

REMITTANCES AND INVESTMENT FACILITIES FOR NON-RESIDENT INDIVIDUAL

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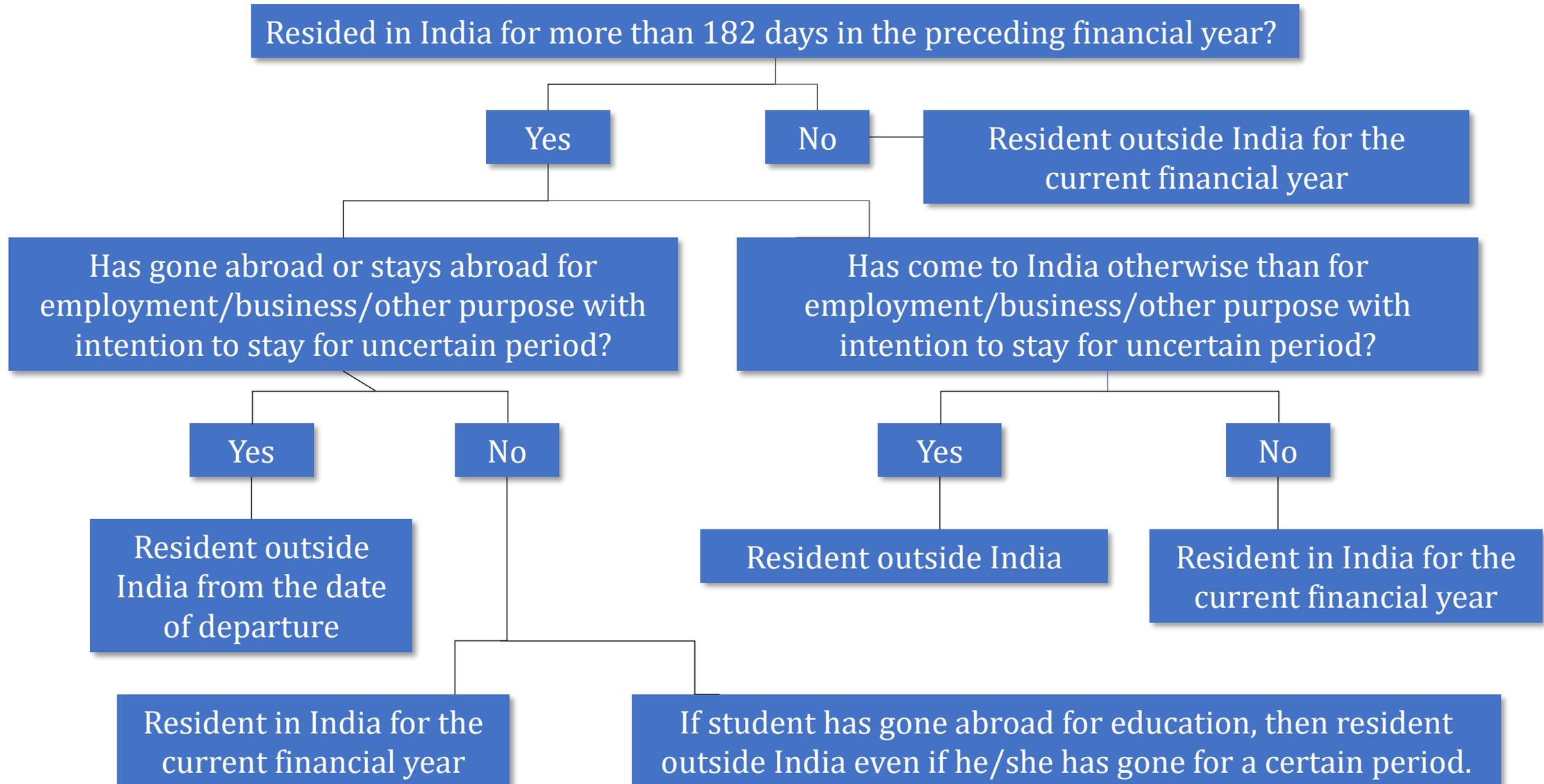
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RESIDENTIAL STATUS UNDER FEMA

- Person Resident In India
- Person Resident Outside India
- Person Not Permanently Resident In India
- Person Of Indian Origin
- Overseas Citizen Of India

RESIDENTIAL STATUS - INDIVIDUAL



PERSON RESIDENT IN INDIA

(i) **A person residing in India for more than 182 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 PROI,

(iv) An office, branch or agency outside India owned or controlled by a person resident in India;

NON-RESIDENT INDIANS

The term "non-resident Indian" has been defined under various regulations issued by the RBI. Each regulation defines the term in a certain manner considering its distinct purposes.

