



**Do's and Don'ts for nri's
under**

**-
FEMA**

NRI

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Contents

- **What FEMA tries to govern?**
- **Definition of NRI/PIO**
- **Residential Status under FEMA**
- **Capital & Current Account Transactions**
- **Bank Accounts of NRI/PIOs in India**
- **Investment by NRIs**
- **Investment in Immovable Properties**
- **Remittance facilities for NRIs/PIOs**
- **Dos and Don'ts – A General Outline**

What FEMA tries to govern?

Today's Discussion has
more focus on

Person
resident **in**
India (PRI)

Currency /
security /
properties
outside India

Person
resident
outside
India (PROI)

Currency /
security /
properties **in**
India

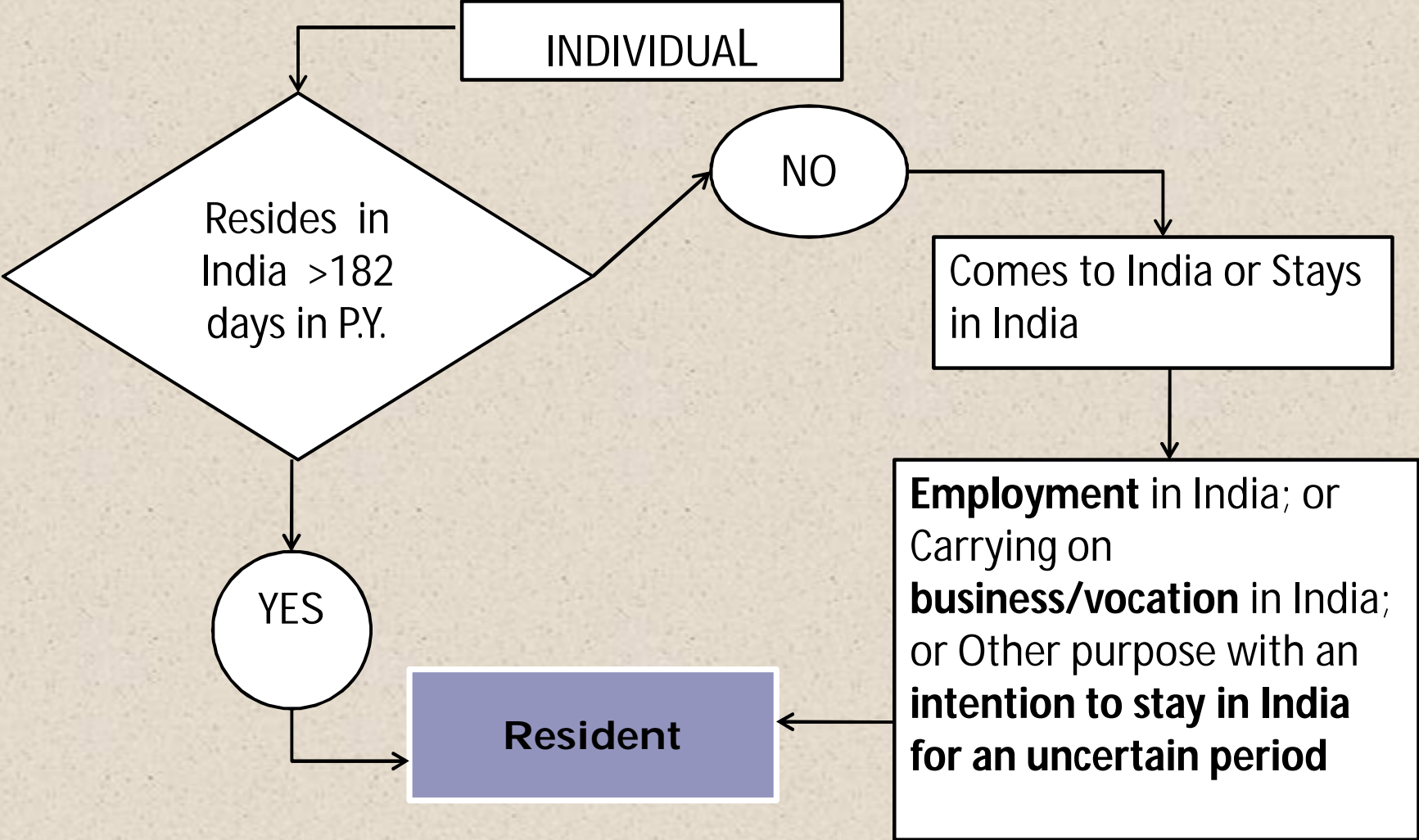
Residential Status under FEMA



Residential Status under FEMA

- The RBI does not determine the residential status.
- Residential status is determined by operation of law, under FEMA.
- The onus to prove his / her residential status is on an individual.

Person Resident in India



Person Resident Outside India

INDIVIDUAL

Resides in
India >182
days in P.Y.

