

Investment options for NRIs under FEMA and Repatriation Facilities

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By:
CA Manoj Shah



Transition from Foreign Exchange Regulation Act, 1973 to Foreign Exchange Management Act, 1999

- Post liberalization (i.e. New Industrial policy of 1991) there was need to remove shackles of regulatory and legal provisions.
- Need to consolidate and amend the law relating to foreign exchange with the objectives of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.
- Need to take various steps to make 'New Industrial Policy'-workable and meaningful.
- Industrial licensing was made pragmatic and objective-oriented.
- It was decided to review provisions of Foreign Exchange Regulation Act, 1973 (FERA).



Transition from Foreign Exchange Regulation Act, 1973 to Foreign Exchange Management Act, 1999

- Intention was to bring provisions of FERA in line with emerging trends of liberalization so as to remove obstacles in the inward flow of foreign exchange and foreign investment.
- 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.



Structure of FEMA

- FEM ACT
 - NOTIFICATIONS
 - RULES
 - MASTER DIRECTIONS
 - A.P. DIR CIRCULARS
-
- FAQs will not prevail over Act, Notifications etc. in case of conflict



Notifications under FEMA

- RBI had initially issued 25 notifications, covering capital account transaction prescribed in Sec 6(3) & certain miscellaneous provisions
- 15 related to capital account transactions, 1 on Export of goods and services and 9 for other regulations
- As on date, the total number of notifications issued by RBI stand at 362.
- Since original notifications have undergone many changes, RBI has started revising the notifications and till date has issued 13 revised notifications carrying suffix (R) for easy identification along with the year in which they are published.
- https://www.rbi.org.in/Scripts/BS_viewfemanewnotification.asp
[X](#)



Master Directions

- RBI has come up with Master Directions covering foreign exchange transactions.
- Master Directions consolidate instructions rules and regulations on the related subject.
- Master Directions are updated as and when there is change in rules/regulations or change in policy.
- In Jan 2016, 17 Master Directions were issued by RBI.
- https://www.rbi.org.in/scripts/FS_Notification.aspx?fn=5&fnn=2764



A.P. (Dir Series) Circulars

- Authorised Persons Directions issued by RBI u/s. 10(4) and 11(1) of FEMA to Authorized Persons (AP)
- These directions are called – **A.P. (Dir Series) Circulars**
- APs are Authorized Dealers, Money Changers and banks who are authorized to deal in Foreign Exchange
- These Circulars are operational instructions to AP by RBI
- Legal validity of these Circulars have been upheld in the case of Prof. Krishnaraj Goswami v. RBI, [2007 (6) Bom. CR 565]
- Court upheld the power of RBI to issue such Circulars based on powers conferred to RBI u/s. 10(4) & 11(1) & negated the contention that RBI has no jurisdiction to issue such Circulars



Current and Capital Account Transaction

- Capital Account transaction means a transaction which alters assets or liabilities including contingent liabilities outside India of person resident in India and vice-versa. It's an economic definition rather than an accounting or legal definition.
- Current Account transaction is transaction other than a capital account transaction.

Current Account transactions are freely permitted unless prohibited - they are regulated by Central Government.

Capital Account transactions are prohibited unless generally permitted - they are regulated by RBI.



Current and Capital Account Transaction

- FEMA looks transaction from Balance of payment position of Country
- Examples -
 - ❑ Import of machinery on payment of cash - Current A/c transaction
 - ❑ Machinery is purchased on hire - Capital A/c transaction. There is an obligation to make future payment to the non-resident
 - ❑ Consideration for goods & Services – Current A/c transaction
 - ❑ Transaction represents a creation or acquisition of wealth- shares, loans or immovable properties – Capital A/c transaction
 - ❑ Subsidy received from IMF – Current A/c transaction
 - ❑ Setting up Branch overseas by resident Indians – Current A/c transaction
- Section 47 of FEMA grants power to RBI to make regulations and Section 46 grants power to Central Government to prescribe rules dealing with Current Account Transactions.



Capital Account Transaction

- RBI has been empowered under section 6(2) of FEMA to specify, in consultation with the Central Government, any class or classes of Capital account transactions , involving debt instruments, which are permissible [i.e. the transactions which are not included under section 6(2A)].
- Section 6(2A) of FEMA – Central Government is empowered to specify in consultation with RBI, the class of capital account transactions, not involving debt instruments, which are permissible.
- Every transaction listed in this section is regulated by a corresponding notification



Residential Status under FEMA

- Under FEMA residential status is of two types:
 - Person resident in India
 - Person resident outside India
- Under FERA, citizenship was considered as deciding factor.
- FEMA lays emphasis on 'residing' which denotes permanency.
- Unlike Income tax, wherein residential status of a person is determined only on the basis of number of days' stay in India, under FEMA, it is the intention of leaving India which determines the residential status as Person Resident Outside India i.e. NRI

Residential Status under FEMA

■ PERSON RESIDENT IN INDIA [Sec. 2(v)(i) of FEMA]:

Residing in India for > 182 days during the course of preceding F.Y. but doesn't include

- going out of India or staying outside India
 - for taking up employment
 - for carrying business or vocation
 - for any other purpose in such circumstances as would indicate his intention to stay outside India for uncertain period
- coming to India or staying in India otherwise than
 - for taking up employment
 - for carrying business or vocation
 - for any other purpose in such circumstances as would indicate his intention to stay in India for uncertain period

■ PERSON RESIDENT OUTSIDE INDIA [Sec. 2(w) of FEMA]: a person who is not resident in India.



