

Overview of Foreign Exchange Management Act and Regulations

The Beginners Study Course
on
Foreign Exchange Management Act

WIRC
May 09, 2013

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

- Applies to the whole of India and all branches, offices and agencies outside India which are owned or controlled by a person resident in India.
- FEMA has 49 sections of which 9 (section 1 to 9) are substantive and the rest are procedural/ administrative
- Section 46 of FEMA grants power to Central Government to make rules to carry out the provision of FEMA
- Section 47 of FEMA grants power to RBI to make regulations to implement its provisions and the rules made there under
- RBI is entrusted with the administration and implementation of FEMA

Substantive Provisions

Section	Description
1	Application and Commencement of FEMA
2	Definitions
3 to 9	Provisions relating to Regulations and Management of Foreign Exchange
10 to 12	Provisions relating to Authorized Person
13 to 15	Provisions relating to Contraventions and Penalties
16 to 38	Provisions relating to Adjudication, Appeal and Directorate of Enforcement
39 to 49	Miscellaneous Provisions

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
- The same term is defined differently in different notifications

For e.g. Person of Indian Origin (PIO) is defined differently in 3 notifications namely:

- FEMA 13/2000-RB pertaining to remittance of assets
- FEMA 21/2000-RB pertaining to the acquisition and transfer of immovable property in India
- FEMA 24/2000-RB pertaining to investment in a firm or proprietary concern in India

Person of Indian Origin

Under FEMA - 13/2000 (Remittance of Assets):-

'Person of Indian Origin' means a citizen of any country other than Bangladesh or Pakistan if

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

Person of Indian Origin

Under FEMA - 21/2000 (Acquisition and transfer of immovable property in India):-

'Person of Indian Origin' 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 the Citizenship Act, 1955 (57 of 1955)." (Recently included vide Notification No.200 dated October 5, 2009)

Person of Indian Origin

Under FEMA - 24/2000 (Investment in Firm or proprietary concern in India):-

'Person of Indian Origin' 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 the Citizenship Act, 1955 (57 of 1955); **or**
- c) The person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);

Some of the important definitions

- Authorized Person
- Capital Account Transaction
- Current Account Transaction
- Export
- Foreign Exchange
- Person
- Person Resident in India
- Person resident outside India
- Repatriate to India
- Security

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 a economic definition rather than 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 obligated 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

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 which are permissible [i.e. the transactions which are not included under section 6(3)].
- Section 6(3) of FEMA specifies the class of capital account transactions which are regulated by RBI.
- Every transaction listed in this section is regulated by a corresponding notification

Capital Account Transaction

Sr. No.	Transactions specified under section 6(3)	Corresponding Notification
1	Transfer or issue of any foreign security by a person resident in India	Notification No. 120 dated July 7, 2004 – Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004
2	Transfer or issue of any security by a person resident outside India	Notification No. 20 dated May 3, 2000 - Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000
3	Transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India	Notification No. 2 dated May 3, 2000 - Foreign Exchange Management (Issue of Security in India by a branch, office or agency of a person resident outside India) Regulations, 2000
4	Any borrowing or lending in rupees in whatever form or by whatever name called	Notification No. 3 dated May 3, 2000 - Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000
5	Any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India	Notification No. 4 dated May 3, 2000 - Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000

Capital Account Transaction

Sr. No.	Transactions specified under section 6(3)	Corresponding Notification
6	Deposits between persons resident in India and persons resident outside India	Notification No. 5 dated May 3, 2000 - Foreign Exchange Management (Deposit) Regulations, 2000
7	Export, import or holding of currency or currency notes	Notification No. 6 dated May 3, 2000 - Foreign Exchange Management (Export and Import of Currency) Regulations, 2000
8	Transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India	Notification No. 7 dated May 3, 2000 - Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2000
9	Acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India	Notification No. 21 dated May 3, 2000 - Foreign Exchange Management (Acquisition and transfer of Immovable Property in India) Regulations, 2000
10	Giving of a guarantee or surety in respect of any debt, obligation or other liability incurred - (i) by a person resident in India and owed to a person resident outside India (ii) by a person resident outside India	Notification No. 8 dated May 3, 2000 - Foreign Exchange Management (Guarantees) Regulations, 2000

Capital Account Transaction

- Section 6(4) – 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
- Section 6(5) – a person resident outside India may 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

Capital Account Transaction

Notification FEMA - 1/2000-RB dated 3-5-2000:

- Relates to permissible capital account transaction
- Capital account transactions of a person may be classified under the following heads, namely-
 - A. Transaction, specified in Schedule I, of a person resident in India
 - B. Transactions, specified in Schedule II, of a person resident outside India

Subject to the provisions of the Act or the rules or the regulations or directions or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction specified in the Schedules

Capital Account Transaction

Schedule I: Classes of capital account transactions of persons resident in India

- a) Investment by a person resident in India in foreign securities
- b) Foreign currency loans raised in India and abroad by a person resident in India
- c) Transfer of immovable property outside India by a person resident in India
- d) Guarantees issued by a person resident in India in favour of a person resident outside India
- e) Export, import and holding of currency/currency notes
- f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India

Capital Account Transaction

- g) Maintenance of foreign currency accounts in India and outside India by a person resident in India
- h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- i) Loans and overdrafts by a person resident in India to a person resident outside India.
- j) Remittance outside India of capital assets of a person resident in India.
- k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

Capital Account Transaction

Schedule II: Classes of capital account transactions of persons resident outside India.