YES

Gone out of India
or Stays outside
India

NO

**Non
Resident**

Employment outside India; or
Carrying on **business/vocation**
outside India; or Other purpose
with an **intention to stay outside
India for an uncertain period**

Definition of NRIs/PIOs



According to **FEM(Deposit) Regulations,**

- 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.

Explanation: PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

Note: For different purposes, there are different meanings of NRIs and PIOs

Foreign Exchange Management (Deposit) Regulations

Investment in Firm or Proprietary Concern in India

Acquisition and Transfer of Immovable Property in India

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 ;

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)
PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

PIO means a person who:

a) held an Indian passport, or

b) Himself, or either of his parents, or either of his grandparents, was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955;

c) Is a spouse of an Indian citizen or a person a spouse of a PIO as discussed above.

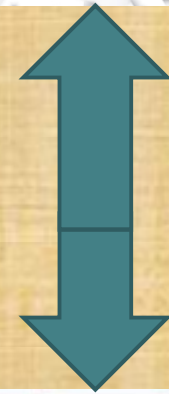
Citizens of Bangladesh, Pakistan and Sri Lanka are not considered as NRIs.

PIO means a person who:

-held an Indian passport, or
-himself, or either of his father or grandfather, was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955;

Citizens of Bangladesh, Pakistan, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan are not considered as PIOs.

Change in Residential Status?



NRI

Change of Residential Status – Impact under FEMA

- Resident To Non Resident

- 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 – Impact under FEMA

- Resident To Non Resident
 - v. Loans given in India
 - vi. Loans obtained in India
 - vii. Power of attorney
 - viii. Time limit for intimation / permission

Change of Residential Status – Impact under FEMA

- Non Resident To Resident

Assets abroad covered by Section 6(4)

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

Change of Residential Status – Impact under FEMA

- Non Resident To Resident

iii. Bank accounts in India

iv. Investments Abroad

v. Time limit for intimation

Scenario I :

Giving and obtaining of loans in/from India

Mr. I, a NRI has come to India on a Visit to India and search for investment opportunities. He runs short on funds to make the investment. Can Mr. I borrow funds from his close relatives in India?

Scenario II :

Giving and obtaining of loans in/from India

Mr. R, who was previously a resident of Canada has shifted to India and has become a resident here. Mr. R is now in need of funds. Can he borrow money from his close relatives in Canada?

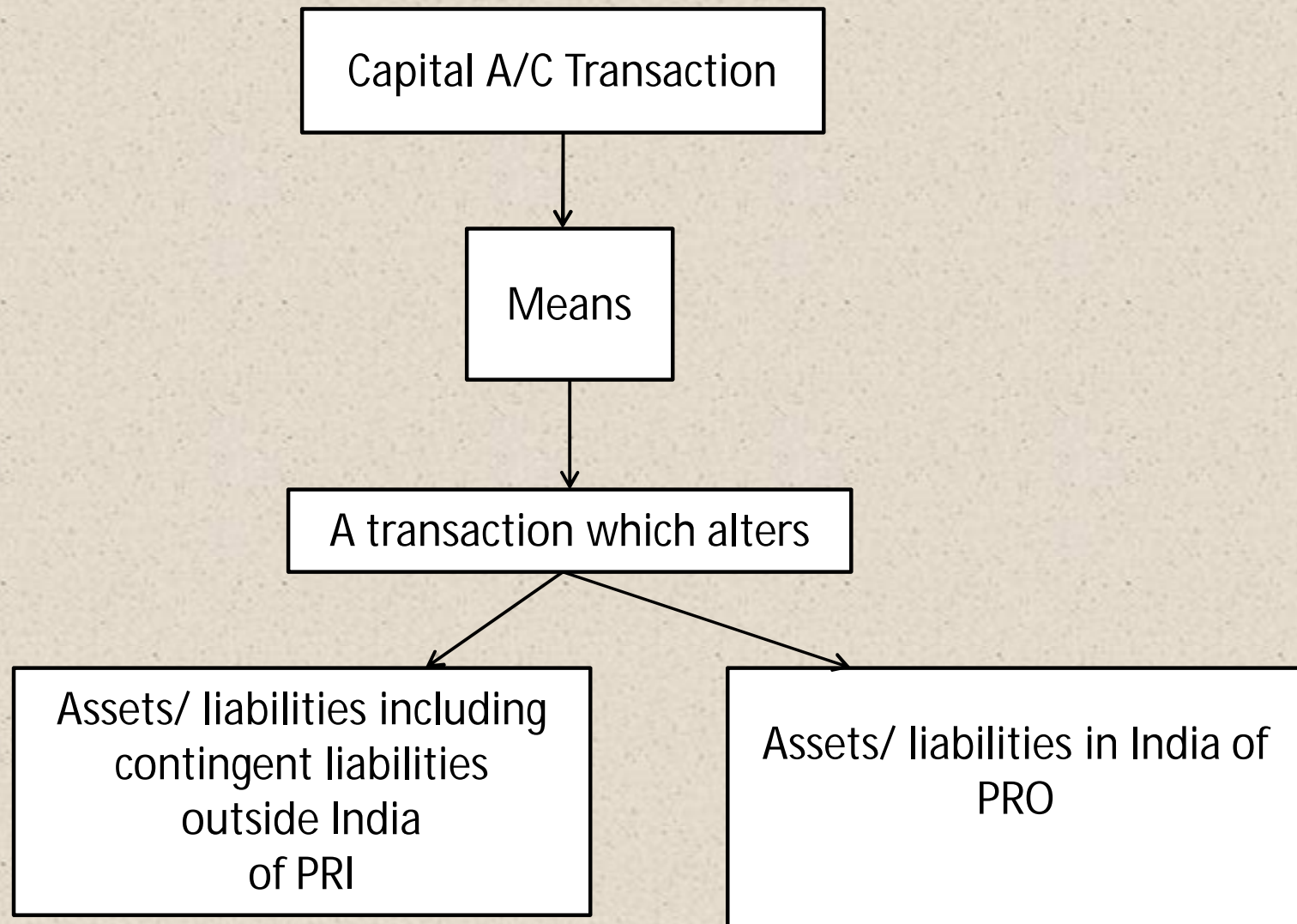
Scenario III :