Residential Status under FEMA

- Person to be resident in India, has to reside in India for more than 182 days during the previous financial year
- Exclusion to this is - if a person stays outside India for employment, for vocation or for any other purpose for uncertain period, then even if he has resided in India for more than 182 days he will become a 'person resident outside India'
- Moreover a person to be treated as person resident in India he has to satisfy not only the condition of period of stay (i.e. 182 days) but has to also comply with the conditions of the 'purpose' of stay i.e. for taking up employment, carrying on business or vocation in India or for any other purpose which would indicate his intention to stay in India for an uncertain period



Residential Status under FEMA - Indian students studying abroad

- The definition of “Resident” is silent regarding the residential status of students going abroad for education.
- A.P. (Dir Series) Circular no. 45 dated 8/12/2003, states that since the students stay abroad for more than 182 days in the preceding financial year and they intend to stay outside India for an uncertain period, they ‘can be’ treated as a person resident outside India.
- The student has a choice whether to be a resident or a non-resident under FEMA.



Remittance facilities to enable Students to pursue Studies and maintenance abroad

- As per Liberalised Remittance Scheme, a Resident Individual can remit up to USD 2,50,000 for permitted purposes including maintenance of his relative.
- However, the exchange facility may exceed the limits prescribed above in the following cases:
 - emigration,
 - expenses for medical treatment or
 - for studies abroad,
- if required by a country of emigration, medical institute offering treatment or the University.



Remittance facilities to enable Students to pursue Studies and maintenance abroad

“Relative” has the same meaning as is assigned to it under Companies Act, 2013.

As per section 2(77) of Companies Act, 2013 read with Rule 4 of Companies (Specification of definitions details) Rules, 2014, “relative”, with reference to any person, means any one who is related to another, if—

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) Father, provided that the term father includes step-father
- (iv) Mother, provided that the term mother includes step-mother
- (v) Son, provided that the term son includes step-son



Remittance facilities to enable Students to pursue Studies and maintenance abroad

- (vi) Son's wife
- (vii) Daughter
- (viii) Daughter's husband
- (ix) Brother, provided that the term brother includes step-brother
- (x) Sister, provided that term sister includes step-sister.



Residential Status under FEMA

- Advantages of being a Non- Resident under FEMA:
 - The income earned abroad need not be repatriated to India. He can make investments out of these earnings. He can retain foreign assets / security even after his return to India.
 - He can remit up to USD 1 million out of sale proceeds/balances in their account maintained with an AD in India
 - He can open a NRE / NRO Account.



Residential Status under FEMA

■ Disadvantages of being a Non-Resident

- The NRI may continue to subscribe to the PPF till maturity. However, they are not eligible to renew/continue the PPF Account after maturity period of 15 years.
- The NRI cannot invest in agricultural land and plantations. They may continue to own existing Agricultural land acquired before attaining NRI status.
- The NRI cannot continue to be a partner in a partnership firm which is involved in agricultural/plantation activity or real estate business, i.e. dealing in land and immovable property



Residential Status under FEMA

- The NRI needs to intimate the bank in which he holds savings Account and get the normal SB account converted to NRO Account.
- Intimate Demat Account about the change in his residential status. Or if shares are held in physical form, intimate the Company.
- Taking Life Insurance Policy of Indian Insurer while staying overseas can be cumbersome process and many private life insurance companies wants presence of Insured in India.

Definition of Person of Indian Origin (PIO) under various Notifications

- FEMA Notification No. 5R – Foreign Exchange Management (Deposit) Regulations, 2016

Person of Indian Origin (PIO) means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying following conditions -

- Who was a citizen of India by virtue of Constitution of India or the Citizenship Act, 1955 (57 of 1955); or*
- Who belonged to a territory that became part of India after 15th day of August, 1947; or*
- Who is a child or grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or*



Definition of Person of Indian Origin (PIO) under various Notifications

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

- *FEMA Notification No. 13R – Foreign Exchange Management (Remittance of Assets) Regulations, 2016*

Person of Indian Origin shall have the same meaning assigned under the Foreign Exchange Management (Deposit) Regulations, 2016.