In general, NRI means a person resident outside India who is a citizen of India or a person of Indian origin.

The above definition has been given under the regulations "2" of the following Regulations:

- (i) FEM (Transfer or Issue of any Foreign Security) Regulations, 2004
- (ii) FEM Act, 1999
- (iii) FEM (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000
- (iv) FEM (Borrowing and Lending in Rupees) Regulations, 2000
- (v) FEM (Deposit) Regulations, 2000
- (vi) FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000
- (vii) FEM (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000

However, according to the regulation 2 of the FEM (Remittance of Assets) Regulations, 2000, a non-resident Indian means a person resident outside India who is a citizen of India.

Person Not Permanently Resident In India

NEW CONCEPT

A person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which **doesn't exceed 3 years** is referred to as a "person who is not permanently resident" under the explanations to Regulations 4 of the FEM (Transfer or Issue of any Foreign Security) Regulations, 2000 and FEM (Possession and Retention of Foreign Currency) Regulations, 2000 and Regulation 5 of the FEM (Remittance of Assets) Regulations, 2000.

The definition has been given for certain specific regulations issued by the RBI such as those on purchase and sale of securities in foreign currency.

Such definition is relevant only to the extent of the specific regulation and does not apply to other provisions of the law.

Person Of Indian Origin (PIO)

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:

- a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 or
- 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 a grandchild or a great-grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
- 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)

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

Overseas Citizen Of India (OCI)

A foreign national, -

- (i) who was a citizen of India at the time of, or at any time after 26th January, 1950; or
- (ii) who was eligible to become a citizen of India on 26th January, 1950; or
- (iii) who belonged to a territory that became part of India after 15th August, 1947; or
- (iv) who is a child or a grandchild or a great grandchild of such a citizen; or
- (v) who is a minor child of such persons mentioned above; or
- (vi) who is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India - is eligible for registration as OCI cardholder.

Besides, spouse of foreign origin of a citizen of India or spouse of foreign origin of an OCI Cardholder and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application is also eligible for registration as OCI cardholder.

However, no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Govt may, by notification in the Official Gazette, specify, shall be eligible for registration as an OCI Cardholder.

Foreign nationals cannot apply for OCI in India while on Tourist Visa, Missionary Visa and Mountaineering Visa. Moreover, the foreigner has to be ordinarily resident of India to be eligible to apply for OCI registration in India.

Types Of Accounts

Accounts Held In India By A Person Resident Outside India

Non-Resident (External) Account (**NRE account**),

Foreign Currency (Non-Resident) Account (**FCNR(B) account**)

Non-Resident (Ordinary) Account Scheme, (**NRO account**)

Special Non-Resident Rupee Account (**SNRR account**),

Foreign Currency Accounts That Can Be Held In India

Exchange Earner's Foreign Currency (**EEFC**) Account

Resident Foreign Currency (**RFC**) Account

Resident Foreign Currency (Domestic) **RFC(D)** Account

Diamond Dollar Account

Types Of Accounts

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

PARTICULARS	NRE ACCOUNT	FCNR(B) ACCOUNT	NRO ACCOUNT
Repatriability	Repatriable	Repatriable	<ul style="list-style-type: none"> • Not Repatriable except for all current income. • Individual: Balances in an NRO account of NRIs/ PIOs are Remittable up to USD 1 (one) million per financial year (April-March) along with their other eligible assets. • Entities: RBI permission
Taxability	Exempt	Exempt	Taxable
Joint account	Jointly with two or more NRIs/ PIOs <ul style="list-style-type: none"> • Jointly with resident relative on 'former or survivor' basis (relative as defined in Companies Act, 2013) • The resident relative can operate the account as a Power of Attorney holder during the life time of the NRI/ PIO account holder. 		
Change in residential status from Non-resident to resident	<ul style="list-style-type: none"> • NRE accounts should be designated as resident accounts or • Funds held in these accounts may be transferred to the RFC accounts immediately upon change of residential status 	<ul style="list-style-type: none"> • FCNR (B) deposits allowed to continue till maturity at the contracted rate of interest • AD should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account 	<ul style="list-style-type: none"> • From PROI to PRI: Immediately designated as resident accounts • From PRI to PROI: Immediately designated as 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