Giving and obtaining of loans in/from India

Mr. U, a resident Indian is a close relative of Mr. V, a NRI, who had borrowed funds from a bank in India. Is it permissible for Mr. U to repay the loan taken by Mr. V from the Indian bank?

Capital and Current Account Transactions

Capital Account Transactions



Capital Account Transactions by Non-Residents – Permitted Transactions

- ✓ Investment in India i.e.,—
 - In security issued by a body corporate or an entity in India; and
 - to the capital of a firm or a proprietorship concern or an association of persons in India.
- ✓ Acquisition and transfer of immovable property in India.
- ✓ Guarantee in favour of, or on behalf of, a person resident in India.
- ✓ Import and export of currency/currency notes into/from India
- ✓ Deposits between a person resident in India and a person resident outside India.
- ✓ Foreign currency accounts in India
- ✓ Remittance outside India of capital assets in India of a person resident outside India.

Capital Account Transactions by Non-Residents – Prohibited Transactions

No Person resident outside India shall make investment in the following:

Business of chit fund

Nidhi Company

Agricultural or plantation activities

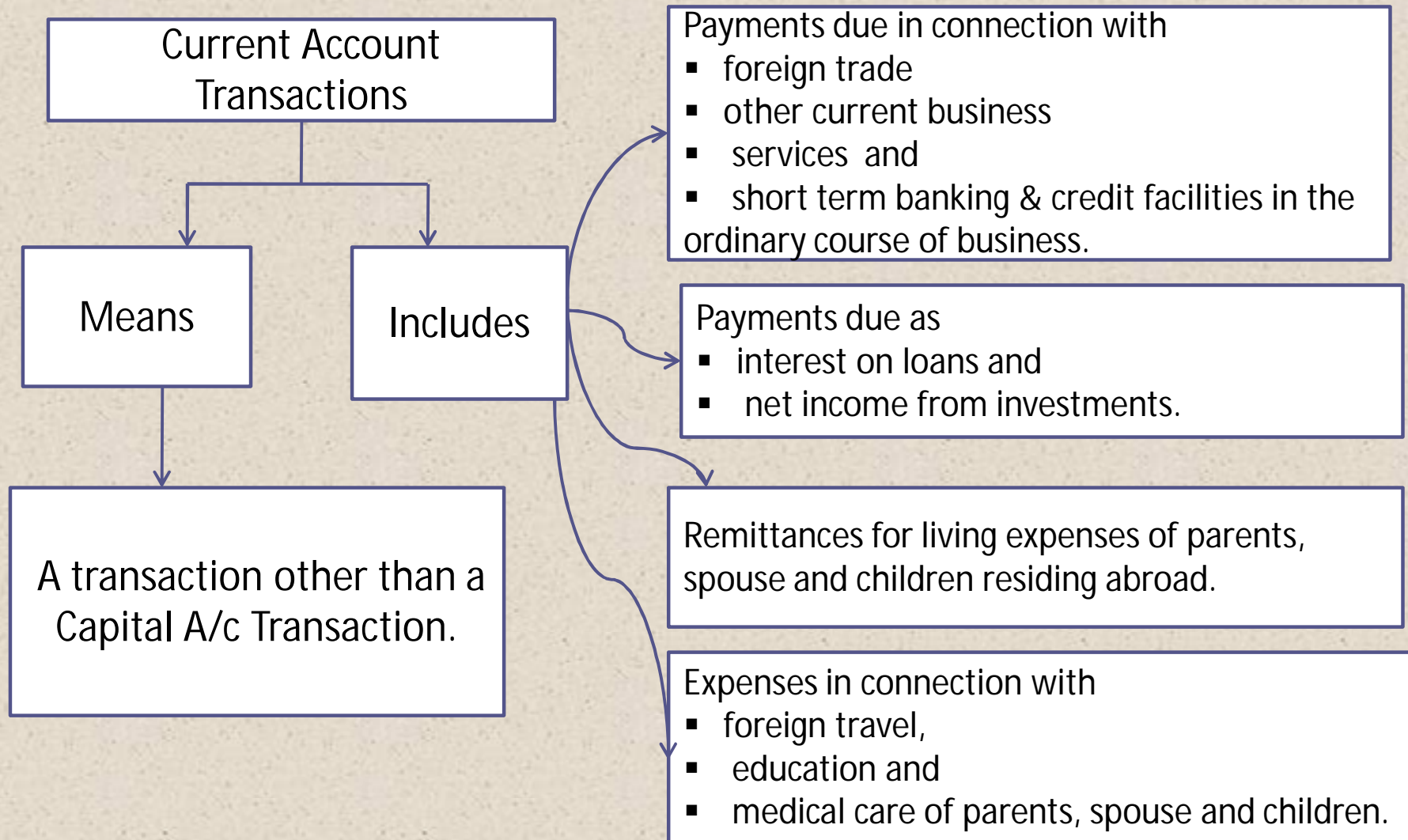
Real estate business, or construction of farm houses,