- a) Investment in India by a person resident outside India, that is to say,
 - i. Issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; &
 - ii. Investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
- c) Acquisition and transfer of immovable property in India by a person resident outside India.
- d) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
- h) Import and export of currency/currency notes into/from India by a person resident outside India. Deposits between a person resident in India and a person resident outside India.
- i) Foreign currency accounts in India of a person resident outside India.
- j) Remittance outside India of capital assets in India of a person resident outside India.

Capital Account Transactions - Prohibited

- No person resident outside India shall make investment in India, in any form, in any Company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage -
 - i. In the business of chit fund, or
 - ii. As Nidhi Company, or
 - iii. In agricultural or plantation activities, or
 - iv. In real estate business, or construction of farm houses, or
 - v. In trading in Transferable Development Rights (TDRs)

For the purpose of this regulation 'real estate business' shall not include development of townships, construction of residential/commercial premises, roads or bridges

Current Account Transaction

- Current account transaction is a transaction other than a capital account transaction
- Current account transactions are governed by Foreign Exchange Management (Current Account Transaction) Rules, 2000 ("Current Account Transactions Rules").
- Current account transactions are divided into 3 schedules in Current Account Transactions Rules:-

Schedule I – Prohibited Transactions

Schedule II – Transactions requiring prior approval of Government of India

Schedule III – Transactions requiring prior approval of RBI

Current Account Transaction

Illustrative transactions :

Schedule I :

1. Remittance out of lottery winnings
2. Remittance of income from racing/riding etc., or any other hobby
3. Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.

Schedule II:

4. Cultural tours
5. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping

Current Account Transaction

Schedule III:

1. Gift remittance exceeding US\$ 5,000 per remitter/donor per annum
2. Donation exceeding US\$ 10,000 per remitter/ donor per annum
3. Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital or hospital/doctor abroad.

Note: Drawal of foreign exchange by resident individuals towards remittance of gift or donations as per this Schedule III shall be within the limit specified under the proviso of Reg. 4 (i.e. US\$ 2,00,000)

Capital Account Convertibility

- There is no formal definition of Capital Account Convertibility but Tarapore committee (set up in 1997) defined it as freedom to convert local financial assets into foreign financial assets and *vice versa* at market determined rate of exchange
- Current Account Convertibility - it allows free inflow and outflow for all purposes other than capital purposes. It allows residents to pay and receive trade & service related payments. India has adopted Current Account Convertibility in terms of Article 8 of IMF Agreement in 1994.

A.P. (Dir Series) Circulars and Notifications

- 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
- Master circulars issued by RBI every year on 1st July to subsumes the position as on date and consolidates all the existing circulars

A.P. (Dir Series) Circulars and Notifications

- Notifications are issued by the Central Government in the Official Gazette
- Section 47 of FEMA grants power to RBI to make regulations.
- As on date, the total number of notifications issued by RBI stand at 255.

Foreign Direct Investment Policy

- 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 Policy

- At times there could be delay on the part of RBI in amending Notification dealing with FDI while there are changes in FDI policy as pronounced by DIPP
- However validity of CFDIP has been upheld by SC in a PIL- M.L. Sharma V UOI, writ petition (Civil) 417 of 2012, order dated 15th Oct, 2012.
- In above petition, SC upheld the amendments to the FDI policy on Retail Trading but asked Govt to bring the FEMA Notifications up to date with FDI policy, though AP (Dir Series) Circulars were issued by RBI with regard to opening up of Retail Trading

Implementation - IT Act *vis-a-vis* FEMA

- Under Income Tax, issue is of taxability of income which is determined for the full year, therefore generally amendments are annual
- Whereas FEMA regulations are for undertaking transaction (generally between Resident & Non Resident) itself & therefore clarity at the time of undertaking transaction is a must
- Therefore amendments keep pace with changes taking place in economy

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

Person Resident in India

Sec. 2(v) 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 outside India otherwise than
 - for taking up employment
 - for carrying business or vocation
 - for any other purpose in such circumstances as would indicate his

Person Resident outside India

- "Person resident outside India" means a person who is not resident in India.
- 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

Person Resident outside India

- RBI may ignore the arithmetic condition (i.e. of 182 days) and treat the person who comes to or stays in India for any of the three purposes set out in section 2(v)(i)(B) as 'person resident in India' even though he may not have resided in India for a period of 182 days or more during the preceding financial year. However legal tenability of such a view cannot be said to be free from doubt.
- RBI has a very narrow approach towards non resident acquiring immovable property in India. It gives a weighted significance to the arithmetic condition of staying in India for more than 182 days during the preceding financial year.
- RBI does not determine the residential status. Under FEMA, residential status is determined by operation of law. The onus is on an individual to prove his / her residential status, if questioned by any authority.