CA to Certify that Money is Tax Paid (15CB)



• 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) Funds can be transferred to NRE account within this USD 1 Million facility (from NRO Account)

NRO ACCOUNT

• 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)
- e) Funds can be transferred to NRE account within this USD 1 Million facility

• 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

REMITTANCE FACILITIES FOR NRI'S

Regulation 3: Prohibition on Remittance of Assets Held in India

- ❖ No remittance allowed for assets held in India by any person, regardless of residency.
- ❖ Exceptions possible as per Act, rules, or regulations.
- ❖ Reserve Bank can grant remittance permission based on sufficient reasons.

Remittance of Assets means remittance outside India representing:

- a deposit with a bank or a firm or a company;
- provident fund balance/ superannuation benefits;
- amount of claim or maturity proceeds of insurance policy;
- sale proceeds of shares, securities, immovable property; or any other asset held in India.

Permission to an Indian entity to remit funds

- being contribution towards PF/ superannuation/ pension fund of expatriate staff;
- who are resident in India but not permanently resident.



REMITTANCE FACILITIES FOR NRI'S

RBI's prior permission

- remittance exceeding USD 1 mn per financial year
 - on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India;
 - by an NRI/ PIO
 - ▫ out of balance in NRO accounts;
 - ▫ sale proceeds of assets acquired by way of inheritance/ legacy.
- remittance to a PROI on the ground that hardship will be caused to such person if remittance is not made from India.

Remittance shall be subject to applicable tax laws.

REMITTANCE FACILITIES FOR NRI'S

Remittance of sale proceeds

- **As per Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019**
 - Sale proceeds, net of taxes, may be remitted outside India or
 - Schedule 1 (FDI Scheme)– be credited to NRE/ FCNR(B);
 - Schedule 2 (FPI) -
 - The sale proceeds (net of taxes) of equity instruments and units of domestic mutual fund may be remitted outside India or be credited to foreign currency a/c or Special Non Resident Rupee account (SNRR) of the FPI.
 - The sale proceeds (net of taxes) of units of investment vehicles other than domestic mutual fund may be remitted outside India
 - Schedule 3 (NRI/ OCI – repatriable) - credited to NRE (PIS) a/c;
 - Schedule 4 (non-repatriable) – credited only to NRO a/c.
 - No repatriation outside India

REMITTANCE FACILITIES FOR NRI'S

➤ As per Regulations and Schedule

- Sale proceeds, net of taxes, may be remitted outside India or
- Schedule 6 (LLP) - credited to NRE or FCNR(B) account of the person concerned.
- Schedule 7 (FVCI) – credited to foreign currency account or SNRR account
- Schedule 8 (Investment vehicle) - credited to the NRE or FCNR(B) account;
- Schedule 10 (IDRs)- Redemption/conversion of IDRs into underlying equity shares of the issuing company shall be in compliance with the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.- Resident holder to report conversion to AD

➤ AD Bank may allow remittance to seller who is PROI provided

- security was held on repatriation basis;
- security has been sold in compliance with pricing guidelines or RBI approval has been obtained

ACQUISITION OF IMMOVABLE PROPERTY IN INDIA

Section 6 (4) allows 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 who was resident outside India. Similarly, a person resident outside India is permitted to 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

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

As per section 6(5) of FEMA , A person resident outside India can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by him/ her when he/ she was resident in India or inherited from a person resident in India.

ACQUISITION OF IMMOVABLE PROPERTY IN INDIA

ACQUISITION AND TRANSFER OF PROPERTY IN INDIA BY A NRI OR AN OCI

A NRI or an OCI may —

(A) Acquire immovable property in India other than an agricultural land or farm house or plantation property:

Provided that the consideration, if any, for transfer, shall be made out of :

- I. funds received in India through banking channels by way of inward remittance from any place outside India ; or
- II. funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder:

Provided further that no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;

ACQUISITION OF IMMOVABLE PROPERTY IN INDIA

ACQUISITION AND TRANSFER OF PROPERTY IN INDIA BY A NRI OR AN OCI

A NRI or an OCI may —

(B) acquire any immovable property in India other than agricultural land or farm house or plantation property **by way of gift** from a person resident in India or from an NRI or from an OCI, **who in any case is a relative** as defined in clause (77) of section 2 of the Companies Act, 2013;

(C) acquire any immovable property in India **by way of inheritance from a PROI or from a resident in India** who had acquired such property:—

- i. in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
- ii. from a person resident in India;

(D) transfer any immovable property in India to a person resident in India;

(E) transfer any immovable property other than agricultural land or farm house or plantation property to an NRI or an OCI.