Trading in Transferable Development Rights (TDRs)

Note :

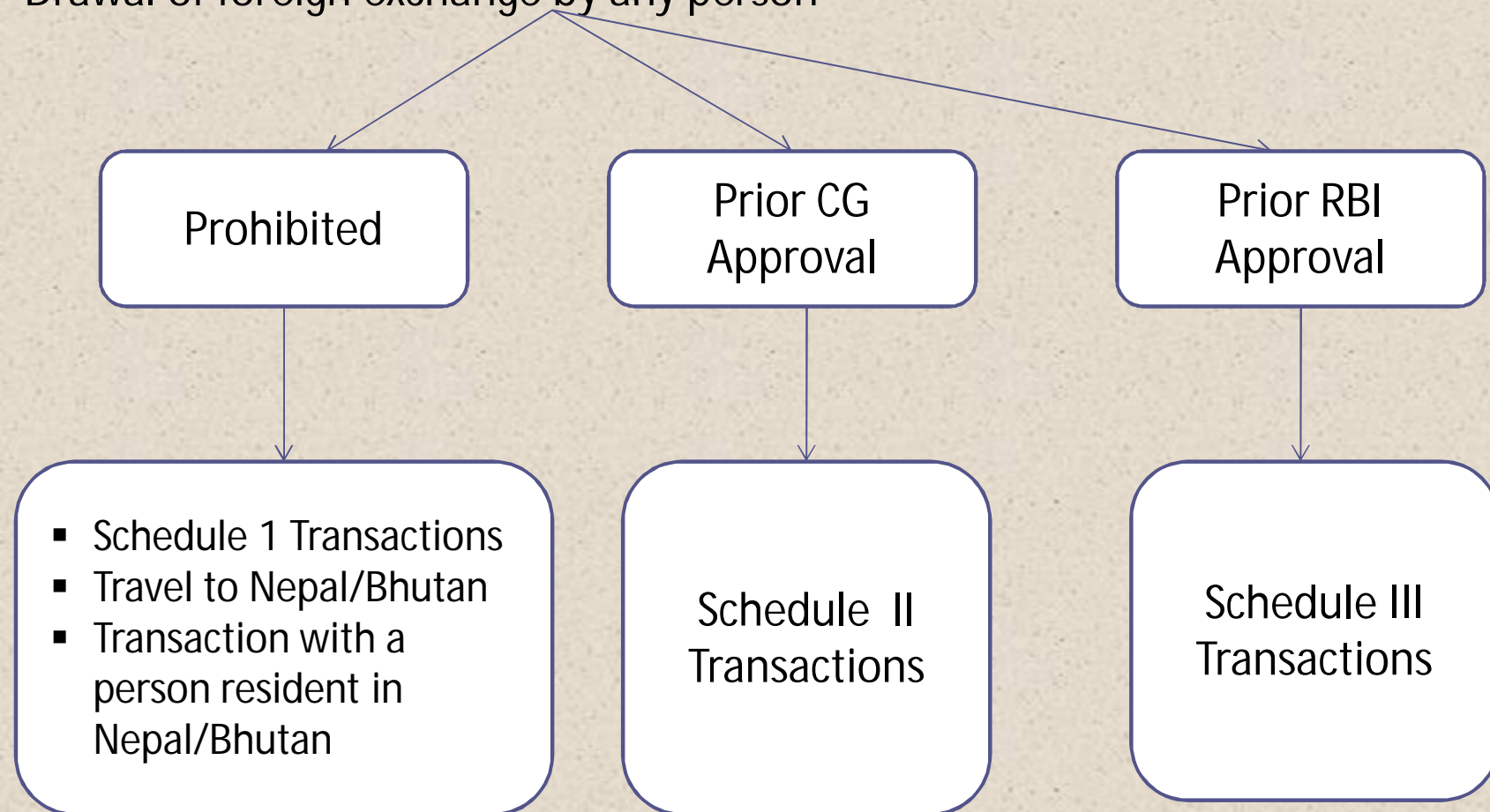
- Real estate business does not include development of townships, construction of residential/commercial premises, roads or bridges and REITs registered and regulated under SEBI (REITs) Regulations, 2014.
- NRIs shall be eligible to subscribe to Chit funds on non-repatriation basis, without limit subject to conditions stipulated by RBI

