency was acquired, held or owned by him while he was non-resident and legitimately brought to India

Change of Residential Status

R TO NR

- i. Bank Account*
- ii. Investments in India*
- iii. Continuation as partner or proprietor*
- iv. Continuation as a director or a trustee*

Change of Residential Status

v. Loans given in India

vi. Loans obtained in India

vii. Power of attorney

viii. Time limit for intimation / permission

RETURNING INDIANS

Assets abroad covered by Section 6(4)

- i. Continuation of business abroad*
- ii. Other Movable Assets*

Penalties (S.13)

- Up to three times the amount involved in the contravention if the amount is quantifiable
- Up to rupees two lakh, if the amount is not quantifiable
- In certain cases, even the assets involved in the contravention or violation can also be confiscated.
- Compounding



Investment opportunities in India for NRIs

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Scope – Investment opportunities for NRIs

- Who is Non Resident Indian
- Investment in Corporate entities
- Investment in Non-corporate entities
- Borrowing in rupees by persons other than companies in India
- Borrowings in foreign currencies
- Investment in Bank Deposits
- Investment in Immovable Properties

Who is Non Resident Indian under FEMA?

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Non Resident Indian

- 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a person of Indian origin;
- 'person resident outside India' means a person who is not resident in India;
- We shall understand who is "person resident in India" ?

Resident Individual-Two Conditions must

- He should be residing in India for at least 183 days during the preceding financial year **and**
- He should have come to India or is staying in India either for
 - taking up employment or
 - carrying on business or vocation in India or
 - for any other purpose, that would indicate his intention to stay in India for an uncertain period.

PIO and NRI

- Blue eyed boys who are enjoying many general permissions under the FEMA.
- 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a person of Indian origin;
- The definition of the word 'PIO' varies from Notification to Notification.

Who is a Person of Indian Origin ?

Under Notif.21 (Acquisition of Immovable Property by Non resident), PIO 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

- (a) at any time, held Indian passport, or
- (b) who or either of whose **father or grandfather** was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

Who is a Person of Indian Origin ?

Under Notif. 5 (Deposit), 'PIO' means a citizen of any country other than Bangladesh or Pakistan, if

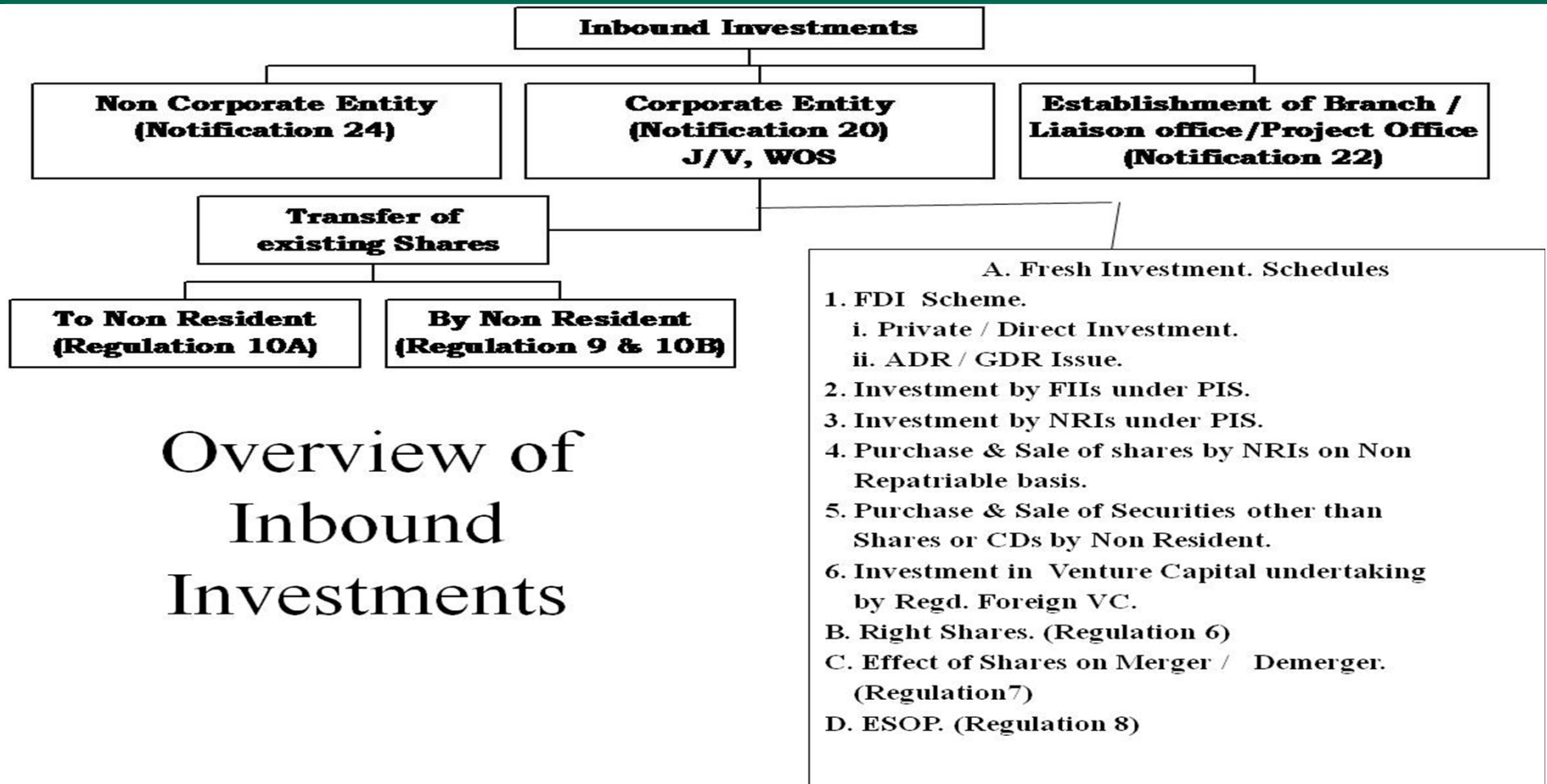
- (a) he at any time held Indian passport; or
- (b) he or either of his **parents or any of his grand-parents** was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- (c) The person is a spouse of an Indian citizen or a person referred to in sub-clause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