IMPLICATION OF THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 FOR ACQUISITION IN THE NAME OF RELATIVES

Section 3 Prohibition of Benami transactions.—

(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or any child

(b) in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document

In case NR wish to buy Immovable Property in name of Parent(s), following steps may be followed: -

- Gift Money
- Buy Property
- Have a will / trust to plan Succession

REGULATORS & REGULATIONS



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

SEBI (Foreign Portfolio Investors)
Regulations, 2019



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA

Foreign Exchange Management (Non debt
Instruments) Rules, 2019

Foreign Exchange Management (Debt
Instruments) Regulations, 2019

WHO CAN REGISTER AS FOREIGN PORTFOLIO INVESTOR?

- Non-resident Indian;
- Foreign Citizen (Not being a Non-Resident Indian or an overseas citizen of India);
- NRI/OCI/RI may be constituents of the applicant:
 - In case of resident Indians other than individuals, they can be the constituents of the applicant if such a person is a fund manager and the applicant is an eligible investment fund under I-T Act.
 - In case resident Indian other than individuals, may also be constituents of the applicant, if the applicant is an AIF setup in IFSC and such person is a sponsor/manager of AIF & the person's contribution shall be max Cat I & II AIF – 2.5% of corpus or US \$ 0.75 m (wel) Cat III - 5% of corpus or US \$ 1.5 m (wel)
 - applicant is a resident of the country whose securities market regulator is a signatory to the IOSCO's Multilateral MoU or a signatory to the bilateral MoU with SEBI;
 - applicant being a bank is a resident of a country whose central bank is a member of Bank for International Settlements (If central bank is applicant it need not be member)
 - applicant or its underlying investors contributing 25% or more in the corpus of the applicant or identified on the basis of control, shall not be the person(s) mentioned in the Sanctions List by the UNSC and is not a resident in the country identified in the public statement of FATF as jurisdictions with weak measures to combat money laundering and terrorist financing

TYPES OF FOREIGN PORTFOLIO INVESTOR

Category I Foreign Portfolio Investor

- Government and Government related investors such as central banks, sovereign wealth funds, or agencies including entities controlled or at least 75% owned by such Government and Government related investor
- Entities from the FATF member countries or from any country specified by the CG which are
 - Appropriately regulated funds;
 - Unregulated funds whose IM is appropriately regulated and registered as a Category I foreign portfolio investor (IM to be responsible for all the acts of commission or omission of such unregulated fund);
 - University related endowments of such universities that have been in existence for more than 5 years;
- Pension funds and university funds;
- Appropriately regulated entities (banks/PM/IA/AMC).
- An entity
 - whose IM is from the FATF member country and such an IM is registered as a Category I FPI; or
 - which is at least 75% owned by another entity as listed above except for government, and such an eligible entity is from a FATF member country.

(IM or eligible entity to be responsible for all the acts of commission or omission of such applicants)

TYPES OF FOREIGN PORTFOLIO INVESTOR

Category II Foreign Portfolio Investor

- appropriately regulated funds not eligible as Category-I foreign portfolio investor;
- endowments and foundations;
- charitable organisations;
- corporate bodies;
- family offices;
- Individuals;
- appropriately regulated entities investing on behalf of their client, as per conditions specified by SEBI;
- Unregulated funds in the form of limited partnership and trusts;

INVESTMENT AVENUE FOR FOREIGN PORTFOLIO INVESTOR (FPI)

- Shares, debentures and warrants issued by a body corporate; listed or to be listed on
- a recognized stock exchange in India;
- Units of mutual funds, real estate mutual fund schemes and
- infrastructure debt fund;
- Units of schemes floated by a CIS
- Derivatives traded on a recognized stock exchange
- Units of REIT, InVIT and units of Category III AIF;
- Indian Depository Receipts;
- Any debt securities or other instruments as permitted by the RBI; and
- Such other instruments as specified by the SEBI from time to time