Current Account Transactions



Current Account Transactions Rules

- Current account transactions are freely permissible unless prohibited.
- Drawal of foreign exchange by any person





Bank Accounts of NRIs/PIOs in India

Bank Accounts of NRIs/PIOs in India



Features of Deposit Schemes under NRE/NRO and FCNR Accounts

Particulars	NRO	NRE	FCNR
Who can open an account	Person resident outside India (Individuals/Entities of Bangladesh/Pakistan Nationality/ownership requires RBI approval)	NRI (Individuals / entities of Bangladesh / Pakistan nationality / ownership requires RBI approval)	NRI (Individuals / entities of Bangladesh / Pakistan nationality / ownership requires RBI approval)
Currency	INR	INR	Permissible Foreign Currency
Repatriable / Non-Repatriable	Non-Repatriable (Except under USD 1 million per F.Y. scheme)	Repatriable	Repatriable
Type of Account	Current, Savings, Recurring or Fixed Deposit Accounts	Current, Savings, Recurring or Fixed Deposit Accounts	Term Deposits
Joint accounts	Jointly with residents on 'former or survivor' basis. NRIs and/or PIOs may hold NRO accounts jointly with other NRIs and/or PIOs.	In names of two or more NRI/PIOs or with resident relative(s) on "former or survivor" basis.	In names of two or more NRI/PIOs or with resident relative(s) on "former or survivor" basis.

Features of Deposit Schemes under NRE/NRO and FCNR Accounts

Particulars	NRO	NRE	FCNR
Major Permissible Debits	Local rupee payments, Remittance outside India of current income in India (net of taxes)	Local disbursements, remittance outside India, transfer to other NRE / FCNR account etc.	Local disbursements, remittance outside India, transfer to other NRE / FCNR account etc.
Major Permissible Credits	Remittance in permitted foreign currency, Deposit by Account holder during temporary visit to India, Transfer from rupee account of Non-Resident Banks , Dues in India of Account Holder	Remittance in permitted foreign currency, proceeds of foreign currency / bank notes tendered during temporary visit to India, transfer from other NRE / FCNR account etc.	Remittance in permitted foreign currency, proceeds of foreign currency / bank notes tendered during temporary visit to India, transfer from other NRE / FCNR account etc.
Taxability of Interest	Taxable	Non-Taxable	Non-Taxable

Features of Deposit Schemes under NRE/NRO and FCNR Accounts

Particulars	NRO	NRE	FCNR
Loan – to account holders	<ul style="list-style-type: none"> ▪ Rupee loan against security of fixed deposits for personal purpose or business purpose except for relending or agricultural/ plantation activity or for investment in real estate ▪ Overdraft Permitted subject to commercial judgement of AD Bank. 	<ul style="list-style-type: none"> ▪ For personal purpose/business purpose except for relending or agricultural/plantation activity or for investment in real estate business ▪ For direct investment in India in firms / companies on non-repatriation basis ▪ For purchase of flat in India for own residential purpose 	<ul style="list-style-type: none"> ▪ For personal purpose/business purpose except for relending or agricultural/plantation activity or for investment in real estate business ▪ For direct investment in India in firms / companies on non-repatriation basis ▪ For purchase of flat in India for own residential purpose

