



Deposits in India by Non Residents

Seminar on FEMA – WIRC of ICAI

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FEMA Regulations governing Deposits

Foreign Exchange Management Act, 1999

Section 6(3)(f)

Notifications

Foreign Exchange Management (Deposit) Regulations, 2016 issued vide Notification No. FEMA 5(R)/2016-RB dated April 1, 2016

Master Direction

Master Direction - Deposits and Accounts

AP DIR Series Circulars

AP (DIR Series) Circulars issued by RBI from time to time



Important Definitions

A '**Non-resident Indian**' (NRI) is a person resident outside India who is a citizen of India

A '**Person of Indian Origin** (PIO)' is 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:

- a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 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: PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

**Definition of NRI has been amended and the inclusion of PIOs has been deleted
Definition of PIO has been amended and the criteria of holding an Indian passport has been deleted**

Deposits accepted by AD Bank

An AD Bank in India is permitted to accept deposits from a non-resident under:

- i. Non-Resident (External) Account Scheme (NRE account), from a NRI;
- ii. Foreign Currency (Non-Resident) Account Banks Scheme, (FCNR(B) account), from a NRI;
- iii. Non-Resident (Ordinary) Account Scheme, (NRO account), from any person resident outside India

Deposits in India with AD Bank - Comparison

Criteria	Non-Resident (External) Rupee Account Scheme [NRE Account]	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B) Account]	Non-Resident Ordinary Rupee Account Scheme [NRO Account]
Who can open an account	<p>NRIs and PIOs</p> <p>Individual/entities of Pakistan and Bangladesh shall require prior approval of the RBI</p>		<p>Any person resident outside India for putting through <i>bonafide</i> transactions in rupees.</p> <p>Individuals/ entities of Pakistan nationality/ origin and entities of Bangladesh origin require the prior approval of the RBI</p> <p>A Citizen of Bangladesh/Pakistan belonging to minority communities in those countries i.e. Hindus, Sikhs, Buddhists, Jains, Parsis and Christians residing in India and who has been granted Long Term Visa (LTV) or whose application for LTV is under consideration, can open only one NRO account with an AD bank subject to conditions.</p> <p>Post Offices in India may maintain savings bank accounts in the names of persons resident outside India and allow operations on these accounts subject to the same terms and conditions as are applicable to NRO accounts maintained with an AD / AD Bank.</p>

Deposits in India with AD Bank - Comparison

Criteria	Non-Resident (External) Rupee Account Scheme [NRE Account]	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B) Account]	Non-Resident Ordinary Rupee Account Scheme [NRO Account]
Joint account	<p>May be held jointly in the names of two or more NRIs/ PIOs.</p> <p>NRIs/ PIOs can hold jointly with a 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.</p>		<p>May be held jointly in the names of two or more NRIs/ PIOs.</p> <p>May be held jointly with residents on 'former or survivor' basis.</p>
Currency	Indian Rupees	Any permitted currency i.e. a foreign currency which is freely convertible	Indian Rupees
Type of Account	Savings, Current, Recurring, Fixed Deposit	Term Deposit only	Savings, Current, Recurring, Fixed Deposit

Deposits in India with AD Bank - Comparison

Criteria	Non-Resident (External) Rupee Account Scheme [NRE Account]	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B) Account]	Non-Resident Ordinary Rupee Account Scheme [NRO Account]
Period for fixed deposits	From 1 to 3 years, However, banks are allowed to accept NRE deposits above three years from their Asset-Liability point of view	For terms not less than 1 year and not more than 5 years	As applicable to resident accounts.
Permissible Credits	<p>Inward remittances from abroad, interest accruing on the account, interest on investment, transfer from other NRE/ FCNR(B) accounts, maturity proceeds of investments (if such investments were made from this account or through inward remittance).</p> <p>Current income like rent, dividend, pension, interest etc. will be construed as a permissible credit to the NRE account. Only those credits which have not lost repatriable character can be credited</p>		<p>Inward remittances from outside India, legitimate dues in India and transfers from other NRO accounts are permissible credits to NRO account.</p> <p>Rupee gift/ loan made by a resident to a NRI/ PIO relative within the limits prescribed under the LRS may be credited to the latter's NRO account.</p>

Deposits in India with AD Bank - Comparison

Criteria	Non-Resident (External) Rupee Account Scheme [NRE Account]	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B) Account]	Non-Resident Ordinary Rupee Account Scheme [NRO Account]
Permissible Debits	Local disbursements, remittance outside India, transfer to other NRE/ FCNR(B) accounts and investments in India.		Local payments, transfers to other NRO accounts or remittance of current income abroad. NRIs and PIOs may remit up to USD 1 million, subject to conditions specified in Foreign Exchange Management (Remittance of Assets) Regulations, 2016. Funds can be transferred to NRE account within this USD 1 Million facility.
Repatriability	Repatriable		Not repatriable except for current income. 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.