Definition of Person of Indian Origin (PIO) under various Notifications

- FEMA Notification No. 21 – Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000

Person of Indian Origin (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 India Passport, or*
- b. Who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or Citizenship Act, 1955 (57 of 1955) or*

(Note: Apart from citizens of above countries even citizens of *Hong Kong and Macau* are prohibited from acquiring or transferring immovable property in India)

Definition of Person of Indian Origin (PIO) under various Notifications

- FEMA Notification No. 24 – Foreign Exchange Management (Investment in Firm or Proprietary Concern) Regulations, 2000

Person of Indian Origin (PIO) means a citizen of any country other than Bangladesh or Pakistan or Sri Lanka, if

- a. He at any time held India Passport, or*
- b. He or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or 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).*



Repatriation to India

Repatriate to India means bringing into India the realised foreign exchange and-

- (i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or
- (ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the reserve Bank

And includes use of the realised amount for discharge of a debt or a liability denominated in foreign exchange and the expression “repatriation” shall be construed accordingly. (Section 2(y) of FEMA)



Repatriation outside India

- ‘Repatriation outside India’ means buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through normal banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency. (Notification no. 21)

Snapshot of Investment Opportunities by NR under FEMA

Investment opportunities	Non-Resident Indian	Non-Resident	Repatriation basis	Non-repatriation basis
Interest free Loans to close "relatives" under USD 250,000 scheme	✓	✓	✓	
Lending in foreign currency in the form of ECB to Indian corporate who is holding at least 25% equity	✓	✓	✓	
Loans to persons other than companies	✓			✓
Deposit with proprietorship concern, partnership firm & companies	✓			✓
Investment in partnership firm or proprietary concern	✓			✓

Snapshot of Investment Opportunities by NR under FEMA

Investment opportunities	Non-Resident Indian	Non-Resident	Repatriation basis	Non-repatriation basis
Deposits under FCNR /NRE /NRO Account	✓		✓	✓
Investment in Immovable Properties	✓			✓*
Investment in Portfolio Scheme	✓	✓(RFPI)	✓	✓
Investment under FDI scheme (Schedule 1)	✓	✓	✓	✓
Domestic Investment under Schedule 4	✓		✓	✓

* - Repatriation of two residential properties is allowed to the extent of cost of immovable property.

Snapshot of Investment Opportunities by NR under FEMA

Investment opportunities	Non-Resident Indian	Non-Resident	Repatriation basis	Non-repatriation basis
Investment in Non Convertible Debentures (Schedule 5 of FEMA 20)		✓	✓	
Investment in Government Securities, treasury bills, units of mutual funds (Schedule 5 of FEMA 20)	✓	✓	✓	✓
Investment in National Plan/Savings Certificate, National Pension Scheme (Schedule 5 of FEMA 20)	✓			✓
Investment in Limited Liability Partnership (LLP) (Schedule 9)	✓	✓	✓	



Interest-free loan to 'close relatives'

- Regulation 5(6) of FEMA Notification No. 3 – Borrowing or lending in Foreign Exchange
- An individual resident in India may borrow a sum not exceeding USD 250,000 from his close relatives outside India, subject to the conditions that:
 - minimum maturity period of the loan is 1 year
 - the loan is free of interest
 - loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account

'Close relative' means relative as defined in Sec. 6 of Companies Act, 1956

- Applicable only to Indian resident as per FEMA
- Limit of USD 250,000 is applicable for borrowings from all relatives put together.
- No restriction on end use.



Lending in the form of ECB from Direct or Indirect equity holder of Indian Company

- Applicable to ECBs availed under Track I, Track II and Track II
 - Direct foreign equity holder with minimum equity holding of 25%
 - Indirect equity holder with minimum 51% indirect equity holding
 - Group company (having common parent)
 - Debt Equity Ratio (for ECB from direct equity holder) not exceeding 4:1
(i.e. the proposed ECB not exceeding four times the direct foreign equity holding)
 - For ECB under approval route ratio should not be more than 7:1
 - ECB liability ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.

Lending in the form of ECB from Direct or Indirect equity holder of Indian Company

- Ceiling on all-in-cost (i.e. rate of interest, other fees and expenses, charges, guarantee fees paid in foreign currency or INR except commitment fee, pre-payment fee, withholding tax payable in INR)
- Penal interest cannot exceed 2% over and above the 'contracted rate of interest'

Track I	Track II	Track III
ECB with MAM of 3 to 5 years - 300 basis points per annum over 6 months LIBOR or applicable bench mark for the respective currency	Maximum spread will be 500 basis points per annum	In line with market conditions
ECB with MAM of more than 5 years - 450 basis points per annum over 6 month LIBOR or applicable bench mark for the respective currency		

Lending in rupees by NRI to persons other than companies on non-repatriation basis

- Regulation 4 of FEMA Notification No.4 – Borrowing and lending in rupees
- Mode of receipt
 - Inward remittance through normal banking channel or through NRE/ NRO/ FCNR-B account of the lender maintained by AD
- Rate of Interest
 - Shall not exceed (2% + prevailing bank rate on date of availment of loan) (Current Bank Rate as per RBI website)
- Maturity Period
 - Shall not exceed 3 years
- Mode of Repayment
 - If amount borrowed through NRSR A/c – Repayment through NRSR A/c
 - If amount borrowed through other mode – Repayment through account desired by lender (NRO or NRSR account).