Features of Deposit Schemes under NRE/NRO and FCNR Accounts

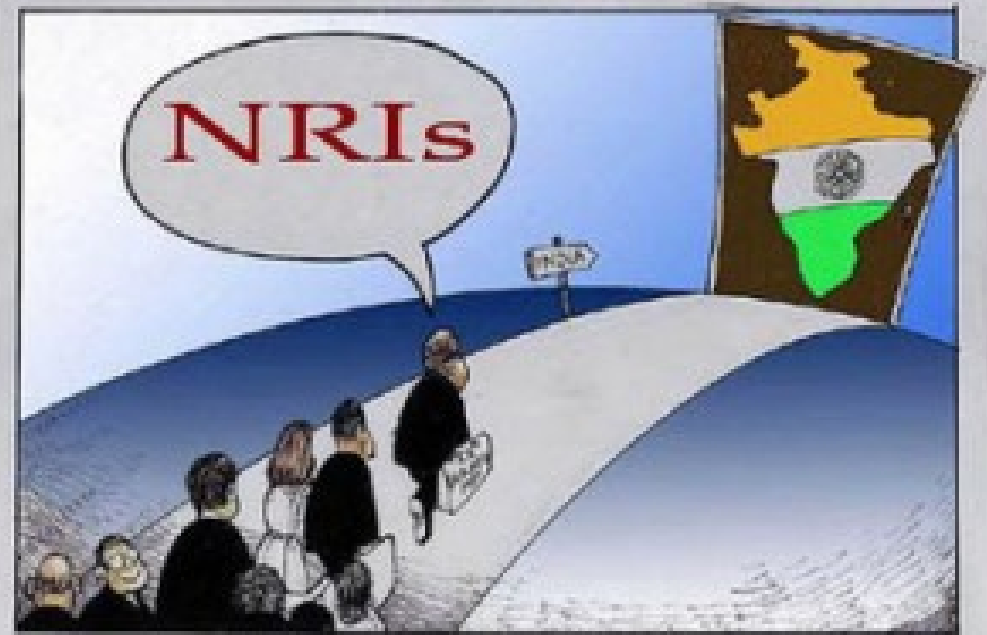
Particulars	NRO	NRE	FCNR
Loan – to third parties	Loans / overdrafts to Resident Individuals / firms / Indian companies against security of FD in NRO account subject to conditions	Fund based / non-fund bases to Resident Individuals / firms / Indian companies against security of FD in NRE account subject to conditions	Fund based / non-fund bases to Resident Individuals / firms / Indian companies against security of FD in NRE account subject to conditions
Loan – outside India	Not allowed	Fund based or non-fund based to or in favour of NRI or to third parties	Fund based or non-fund based to or in favour of NRI or to third parties

Bank Accounts - NRO Account

Mr. O, an Indian Non resident has remitted total funds of \$ 2.5 Million from his NRO account in India to his Bank Account in The US in the F.Y. 2015-16. Is such a remittance permissible?

Bank Accounts - FCNR(B) Account

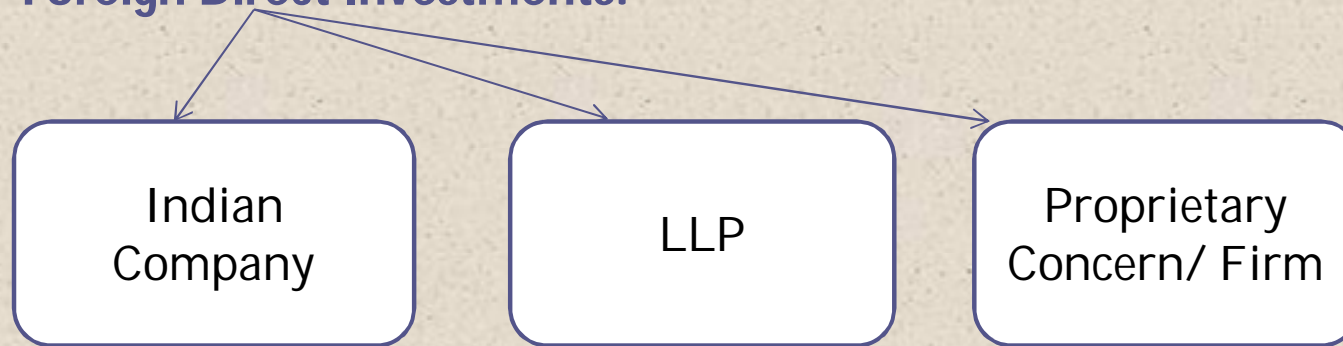
Are the Deposits held by a NRI in FCNR(B) Account allowed to be continued even if the person, subsequently becomes Resident in India?



Investment By NRIs

Foreign Direct Investments

➤ Foreign Direct Investments:



Entry Routes in FDI:

- Automatic Route
- Government/FIPB Approval

➤ Portfolio Investment Scheme

Overview of Foreign Direct Investment in various entities

Particulars	Investment in Indian Co.	Deemed Domestic Investment **	Portfolio Investment Scheme	Investment in Indian LLP	Investment in Firm/ Proprietary Concern
Non-Resident Indian	Yes	Yes	Yes	Yes	Yes
Repatriation basis	Yes	No	Yes	Yes	No
Non-Repatriation basis	Yes	Yes	Yes	Yes	Yes

**Which Investment is treated as Domestic Investment?	Purchase and sale of Shares/Convertible Debentures or Warrants of an Indian Company
By Whom?	<ul style="list-style-type: none"> ▪ NRI or ▪ Company/Firm/ Partnership Firm incorporated outside India AND controlled by Non-Resident Indians
Basis	Non-Repatriation basis