Inbound Investment in India



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Destination India

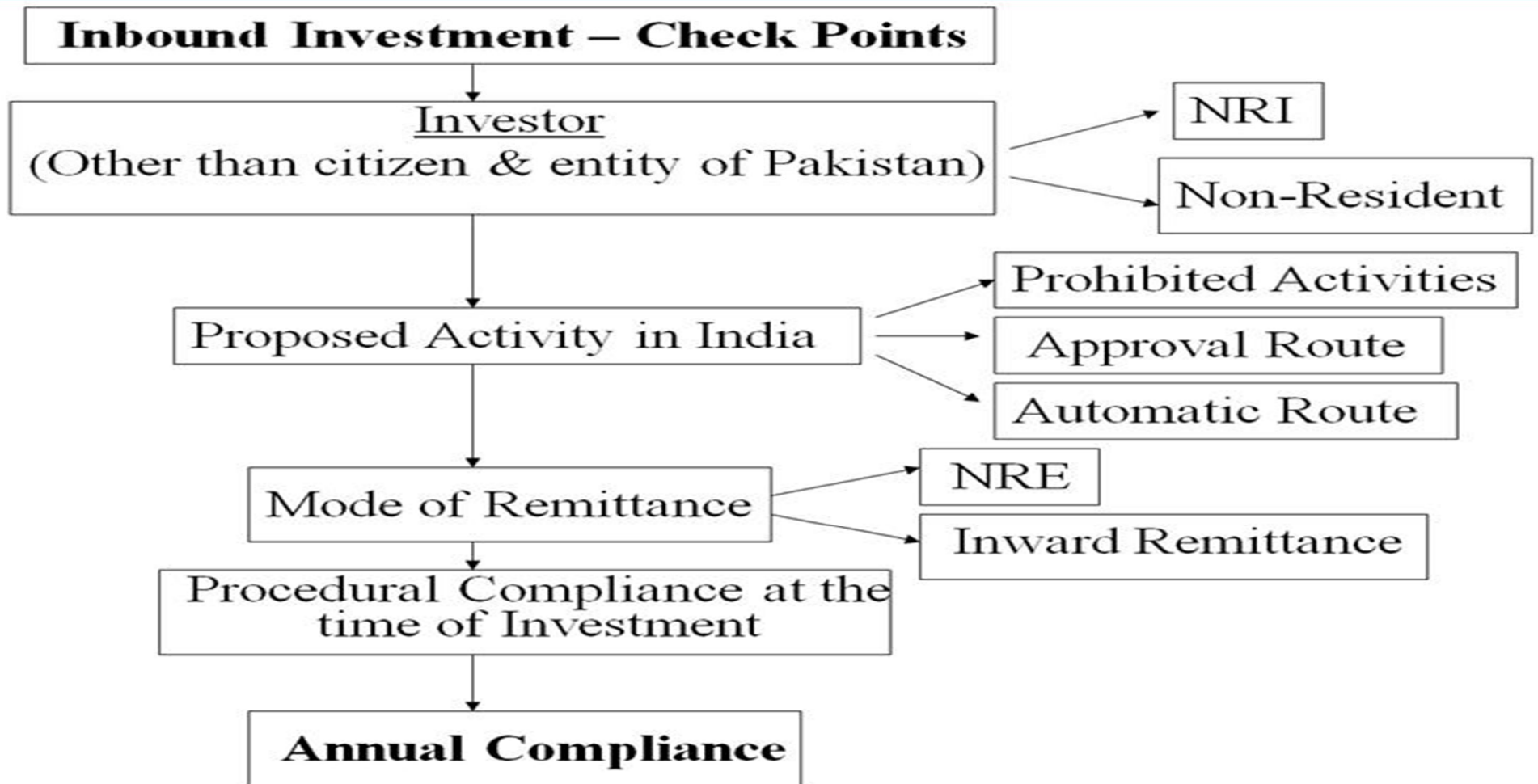


Overview of Inbound Investments

Foreign Direct Investment

- FDI policy is formulated by Government of India.
- FEMA regulations prescribe the mode of investments i.e. manner of receipt of funds, issue of shares/convertible debentures and preference shares and reporting of the investments to RBI.

Foreign Direct Investment



How NRI/PIO can do business/invest in India ?

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Investment in Corporate Entity in India- FDI and other Schemes - Notification 20

Schedule	Investment Schemes
1	FDI Scheme
2	FII Scheme
3	Portfolio Investment Scheme for NRI (Repatriable)
4	Investment Scheme for NRI (Non-repatriable)
5	Investment Scheme for securities other than share / convertible debentures
6	Investment Scheme for Foreign Venture Capital Investment

Schedule – 1 (FDI): Investment in Real estate by NRI

- General Permission: All Non Residents including NRIs are allowed to invest in the sectors specified under the FDI
- Specific General Permission: NRI can invest 100% with repatriation benefits in following activities (which are not open to other Non Resident or open with stringent terms and conditions)
 - (a) Development of serviced plots and construction of built up residential premises
 - (b) Investment in real state covering construction of residential and commercial premises including business centres and offices
 - (c) Development of townships
 - (d) City and regional level urban infrastructure facilities, including both roads and bridges
 - (e) Investment in manufacture of building materials, which is also open to FDI