Lending in rupees by NRI to persons other than companies on non-repatriation basis

- The borrowed funds shall not be used for any other purpose except the borrowers business unless the business is that of:
 - ❑ Agriculture or plantation activities
 - ❑ Real estate business or construction of farm houses
 - ❑ Trading in Transferable Development Rights
 - ❑ Chit fund
 - ❑ Nidhi Company
- The borrowed funds shall not be used for any investment by any means in any company, partnership firm, proprietorship concern or any entity or for relending.



Investment by way of deposits to proprietorship concern, partnership firm & companies on non-repatriation basis

- Schedule 7 [Regulation 6(2)] – FEMA Notification No. 5R – Acceptance of Deposit Regulations
 - ❑ Investment in deposits by NRIs will be on non repatriation basis.
 - ❑ 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. (substituted by FEM (Deposit)(Amendment) Regulations, 2004.)



Investment by way of deposits to proprietorship concern, partnership firm & companies on non-repatriation basis

- ❑ If accepting company is NBFC the rate of interest payable on deposits shall be in conformity with guidelines issued by RBI for such companies.
- ❑ In other cases the rate of interest payable on deposits shall not exceed the ceiling rate prescribed from time to time under Companies (Acceptance of Deposits) Rules, 1975.



Investment by NRI in partnership firm or proprietary concern in India

FEMA NOTIFICATION NO. 24

- Investment shall be by way of contribution to capital.
- Investment is by way of inward remittance or out of NRE/FCNR(B)/NRO account.
- Restricted sectors
 - agricultural/plantation
 - real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from)
 - print media sector
- Investment on repatriation basis is allowed with prior permission of RBI.
- Profits can be repatriated under USD 1 million scheme by NRIs.

Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
Who can open an account	Person resident outside India (Individuals of Pakistan nationality and entities of Pakistan and Bangladesh ownership require RBI approval. Individuals of Bangladesh nationality may be allowed by AD Bank subject to holding of valid visa and residential permit issued by FRO and FRRO)	NRIs and PIOs	NRIs and PIOs
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	Fixed deposits

Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
Joint accounts	Jointly with residents on 'former or survivor' basis. NRIs and / or PIOs may hold account jointly with other NRIs and / or PIOs.	Joint accounts can be opened by two or more NRIs and/or PIOs or with a resident relative(s) on 'former or survivor' basis.	Same as NRE account
Major Permissible Debits	Local rupee payments including payments for investments, Remittance outside India of current income in India (net of taxes), transfer to other NRO accounts, settlement of charges on International Credit Cards.	Local disbursements, remittance outside India, transfer to other NRE / FCNR account , Investment in shares/ securities/ commercial paper of an Indian company or purchase of immovable property in India etc.	Same as NRE account

Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
Major Permissible Credits	Remittance in permitted foreign currency, Deposit by account holder during temporary visit to India, Transfer from other NRO accounts, legitimate dues in India of accountholder.	<ul style="list-style-type: none"> ➤ Remittance in permitted foreign currency, ➤ proceeds of personal cheques, proceeds of foreign currency / bank notes tendered during temporary visit to India, ➤ transfer from other NRE / FCNR account, ➤ interest accrued on funds held in account, ➤ current income due in India, ➤ maturity of sales proceeds of permissible investment in India, ➤ refund of shares or debentures to new issue, ➤ refund of application/earnest money/purchase consideration on account of non allotment of flat etc. 	Same as NRE account

Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
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 business ▪ Overdraft 	<ul style="list-style-type: none"> • For personal purpose or 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 	Same as NRE account

Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
Loan - to third parties	Loans / overdrafts to R / firms / Indian companies against security of FD in NRO account subject to conditions	Fund based / non-fund bases to R / firms / India companies against security of FD in NRE account subject to conditions	Same as NRE account
Loan - outside India	Not allowed	Authorised dealers may allow their branches/correspondents outside India to grant loans to or in favor of non-resident depositor or third parties at the request of depositor for bona fide purpose except for purpose of relending or carrying on agricultural/plantation activities or for investment in real estate business against security of funds held in NRE accounts in India and also agree for remittance of the funds from India, if necessary, for liquidation of the outstanding.	Same as NRE account

Features of deposits schemes under FCNR /NRE /NRO account

Particulars	Non-Ordinary Rupee Account (NRO Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Foreign Currency (Non-Resident) Account (Bank) (FCNR(B) Account)
Change of residential status 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.</p> <p>Likewise, when a resident Indian becomes a person resident outside India, his existing resident account should be designated as NRO account.</p>	<p>NRE accounts should be designated as resident accounts or the funds held in these accounts may be transferred to the RFC accounts, at the option of the account holder, immediately upon the return of the account holder to India for taking up employment or on change in the residential status.</p>	<p>In case account holder becomes resident, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him.</p> <p>AD Banks should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account, at the option of the accountholder.</p>



Deposits under FCNR /NRE /NRO account

- Interest on NRO deposit would be non repatriable and would be taxable.
 - Interest on NRO A/c should be regarded as investment income and hence 20% rate should apply. (AAR no.784 dated 17th December, 2008 in the case Dr. Virendrakumar Raina)
 - In case NRI is able to access treaty entered by India and if treaty rate is lower than 20% such lower rate can be adopted. For e.g. UAE treaty provides for 12.5% withholding tax on interest