FPI INVESTMENT

- FPI to be registered with SEBI.
- Each FPI to hold less than 10 percent of each series of equity, debentures, or preference shares or warranties.
- Total holding of all FPI not to exceed 24 percent of each series of equity, debenture or preference shares.
- The overall cap can be increased by a resolution of the company concerned, subject to sectorial cap.
- FPI ceiling will exclude investment by offshore funds, GDR and Euro Convertible Bonds.
- Pricing Guidelines of FPI Acquisition
- Pricing - offer Price shall not be less than offered to Public.
- Private Placement- Price as per valuation by **CA or Merchant Banker** as per the internationally accepted methodology.
- Short selling and lending borrowing promoters subject to conditions.

INVESTMENT BY NRI/OCI

On Repatriation Basis

➤ Listed Equity

- Purchase/Sale through one designated Bank Branch
- Total holding maximum 5 percent of equity and each series of debentures/ preference shares or warranties.
- Aggregate ceiling 10 Percent of funds NRI/OCI
- This limit can be raised to 24 percent by General Body Resolution of Investee Company.

➤ Cannot invest in:

- Nidhi Company
- Company engaged in Agriculture/ Plantation (some exceptions e.g. horticulture)
- Real estate business – Buying and selling of real estate
- Construction of farm house
- Dealing in Transferable Developmental Rights (TDRs)

INVESTMENT BY NRI/OCI

On Repatriation Basis

➤ Payment Mechanism

- Inward Remittance through Bank Channel
- NRE Account to be designated as NRE (PIS) Account.
- Sale proceeds/ Dividend to be credited to same account.
- Freely repatriate sale proceeds subject to withholding tax

INVESTMENT BY NRI/OCI

On Non-Repatriation Basis

- **Investment Permitted to NRI/OCI including Company, Trust, or partnership firm resident outside India owned and controlled by NRI/OCI**
- **permitted to invest without any limit or restrictions:**
 - Any Capital instrument of a Company.
 - Unit of Investment Vehicle
 - Capital of LLP
 - Convertible Notes of Start up
 - Partnership Firm or Sole Proprietorship on Non repatriation Basis
 - Investment deemed as Domestic investment

INVESTMENT BY NRI/OCI

On Non-Repatriation Basis

➤ Money can be remitted from:

- Outside India through proper banking channels
- NRE/NRO/ FCNR (B) Accounts
 - ❖ Sale proceeds to be credited to NRO Account.
 - ❖ Can be remitted up to US \$ 1 Million from NRO Account under Special Scheme for NRI/OCI.

LENDING TO RELATIVES

- **Borrowing from outside India in Foreign Exchange by a Person Resident in India:** - An individual resident in India may borrow a sum not exceeding USD 250,000/- or its equivalent, or any other amount as decided by the Reserve Bank from time to time, from his/her relatives outside India and subject to such terms and conditions as specified by the Reserve Bank from time to time in consultation with the Government of India.
- **Borrowing in Indian Rupees by a Person Resident in India:** - A person resident in India, not being a company incorporated in India, may borrow in Indian Rupees from a NRI/Relatives who are OCI Cardholders outside India, subject to such terms and conditions as specified by the Reserve Bank from time to time in consultation with the Government of India. The borrower should ensure that the borrowed funds are not used for restricted end uses.
- **Lending in Indian Rupees by a Person Resident in India:** - A resident individual may grant Rupee loan to a NRI/OCI Cardholder relative within the overall limit under the Liberalised Remittance Scheme subject to such terms and conditions as prescribed by the Reserve Bank from time to time. The borrower should ensure that the borrowed funds are not used for restricted end uses.

Interest Free and for Self Use. (Cannot be used for On-Lending)

GIFT TO / FROM RELATIVE

TDS Planning Tool

A resident individual can make a rupee gift

- to a NRI/PIO who is a close relative of the resident individual [relative' as defined in Section 2(77) of the Companies Act, 2013] by way of crossed cheque /electronic transfer.
- The amount should be credited to the NRO a/c of the NRI / PIO and credit of such gift amount may be treated as an eligible credit to NRO a/c.
- The gift amount would be within the overall limit of USD 250,000 per financial year as permitted under the LRS for a resident individual.
- It would be the responsibility of the resident donor to ensure that the gift amount being remitted is under the LRS and all the remittances made by the donor during the financial year including the gift amount have not exceeded the limit prescribed under the LRS.