Foreign Direct Investments – Indian Company

Eligibility	Person Resident Outside India
Instruments:	*Fully and partly paid Equity Shares, *Fully Convertible Debentures, *Fully Convertible Preference Shares. * Warrants
Modes Of Investment:	Issuance Of Fresh Shares, Transfer Of Existing Shares

The Investment is subject to :

- Sectoral caps
- Government Approval, *if required*
- Further conditions and reporting as prescribed by the Reserve Bank of India

India's FDI Policy – An Overview of a few sectors

Sectors – Automatic Route

- ✓ Agriculture & Animal husbandry
- ✓ Plantation
- ✓ Mining
- ✓ Manufacturing
- ✓ Insurance- Upto 49%
- ✓ Construction Development
- ✓ Defence – upto 49%
- ✓ Telecom – upto 49%
- ✓ NBFCs
- ✓ Power Exchanges
- ✓ Pharmaceuticals – Greenfield Investments

Sectors –Approval Route

- Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities
- Defence – beyond 49%
- Satellites
- Private Security Agencies - 49%
- Telecom - beyond 49%
- Pharmaceuticals – Greenfield Investments

Prohibited

- ✗ Lottery, betting and gambling
- ✗ Business of chit fund
- ✗ Nidhi company
- ✗ Trading in TDRs
- ✗ Cigars, cheroots, cigarillos and cigarettes
- ✗ Real estate business
- ✗ Atomic Energy

Foreign Direct Investments – Indian Company (Investment by NRIs on Non-Repatriation basis)

A Non-resident Indian (NRI) , including a Company, Trust, Partnership firm incorporated outside India **and** owned and controlled by NRIs, may acquire and hold, **on non-repatriation basis:**

- Equity shares,
- Convertible preference shares,
- Convertible debenture, warrants or units

*which will be **deemed to be domestic investment at par** with the investment made by residents.*

Prohibition on Purchase: An NRI cannot purchase any equity shares, convertible preference shares, convertible debenture, warrants or units of the following companies:

- Nidhi Company
- Company engaged in agricultural/plantation activities
- Real Estate business or Construction of farmhouses
- Dealing in TDRs(Transferable Development Rights)

Foreign Direct Investments – LLP

Eligible Investors

- A person resident outside India
- Entity incorporated Outside India (Except certain persons)

Eligibility of LLP for accepting foreign Investment

Allowed for :

LLPs operating in sectors where 100% FDI under Automatic route is allowed (+) There are no FDI linked performance conditions – **FDI is allowed under Automatic Route only**

Disallowed for :

- Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions.
- Sectors eligible to accept <100% FDI under automatic route; or
- Sectors eligible to accept FDI under Government Approval route; or
- Agricultural/plantation activity and print media; or
- Sectors not eligible to accept FDI i.e. any sector which is prohibited under the extant FDI policy as well as those prohibited under Capital Account Transactions

Foreign Direct Investments – Partnership Firm/ Proprietary Concern

- Only NRIs and PIOs are allowed
- General permission to invest on non-repatriation basis
- Prior approval of RBI for investment on Repatriation basis
- The Firm or Concern should not engage in any agricultural/plantation or real estate business or print media sector

Scenario :

Partnership Firm/Proprietary concern

Mr. P, Resident Indian is a partner in a partnership firm PQR. The firm is engaged in the real estate business. Mr. P becomes a Non resident in a subsequent F.Y. Now, can Mr. P (being a NR) invest additional capital into his partnership firm? Can he continue as a partner in a firm engaged in the real estate business?

Would this also have any effect on his position of being a partner?

Portfolio Investment Scheme – Conditions

- Shares purchased under PIS on Stock Exchange shall be sold on stock exchanges only.
- An NRI or a PIO can purchase shares up to 5% of the paid up capital of an Indian company.
- All NRIs / PIOs taken together cannot purchase more than 10% of the paid up value of the company. (This limit can be increased by an Indian company to 24% by passing a General Body resolution).
- An NRI may open an NRE(PIS) Account for Investment on Repatriation basis and NRO(PIS) Account for investment on non-repatriation basis

Investment in Immovable Property



Investment by NRIs in Immovable Property in India

- Prohibition for Citizens of Certain Countries
- General Prohibition
- General Permission [section 6(5)]
- Manner of Acquisition

Investment by NRIs in Immovable Property in India

Sr. No.	Category	Remarks	Precautions
1	Resident + Indian Citizen	Freely Permitted from any Category.	<ul style="list-style-type: none"> ❖ TDS obligation u/s 195 if the seller is a NR. ❖ Keep Records of payment to justify remittance at a later date
2	R+ Foreign Citizen	----- do -----	----- do -----
3	NR + Indian Citizen	<ul style="list-style-type: none"> ➤ Permission required if Sale by PIOs as PIOs are not permitted to sale to NR individuals. ➤ From others freely permitted. 	----- do -----