Deposits in India with AD Bank - Comparison

Criteria	Non-Resident (External) Rupee Account Scheme [NRE Account]	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B) Account]	Non-Resident Ordinary Rupee Account Scheme [NRO Account]
Loans in India	<ul style="list-style-type: none"> AD can sanction loans in India to the account holder/ third parties without any limit. Loans cannot be repatriated outside India and can be used in India only for the specified purposes In case of loans sanctioned to a third party, there should be no direct or indirect foreign exchange consideration for the non-resident depositor. In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from outside India or out of balances held in the NRO account. <p>Premature withdrawal of deposits not available where loans against such deposits are availed of.</p> <p>The term “loan” shall include all types of fund based/ non-fund based facilities.</p>		<ul style="list-style-type: none"> Loans against the deposits can be granted in India to the account holder / 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. The term “loan” shall include all types of fund based/ non-fund based facilities.

Deposits in India with AD Bank - Comparison

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Loans outside India	<ul style="list-style-type: none"> Branches/ correspondents outside India of AD Banks grant loans to or in favour of non-resident depositor/ third parties at the request of depositor for bona fide purpose against the security of funds held in the NRE/ FCNR (B) accounts in India, subject to usual margin requirements. The term “loan” shall include all types of fund based/ non-fund based facilities 		Not permitted
Operations by Power of Attorney in favour of a resident	Power of Attorney holders can make withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.		Power of Attorney holder can make withdrawals for permissible local payments in rupees, remittance of current income to the account holder outside India or remittance to the account holder himself through normal banking channels. While making remittances, the limits and conditions of repatriability will apply.

Deposits in India with AD Bank - Comparison

Criteria	Non-Resident (External) Rupee Account Scheme [NRE Account]	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B) Account]	Non-Resident Ordinary Rupee Account Scheme [NRO Account]
Change in residential status from Non-resident to resident	<ul style="list-style-type: none"> NRE accounts should be designated as resident accounts Funds may be transferred to the RFC accounts immediately upon the return of the account holder to India 	<p>FCNR (B) deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by the account holder.</p> <p>ADs should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder</p>	NRO accounts may be designated as resident accounts on the return of the account holder to India for any purpose indicating his intention to stay in India for an uncertain period.

Accounts of a tourist visiting India

Who can open

Foreign national of non-Indian origin visiting India can open an **NRO (current/ savings)** account

Permitted credits

- Funds remitted from outside India through banking channel
- Sale of foreign exchange brought by him to India.

Closure of account

- The balance in the NRO account may be paid to the account holder at the time of his departure from India provided the account has been maintained **for a period not exceeding six months;** and
- the account has not been credited with any local funds, other than interest accrued thereon

Special Non-Resident Rupee (SNRR) Account

Opening of the account

- Any PROI, having a **business interest** in India for putting through **bona fide** transactions in rupees
- Non interest bearing account

Credits/Debits

- The account holder shall not make available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner
- Balance in the account shall be eligible for repatriation
- Transfers from any NRO account to the SNRR account are prohibited

Closure of account

- Has to be co-terminus with the contract/business/operations of the account holder
- Tenure cannot exceed 7 years, except with prior RBI approval

Change of residential status of account holder

- To be designated as resident rupee account upon the account holder becoming a resident

Escrow Account for open offers/ delisting/exit offers

Opening of the account

- By NR corporates for acquisition/transfer of capital instruments/ convertible notes through open offers/ delisting/ exit offers

Credits

- Foreign inward remittances through normal banking channels
- By way of guarantee issued by AD Bank

Debits

- As per SEBI(SAST) or other SEBI regulations

Closure of account

- Has to be co-terminus with the transaction for which it was opened

Change of residential status of accountholder

- To be designated as resident rupee account upon the accountholder becoming a resident

Escrow Account for acquisition/transfer

Opening of the account

- By resident and non-resident acquirers for acquisition/ transfer of capital instruments/convertible notes

Credits

- Foreign inward remittances through normal banking channels
- By way of guarantee issued by AD Bank
- Rupee consideration through banking channels by the resident acquirer of capital instruments/convertible notes who proposes to acquire from NR holders by way of transfer

Debits

- Remittance of consideration for issue/transfer of capital instruments/convertible notes directly to the beneficiary's bank account
- Refund of consideration if the transaction does not go through

Closure of account

- Account to be closed within 6 months unless RBI approval obtained
- Has to be co-terminus with the transaction for which it was opened
- Notwithstanding above, if agreed between the buyer and seller, an escrow arrangement may be made for an amount not more than 25% of the total consideration for a period not exceeding 18 months from the date of the transfer agreement

Acceptance of Deposits on a Non Repatriable basis

Opening of the account

- An Indian proprietorship concern/ firm or a company (including NBFC registered with RBI) can accept deposits from NRIs or PIOs on non-repatriation basis
- In case of company, deposits may be accepted under a private arrangement/ public deposit scheme

Maturity period

Not to exceed 3 years

Source of funds

- By debit to the NRO account which is not funded by transfers from NRE/FCNR(B) accounts or inward remittances
- The deposits shall not be used for relending (not applicable to NBFC) or for undertaking agricultural/plantation activities or real estate business

Issues

Do FCNR (B) loans given by AD Category I banks come under the ECB framework?

Thank
you

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