GIFT OF SHARES OF AN INDIAN COMPANY

Donor	Donee	Permissibility	Reporting* & Sector caps
Non-resident (including NRI/OCI) holding on repatriation basis	Resident	Automatic	Only reporting, Sectoral caps would not apply
	NRI/OCI who will hold on non-repatriation basis	Automatic	Only reporting, Sectoral caps would not apply
	Non-resident (including NRI/OCI) who will hold on repatriation basis	Automatic subject to condition**	Not applicable (Manual changes needed in Entity Master Form)
NRI/OCI holding on non repatriation basis	Resident	Automatic	Not applicable
	NRI/OCI holding on non-repatriation basis	Automatic	Not applicable
	Non-resident (including NRI/OCI) holding on repatriation basis	Prior RBI Approval subject to conditions***	Both
Resident	NRI/OCI who will hold on non repatriation basis	Automatic	Not applicable
	Non-resident (including NRI/OCI) holding on repatriation basis	Prior RBI Approval subject to conditions***	Both

GIFT OF SHARES OF AN INDIAN COMPANY

➤ CONDITIONS FOR GIFT OF SHARES

- **Reporting*** In case reporting is applicable, Form FC-TRS is required to be filed with supporting documents on FIRMS portal. The onus of compliance is on donor or donee who is resident in India.
- **NR holding on Repatriable Basis to NR on Repatriable Basis - Automatic subject to condition**** Prior Government approval is needed if the company is engaged in a sector which requires Government approval
- **Resident/NRI/OCI on Non-Repatriable Basis to NR on Repatriable Basis – Prior RBI Approval subject to condition ***** Following are the conditions:
 - Donee is eligible to acquire such shares under the Rules
 - The gift does not exceed 5% of the paid up capital of the Indian company or each series of debentures or each mutual fund scheme on cumulative basis by a single person to another single person
 - The applicable sectoral cap in the Indian company is not breached by such gift
 - The donor and the donee should be relatives as described above
 - The value to be transferred by the donor together with any shares transferred to any person residing outside India as gift during the financial year does not exceed INR equivalent of 50,000 US Dollars;
 - Such other conditions as considered necessary in public interest by the Central Government.

GIFT OF MONEY

Donor	Currency	Donee	Permissibility
Resident	Foreign currency	Non-resident	Allowed upto LRS limit of USD 250,000 per financial year
	Indian rupee	Non-resident	Allowed only to NRI/PIO relatives of the donor as per Companies Act, 2013 by credit in the NRO account of such relative upto LRS limit of USD 250,000 per financial year
	Foreign currency	Resident	Not a permitted transaction
Non-Resident	Foreign currency	Resident	Allowed without limit, but the amount should be repatriated to Resident's bank account in India
	Indian rupee	Resident	Allowed without limit
	Indian rupee	Non-resident	Not regarded as a permissible credit to NRO Account

GIFT OF IMMOVABLE PROPERTY SITUATED IN INDIA

Provisions for gift of immovable property in India as per Foreign Exchange Management (Non-debt Instruments) Rules, 2019 are summarized as under:

Donor	Donee	Permissible Type of Property
Person resident in India	NRI/OCI relative as defined above	Immovable property other than agricultural land / farm house / plantation property
NRI/OCI	NRI/OCI relative as defined above	Immovable property other than agricultural land / farm house / plantation property
NRI/OCI	Person Resident in India	Any immovable Property

HOW CAN A NRI AND AN OCI ACQUIRE IMMOVABLE PROPERTY IN INDIA?