Transfer from NRO to NRE A/c

- NRI shall be eligible to transfer funds from NRO Account to NRE Account
- overall ceiling of *USD one million per financial year* subject to payment of taxes.
- {A. P. (DIR Series) Circular No.117 dated May 07, 2012}
- 15 CA is required

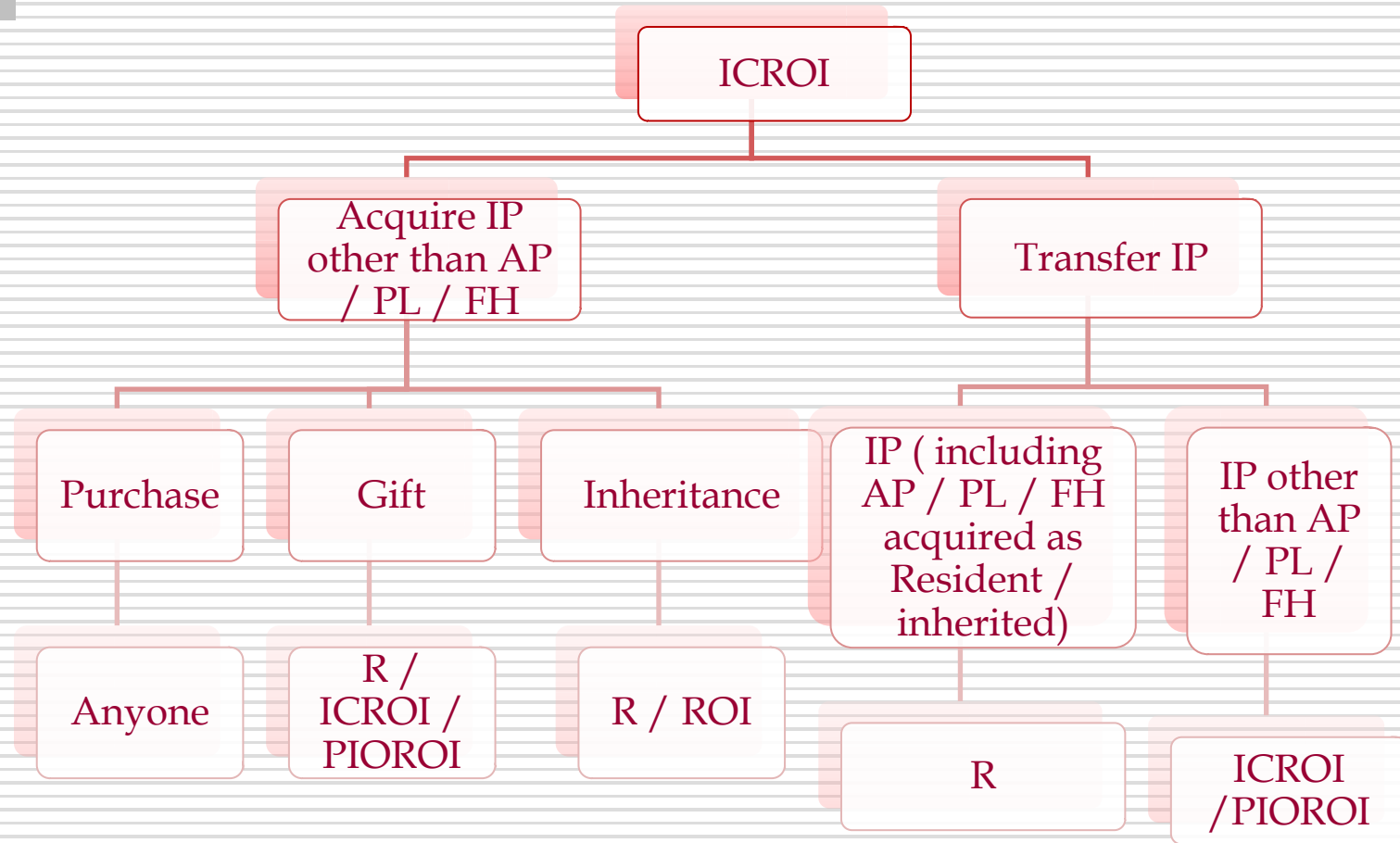


Investment in Immovable Properties

FEMA NOTIFICATION NO. 21

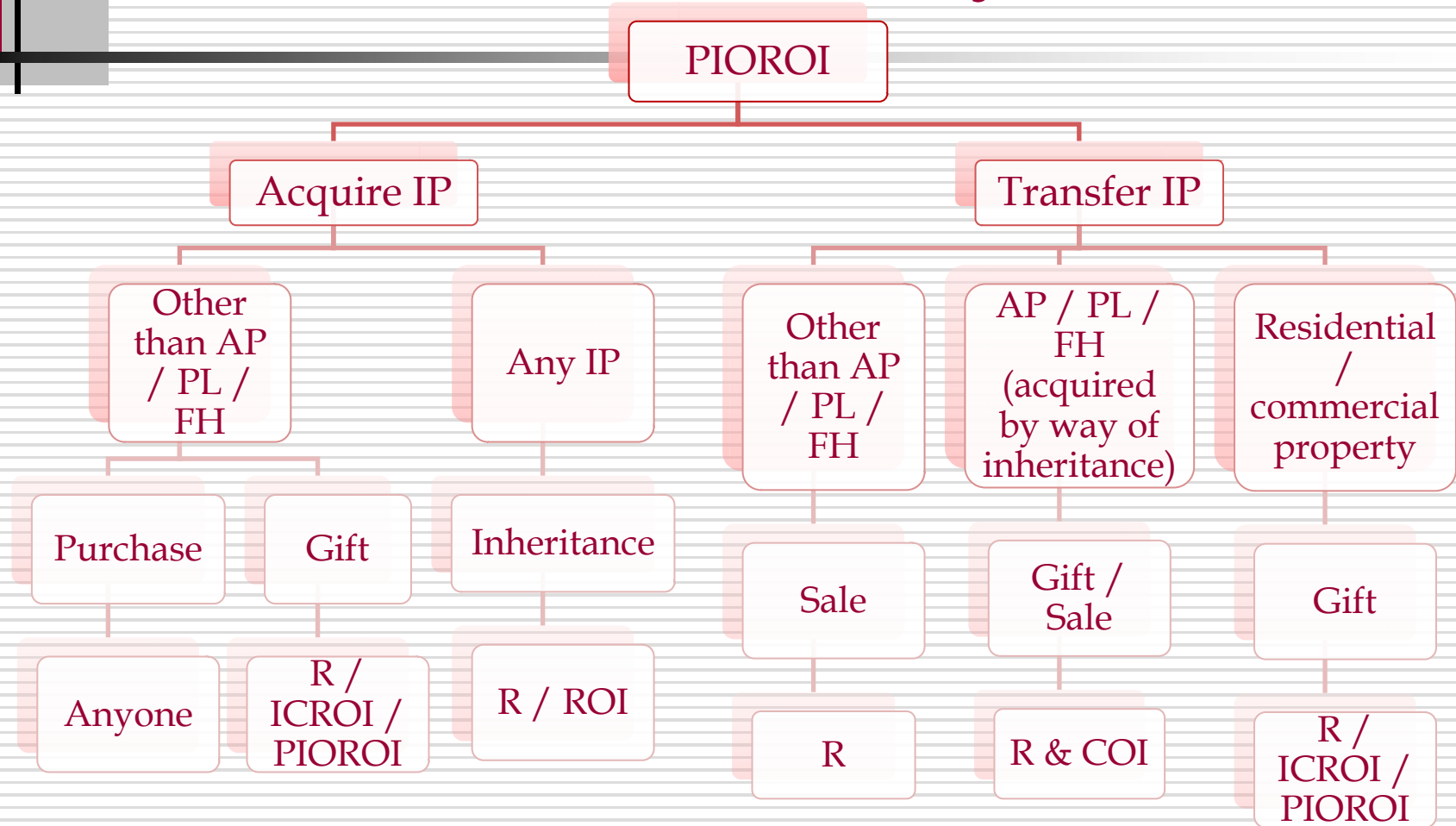
- Immovable Property (IP) is neither defined in FEMA nor in Notification No.21
- Investment in Agricultural Property (AP), Plantation (PL) and Farm House (FH) not permitted
- PIO has to sell property to Resident Indian only. Sale to other NRI or PIO would require prior RBI approval.
- Transactions involving acquisition of immovable property under these regulations shall be subject to the applicable tax laws in India.-A.P. (DIR Series) Circular No. 38 dated November 20, 2014

Acquisition / Transfer of property in India by an ICROI



- ICROI - Indian Citizen Resident Outside India
- PIOROI - Person of Indian Origin Resident Outside India
- R - Resident
- ROI - Resident outside India

Acquisition / Transfer of property in India by an PIOROI



- ICROI - Indian Citizen Resident Outside India
- PIOROI - Person of Indian Origin Resident Outside India
- R - Resident
- ROI - Resident outside India
- COI - Citizen of India



Investment in Immovable Properties

Repatriation of sales proceeds:

Regulation 6(a) of FEMA 21 - Prior approval of RBI is required to be obtained to repatriate sale proceeds of immovable property outside India by persons referred to in Section 6(5) or his successor who had acquired such property when he was resident in India or inherited from a person resident in India.

- Section 6(5) refers to person resident outside India and includes NRI or PIO
- However, NRIs and PIOs in terms of FEMA 13(R) can repatriate under USD 1 million per financial year sales proceeds of immovable property.
- Thus, the restriction under Regulation 6(a) of FEMA 21 applies to all persons residents outside India except NRIs and PIOs



Investment in Immovable Properties

Repatriation under USD 1 millions scheme:

- Sale proceeds of residential property purchased by NRI / PIO to the extent of the original cost of immovable property in foreign exchange.
- Restricted to 2 such properties.
- Capital appreciation thereon can be credited to the NRO account and can be remitted out of NRO account upto USD 1 million per financial year {Except for Section 6(5)}


Refund in case of non-allotment of flat / plot / cancellation of bookings / contracts (FAQ No. 18 on Acquisition and Transfer of Immovable Property in India by a person resident outside India):

- Refund together with interest (net of income tax) can be credited to NRE / FCNR (B) account provided:
 - ❑ the original payment was made out of NRE/FCNR (B) account or remittance from outside India through normal banking channels; and
 - ❑ the authorised dealer is satisfied about the genuineness of the transaction.