 - (f) Investment in participatory ventures in (a) to (e) above
 - (g) Investment in housing finance institutions, which is also open to FDI as an NBFC

Schedule – 3 : PIS by NRIs

- Shares of **listed Indian companies** in recognised Stock Exchanges through a registered broker.
- **up to 5 per cent of the paid-up capital**
- The aggregate paid-up value of shares / convertible debentures purchased by **all NRIs cannot exceed 10 per cent of the paid-up capital of the company.**
- **Delivery based purchase and sale permitted. Short Selling is not permitted.**

Schedule – 3 : PIS by NRIs

- **Restriction on Transfer** : Shares purchased by NRIs on the stock exchange under **PIS cannot be transferred by way of sale under private arrangement or by way of gift** (except by NRIs to their relatives as defined in Section 6 of Companies Act, 1956 or to a charitable trust duly registered under the laws in India) to a person resident in India or outside India without prior approval of the Reserve Bank

Investment in Exchange Traded Derivative Contracts

- NRIs are allowed to invest in Exchange Traded Derivative Contracts approved by SEBI from time to time out of Rupee funds held in India **on non-repatriation basis**, subject to the limits prescribed by SEBI

Schedule 4: Investment by NRIs on non-repatriation basis.

- Prohibited activities of investee company
- Investment Limit : **a Non-resident Indian may without any limit.**
- Repatriation of sale proceeds: The sale proceeds shall be credited to NRO account.
- **Reporting requirement**
Unlike FDI Scheme, there is **no onus** of reporting the investment **on non-repatriation basis** to RBI by the investee company.