Particulars	NRI/ OCI (NDI Rules, 2019)
Purchase (other than agricultural land/ farmhouse/ plantation etc.) from	Resident/ NRI/ OCI [24(a)]
Acquire as gift (other than agricultural land/ farmhouse/ plantation etc) from	Resident/ NRI/ OCI [24(b)] who is a relative
Acquire (any IP) as inheritance from	a. Any person who has acquired it under laws in force [24(c)]; b. Resident [24(c)]
Sell (other than agricultural land/ farmhouse/ plantation etc) to	Resident/ NRI/ OCI [24(e)]
Sell (agricultural land) to	Resident [24(d)]
Gift (other than agricultural land) to	Resident/ NRI/ OCI [24(e)]
Gift (agricultural land) to	Resident [24(d)]
Gift residential/ commercial property to	Resident/ NRI/ OCI [24(e)]

ACQUISITION OF FOREIGN SECURITIES BY WAY OF GIFT OR INHERITANCE

Resident Individual can acquire foreign securities: -

- By way of Inheritance from a Residence / Non-Resident
- By way of Gift from a Relative Resident / Relative Non-Resident
- From a Foreign Source (Foreign Company, Foreign Trust or Foreign Citizen)
 - If above Rs. 10 Lacs → Permission Under FCRA from MCA
 - If below Rs. 10 Lacs → Permitted to receive gift from a Relative (No Compliance Needed)
 - If above Rs. 10 Lacs → Permitted to receive gift from a Relative (Subject to Filing of Form FC-1 with Central Govt. within 3 months of receipt)

ACQUISITION OF SHARES OR INTEREST UNDER EMPLOYEE STOCK OWNERSHIP PLAN (ESOP), OR EMPLOYEE BENEFITS SCHEME OR SWEAT EQUITY SHARES

An Indian company may issue "employees' stock option", "sweat equity shares", and "Share Based Employee Benefits" to its employees or directors or employees or directors of its holding company or JV or overseas WOS or subsidiaries who are resident outside India

Provided that –

- a) the scheme has been drawn either in terms of regulations issued under the SEBI Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 or as per other applicable law, as the case may be;
- b) the "employee's stock option" or "sweat equity shares" or "Share Based Employee Benefits" so issued under the applicable rules or regulations are in compliance with the sectoral cap applicable to the said company;
- c) the issue of "employee's stock option" or "sweat equity shares" or "Share Based Employee Benefits" in a company where foreign investment is under the approval route shall require prior government approval;
- d) issue of "employee's stock option" or "sweat equity shares" or "Share Based Employee Benefits" to a citizen of Bangladesh or Pakistan shall require prior government approval :

OBLIGATION OF RETURNING INDIANS (NRI / OCI)

- 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. who was a resident outside India.
- Assets (Shares / Securities, Immovable Property, and Foreign Currency) that were acquired at a time when a person was resident outside India can continue to be held even after turns resident.
- The same can even be transferred or invested.
- Further, R can inherit the same from a non-resident u/s 6(4) of FEMA.
- Foreign currency accounts opened and maintained by such a person outside India when he was resident outside India;

OBLIGATION OF RETURNING INDIANS (NRI / OCI)

- Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments 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 utilize 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 cost of such investments and/or any subsequent payments received therefore 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.

OBLIGATION OF RETURNING INDIANS (NRI / OCI)

- Whether other Movable Assets like Jewellery, Paintings, Silver Articles etc., or Other Assets like interest in LLP or Partnership firms outside India can also be continued in terms of Section 6 (4)?
- ❖ 6(4) also only refers to specific assets viz. currency, securities and immovable property.
- ❖ However intention seems to be to permit resident to own all assets outside which he was owning prior to turning resident.
- ❖ Thus, these assets can be continued.
- ❖ However with regards to Interest in Firm with unlimited liability, it would be advisable to take RBI permission.

- **ODI-FDI structure:**
- An individual was having a company outside India while he was being a non-resident.
- At that time such overseas company had made FDI in India.
- Upon return to India 6(4) permits to continue existing investment outside India.

OBLIGATION OF RETURNING INDIANS (NRI / OCI)

➤ **Bank Account**

- ❖ Foreign Bank Accounts can be continued to be held u/s6(4).
- ❖ NRE accounts should be re-designated to resident accounts immediately upon return to India (for employment or immediately upon return to India (for employment or business or vocation outside India).
- ❖ Funds in NRE accounts can even be transferred to RFC at the option of the account holder.
- ❖ NRO accounts to be re-designated to resident rupee accounts
- ❖ FCNR deposits can be continued till maturity. On maturity, the same shall be converted to rupee deposit accounts or RFC accounts.

➤ **Insurance Policies:**

- ❖ Life /General Insurance Policy taken outside India can be continued.
- ❖ No permission is required for payment of premium
- ❖ Maturity proceeds or the amount of any claim due shall be repatriated to India within 7 days of receipt.

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