Availing loan against security of immovable property

- Rupee loan against security of IP (other than AP, PL & FH) subject to following conditions:
 - ❑ Shall be utilized for borrower's personal requirements or for business purposes
 - ❑ Shall not be utilized for activities in which investment by NRI is prohibited (chit fund, nidhi company and AP, PL, FH or real estate business and trading in TDR)
 - ❑ Shall not be credited to NRE / FCNR / NRNR account of the borrower
 - ❑ Shall not be remitted outside India
 - ❑ Repayment out of foreign remittance or NRO / NRSR / NRNR / NRE / FCNR account or sale of shares or securities or immovable property



Availing loan for purchase of immovable property

- Housing loan to NRI or PIO/ROI for acquisition of a residential accommodation in India subject to following conditions:
 - ❑ Quantum of loans, margin money and repayment period shall be same as for housing loans to Resident.
 - ❑ Shall not be credit to NRE / FCNR / NRNR account
 - ❑ Fully secured by equitable mortgage of property proposed to be acquired and if required, by lien on the borrower's other asset in India
 - ❑ EMI and other charges to be paid by way of remittance or out of funds in NRE / FCNR / NRNR / NRO / NRSR account in India or rental income or by any 'relative' (as defined under sec. 6 of the Companies Act) in India by crediting the borrower's loan account through the bank account of such relative.
 - ❑ Rate of interest shall conform to RBI or NHB directives.



Foreign Direct Investment Policy

FEMA NOTIFICATION NO. 20

- FDI framework is governed by FEMA as well as Consolidated FDI policy- CFDIP
- CFDIP is issued by Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce
- CFDIP lays down the sectors in which FDI is allowed under Automatic Route or Approval Route and the Sectors which are prohibited for FDI
- FDI under Approval Route is governed by FIPB which is a part of Department of Economic Affairs, Ministry of Finance
- FIPB consists of Secretaries from various Ministries, such as Finance, DIPP, External Affairs, Depart of Commerce etc.
- In case of conflict with FDI Policy vis-à-vis FEMA , the FEMA notifications will prevail




Foreign Direct Investment - NRIs (Schedule 1 of FEMA Notification No. 20)

- NRIs can invest under FDI scheme in sectors / activities at Annex B of Schedule 1 of FEMA 20 subject to applicable laws, regulations and conditionalities.
- In sectors/activities not listed in Annex B, 100 % FDI is permitted under automatic route.
- However, FDI in following sectors / activities is prohibited:
 - Lottery Business including government / private lottery
 - Gambling and Betting including casinos
 - Chit Funds
 - Nidhi company
 - Trading in TDRs
 - Real Estate Business or Construction of Farm Houses
 - Manufacturing of cigars, cheroots, cigarillos and cigarettes of tobacco or of tobacco substitutes
 - Activities not open to private sector investment e.g. Atomic Energy, Railway operations (other than permitted activities).



Transfer of Shares by NRI to NR

- Regulation 9 and 10 of FEMA 20
 - Transfer of shares by Person Resident Outside India (other than NRI or PIO) to any person resident outside India, transfer of shares by NRI to another NRI, transfer of shares by Person Resident outside India to resident is allowed under automatic route.
 - Under Reg 10, in cases of transfer of shares by Person Resident Outside India (not being erstwhile OCBs) where certain conditions are not fulfilled, RBI permission is required.
- However, the above regulations do not include NRI to NR transfer of shares.
- So prior RBI approval will be required for NRI to NR transfer.



Investment under Portfolio Investment Scheme (Schedule 3 of Notification No. 20)

- Repatriable as well as Non-Repatriable basis.
- To be carried out through single Authorised Dealer (A.D.) but can be routed through a branch designated by A.D. – *[Source: FAQ for NRI – Trading Account issued by NSE on December 24, 2010]*
- NRI investor undertakes delivery based transactions
- Payments for purchase -
 - inward remittance; or
 - funds held in NRE / FCNR account – repatriation basis
 - funds held in NRE / FCNR / NRO / NRNR / NRSR account – non-repatriation basis
- Sale proceeds 'Net of Taxes' to be credited
 - NRE/FCNR/NRO account or remitted abroad - repatriation basis
 - NRO account – non-repatriation basis



Investment by NRI on non-repatriation basis (Schedule 4 of Notification No. 20)


- DIPP Press Note No. 7 (2015 Series) dated 18th June 2015
 - Investments by NRIs under Schedule 4 will be deemed to be treated as domestic investment and at par with investment made by residents.
- The definition of NRI is also amended in the Consolidated FDI Policy Circular of 2015. It reads as under:

NRI means an individual resident outside India who is a citizen of India or is an 'Overseas Citizen of India' cardholder within meaning of Section 7 (A) of the Citizenship Act, 1955. 'Persons of India Origin' cardholders registered as such under Notification No. 26011/4/98/F.I, dated 19.08.2002, issued by the Central Government are deemed to be the 'Overseas Citizen of India' cardholders.