Investment by NRIs in Immovable Property in India

Sr. No.	Category	Remarks	Precautions
4	NR + PIO	<ul style="list-style-type: none"> ➤ Permission required if Sale by PIOs as PIOs are not permitted to sale to NR individuals. ➤ From others freely permitted. 	<ul style="list-style-type: none"> ❖ TDS obligation u/s 195 if the seller is a NR. ❖ Keep Records of payment to justify remittance at a later date
5	Non – resident + Non – Indian Origin	<ul style="list-style-type: none"> ➤ Permission if Seller is a PIO or NR + Indian Citizen. ➤ R can sell only for business purposes. 	<ul style="list-style-type: none"> ❖ Necessary approval / invest must be in accordance with FEMA. ❖ Property can be acquired only for bonafide business purposes. ❖ Declaration in IPI. ❖ Permission required for repatriation.

Eligible Investors	NRI's & PIO's
Acquire/Transfer of-	Immovable Property in India
Except for-	Agricultural land/ Plantation property or a farm house
Payment to be made-	Out of the funds; <ol style="list-style-type: none"> 1. Received in India through normal banking channels by way of inward remittance from any place outside India or 2. Held in any NR A/c in accordance with the provisions of the Act and the regulations made by the RBI.

Immovable Property

Scenario I :

Investment in Immovable Property

Mr. A, a NRI received a house property in India from Mr. B (a resident of India) by way of **Gift**. Is it permissible for Mr. A to hold the Indian House property under FEMA?

What if Mr. B transfers to Mr. A, by way of Gift, an Agricultural Land in India?

Scenario I (Cont.)

Investment in Immovable Property

The Gift of house property received by Mr. A from Mr. B is sold by him. Is it permissible for Mr. A to repatriate the proceeds of such sale to his Bank accounts abroad?

Scenario II :

Mr. P, a resident of Australia owns an Agricultural land in India. After his death, his son Mr. Q (NRI) **inherited** all his wealth including the Indian agricultural land. Is Mr. Q allowed to hold such immovable property in India under FEMA?

In case Mr. Q had inherited a House property, would that be permissible?

Investment in Immovable Property

Scenario III :

Mr. X, an NRI owns a farm house in India. He transfers his farm house to Mr. Y (an Indian Resident) for a consideration. Is such transfer permissible under FEMA?

Also, in case Mr. Y is a person resident outside India, would the transfer be permissible?

Investment in Immovable Property

Scenario IV :

Mr. L, an Indian farmer owns agricultural land in India. Later on, he settles in London and becomes the resident there. Can Mr. L, who is now an NRI, continue to hold his agriculture land in India under FEMA provision?

Investment in Immovable Property

Repatriation of sale proceeds of immovable property in India

- If the property was acquired out of foreign exchange sources i.e. remitted through normal banking channels e.g. NRE / FCNR (B) account.
- The amount to be repatriated should not exceed the amount paid for the property in foreign exchange received through normal banking channel i.e. NRE account (foreign currency equivalent, as on the date of payment) or FCNR (B) account.
- If the property was acquired out of Rupee sources, NRI or PIO may remit an amount up to **USD one million** per financial year out of the balances held in the NRO account (inclusive of sale proceeds of assets acquired by way of inheritance or settlement)

Investment in Immovable Property

Remittance Facilities for NRIs



Remittance facilities for NRIs/PIOs

> Remittance of Current Income

Current Income like Rent, dividend, pension, interest, etc. in India of the account holder is permissible through **NRO Account** without any limit.

> Remittance of Assets

NRIs/PIOs may, on submission of documentary evidence, remit **upto USD 1 Million per financial year:**

- i. out of balances in NRO accounts/ sale proceeds of assets/ assets acquired in India by way of inheritance/ legacy;
- ii. in respect of **assets acquired under a deed of settlement** made by either parents or a relative as defined in Companies Act, 2013 on the death of the settler;
- iii. in case settlement is done **during the lifetime of the owner/ parent, it would tantamount to regular transfer by way of gift** and the remittance of sale proceeds of such property would be guided by the extant instructions on remittance of balance in the NRO account;

Remittance facilities for NRIs/PIOs

> Repatriation of sale proceeds of Immovable Property

- Repatriation is restricted to the amount paid for acquisition of immovable property
- In case of sale of Residential Property – Facility restricted to 2 properties

Dos and Don'ts for NRIs – A General Outline

✓ Dos

- Check Residential Status
- If Non-resident, differentiate between NRI/PIO.
- Check permissibility of investments.
- Route investments through an authorised dealer.
- Understand Repatriability conditions.
- In case returning to India, redesignate Bank Accounts and intimate relevant authorities.

× Don'ts

- Not differentiating between Capital and Current Account Transactions.
- Not taking approvals, wherever and whenever required.
- Non-compliance with statutory requirements of reporting etc.

Thank
you