Schedule 5: Investment in securities other than shares or CDs by Non Resident

- Scheme available to FIIs & NRIs
- Investment on repatriation basis in - dated Govt., securities/treasury bills, NCD and Units of Domestic MF
- NRIs can also invest in shares of Public Sector enterprise in disinvestment process
- Investment on Non Repatriation basis by NRIs in – units of money market funds in India or National Plan/Saving Certificates.

Investment in Non-Corporate Entity in India

- Ntf. 24- Foreign Exchange Management (Investment in Firm or Proprietary concern in India) Regulations, 2000.
- NRI may invest by way of contribution to the capital of a firm or a proprietary concern in India.
- the firm or the proprietary concern is not engaged in print media , any agricultural/plantation activity or real estate business, i.e. dealing in land and immovable property with a view to earning profit or earning income therefrom;
- the amount invested shall not be eligible for repatriation outside India;

Investment in Non-Corporate Entity in India

- **Vide AP (Dir series) Circular No. 39 dated December 3,2003, it is provided that NRIs/PIOs can invest in sole Proprietorship concerns/ Partnership Firms also with Repatriation benefits but with prior approval of Secretariat of Industrial Assistance (SIA), Government of India and the RBI.**
- **Persons other than NRIs/PIOs can invest in sole Proprietorship concerns/ Partnership Firms or any association of persons in India with repatriation rights but with prior approval of Reserve Bank.**

Borrowing in rupees by persons other than companies in India:-

- Non-corporate entity may borrow in rupees on non-repatriation basis from NRI/PIOs: Conditions:
 - the period of loan shall not exceed three years;
 - the rate of interest on the loan shall not exceed two percentage points over the Bank rate prevailing on the date of availment of loan
 - the amount borrowed shall not be allowed to be repatriated outside India
 - **Restriction on use of borrowed funds:- (Next slide)**

Restriction on use of borrowed funds:-

1. Shall NOT use such borrowed funds for any purpose except in his own business other than
(i) the business of chit fund, or (ii) As Nidhi Company ,
or(iii) agricultural or plantation activities or real estate
business; or construction of farm houses or (iv) trading
in Transferable Development Rights (TDRs).
2. Shall NOT use such borrowed funds for any investment,
whether by way of capital or otherwise, in any company
or partnership firm or proprietorship concern or any
entity, whether incorporated or not, or for relending.

Borrowing in foreign currency

- An individual resident in India may borrow a sum not exceeding US \$ 250,000/- or its equivalent from his close relatives outside India, subject to the conditions that-
 - 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 debits to the NRE/FCNR account of the non-resident lender.
 - **Explanation:**
'Close relative' means relative as defined in Section 6 of the Companies Act, 1956.

Investment by NRI in Bank Deposits

- Notification No. 5 (Deposit)
- 'Deposit' includes deposit of money
 - with a bank,
 - company, proprietary concern, partnership firm, corporate body, trust or any other person

Acceptance of deposits by Indian proprietorship concern/firm or company

- On non-repatriation basis from NRIs
- Terms and conditions :
 - In the case of a **company**, the deposits may be accepted either under private arrangement or under a public deposit scheme.
 - The maturity period of deposit shall not exceed 3 years
 - The amount of deposit shall be received by debit to NRO account only, **provided** that the amount of the deposit shall not represent inward remittances or transfer of funds from NRE/FCNR(B) accounts into the NRO account

Acceptance of deposits by Indian proprietorship concern/firm or company

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

Bank account in foreign currency for Residents

- Notifi No. 10 (Foreign Currency Accounts by a Person Resident in India)
- Exchange Earner's Foreign Currency Account (EEFC)
- Resident Foreign Currency (RFC) Account
- Resident Foreign Currency (Domestic) Account [RFC (D)]
- Foreign Currency Accounts in India by shipping companies/Airlines companies
- Foreign Currency Accounts in India by ship-manning / crew managing agencies
- Foreign Currency Accounts in India by A Project Office
- Foreign Currency Account of an unit in a Special Economic Zone

Investment in Immovable Property in India

- Notification No. 21 (Acquisition and transfer of immovable property in India)
- NRI-PIO are given general permission to acquire /transfer IP in India
- An individual who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, or Bhutan is not regarded as Person of Indian Origin (PIO) and hence cannot invest in IP in India.

- Questions Please??????

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