Investment by NRI on non-repatriation basis (Schedule 4 of Notification No. 20)

- DIPP Press Note No. 12 (2015 Series) dated 24th November 2015
 - Investments by a company, trust and partnership firm incorporated outside India and owned and controlled by non-residents Indians will be eligible for investments under Schedule 4 of FEMA 20.
 - Such investments will be deemed as domestic investments at par with investments made by residents.
- Investments by NRIs or NRI owned companies/trust/firms under schedule 4 being treated as domestic investments, no reporting would be required as it is not FDI.



Purchase and Sale of Securities Other than Shares or Convertible Debentures (Schedule 5 of Notification No. 20)

- **Foreign Institutional Investor (FII) / Registered Foreign Portfolio Investors (RFPI) / Qualified Foreign Investors (QFI) / Other non-resident investors - Long Term Investors like Sovereign Wealth Funds, Multilateral Agencies, Endowment Funds, Pension Funds may invest on repatriation basis in following:**
 - ❑ Dated government securities / treasury bills
 - ❑ Listed non-convertible debentures / bonds of Indian company
 - ❑ Commercial papers
 - ❑ Units of domestic mutual funds
- **Non-Resident Indians may without limit invest on repatriation basis in following:**
 - ❑ Dated government securities / treasury bills / units of mutual funds
 - ❑ Bonds issued by Public Sector Undertakings
 - ❑ Bonds/units issued by Infrastructure Debt Funds
 - ❑ Share in Public Sector Enterprises being disinvested by Government of India.



Purchase and Sale of Securities Other than Shares or Convertible Debentures (Schedule 5 of Notification No. 20)

- **Non-Resident Indians may without limit invest on non-repatriation basis in following:**
 - ❑ Dated government securities / treasury bills / units of mutual funds
 - ❑ National Plan / Savings Certificates
 - ❑ National Pension Scheme (NPS) governed by Pension Fund Regulatory and Development Authority (PFRDA). [The annuity/accumulated saving will be repatriable].



Investment in Limited Liability Partnerships (LLPs) - (Schedule 9 of Notification No. 20)

- Person resident outside India or entity incorporated outside India are eligible investors for purpose of FDI in LLPs.
- Following are not eligible:
 - Citizen / entity of Pakistan and Bangladesh, or
 - SEBI registered FII / FVCI / QFI, or
 - A Foreign Portfolio Investor Registered in accordance with SEBI (FPI) Regulations, 2014 (RFPI).
- Investment in LLP is under automatic route in sectors/activities where 100% FDI is allowed through automatic route and there are no FDI linked performances (such as Construction-Development & NBFC) (DIPP Press Note No. 12 (2015) Series dated 24th November 2015)



Investment in Limited Liability Partnerships (LLPs) - (Schedule 9 of Notification No. 20) Contd...

- Contribution to capital of LLP will be an eligible investment.
- Investment by way of 'Profit share' will fall under category of reinvestment of earnings.
- Contribution to capital shall be by way of inward remittance through normal banking channels or by debit to NRE/FCNR (B) account.
- FDI in LLP by way of capital contribution would have to be more than or equal to fair prices as worked as per any internationally accepted valuation norm issued by any CA or practicing Cost Accountant or by an approved valuer from panel of Central Government.



Investment in Limited Liability Partnerships (LLPs) - (Schedule 9 of Notification No. 20) Contd...

- The receipt of consideration shall be reported by LLP in Form FDI LLP I within 30 days of the receipt of consideration along with KYC report of NR investor and valuation report.
- LLPs are not permitted to raise ECBs.



REMITTANCE OF ASSETS

FEMA NOTIFICATION NO. 13R:

- NRI/PIO are allowed to remit up to USD 1 million per financial year
 - Out of balances held in NRO account / sale proceeds of assets / assets acquired by way of inheritance / legacy
 - In respect of assets acquired under deed of settlement made by either parents or relative and settlement taking effect on the death of settler.
- If remittance is made in more than one installment, all remittances shall be made from same AD Bank.
- Remittance to be made out of balances in the NRO account of remitter arising from his / her **legitimate receivables** in India and not by borrowing from any other person or transfer from any other NRO account.



REMITTANCE OF ASSETS

- Prior permission of RBI:
 - Remittance exceeding USD 1 million per financial year on account of legacy, bequest or inheritance to a citizen of foreign state and by NRI/PIO out of balances held in NRO account/sale proceeds of assets/assets acquired by inheritance /legacy.
 - Remittance to person resident outside India on grounds that hardship will be caused if remittance is not made.
- All remittances shall be subject to applicable tax laws in India.



Q & A...

Questions ...





THANK YOU

FIRST DESERVE

AND

THEN DESIRE!!