Residential status under FEMA

- Purpose under FEMA is different as compared to Income Tax
- Under Income Tax, issue is of taxability of income which is determined for the full year, therefore number of days concept has been adopted under Income Tax.
- Whereas FEMA regulates the transactions and provides guidance for undertaking transaction itself and hence clarity on status at the time of undertaking transaction is a must.
- Though FEMA also uses the concept of number of days stay (of more than 182 days but of preceding financial year) but importance is given to intention of going out of India for employment, business or intention to stay outside India for uncertain period.

Liberalized Remittance Scheme (LRS)

LRS for Resident Individuals

- A resident individual (including minors) is allowed to remit up to USD 200,000 per financial year (April-March) for any permitted current or capital account transactions or a combination of both.
- **The limit of UDS 200,000 is available per resident individual per financial year.**
- The permissible transactions under this scheme include acquisition of immovable property/ shares-listed and unlisted/ debt instrument/ mutual funds/ any other asset outside India, etc.
- For undertaking transactions under this Scheme, resident individuals may use the prescribed application-cum-declaration form. PAN number is mandatory to make remittances under the Scheme.

LRS for Resident Individuals

- The limit of USD 200,000 under the Scheme also includes remittances towards gift and donation by a resident individual.
- A resident individual is permitted to **gift in rupee to his NRI/PIO close relative** under the LRS and credit the same to his NRO A/c. [A.P.(DIR Series) Circular No.17 dated September 16, 2011]
- A.P. (DIR Series) Circular No. 90 dated March 06, 2012:
 - Remittances under the facility can be consolidated in respect of family members subject to individual family members complying with the terms and conditions of the scheme;
 - Remittances under the scheme can be used for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.

FAQ on LRS by RBI

Q. What are the prohibited items under the Scheme?

Ans. The remittance facility under the Scheme is not available for the following:

- Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000;
- Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty;
- Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market;
- Remittance for trading in foreign exchange abroad;
- **Remittance by a resident individual for setting up a company abroad;**
- Remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan;
- Remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as “non co-operative countries and territories”, from time to time; and
- Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

Realisation, Repatriation and Surrender of Foreign Exchange

Notification No.9

- Draws its origin from Sec -8, 10(6) and 47(2)(c)
- Sec 8 casts responsibility on Resident Indian to take all reasonable steps to realize and repatriate to India FE within such period and such manner as may be prescribed
- Sec 10(6)-Any person other than AP who has acquired or purchased & doesn't use it for such purpose for which it was acquired, or doesn't surrender within such period as may be prescribed- such act will deemed to be contravention
- Sec 47(2)(c)- gives power to make regulations

Definition

- *Foreign exchange due* means the amount which a person has a right to receive or claim in foreign exchange
- *Surrender* means the selling of FE to an AP in India in exchange of Rupees
- Reg 3 casts responsibility to realize & repatriate and in not to indulge in any act which has the impact of delaying receipt of FE or has the effect that FE ceases in whole or in part to be receivable by him

Definition

- *Reg 4 manner of repatriation* either to sell to an AP or hold it an account with an AD to the extent specified (say EEFC A/c) or use it for discharge of liabilities denominated in FE to the extent specified by RBI
- *Reg 5 period of surrender of FE* - A person other than Individual Resident shall sell to AP (in terms of Reg 4) as under-
 - - for services rendered, settlement of any lawful obligation and income on assets held outside India within seven days of its receipt
 - - in all other cases within 90 days from the date of its receipt

Surrender of FE

- Reg 6 Period of surrender in certain cases-

For Non Individuals

- acquired for purpose other than travel - to be surrendered (or unused portion) within a period of 60 days from the date of its acquisition or purchase
- acquired for travel- within 90 days from the date of return of the traveler to India when the unspent FE is in the form of notes & coins
- within 180 days when the unspent FE is in the form of traveller's cheques

Period of surrender of FE by resident Individuals

- Resident Individual shall surrender the received/realized/unspent/unused foreign exchange whether notes/coins and Traveller's cheques to an AP within a period of 180 days from the date of such receipt/realization/purchase/acquisition or date of his return to India, as the case may be.

Possession and Retention of Foreign Currency

Possession and Retention of Foreign Currency - Notification 11

- Draws its origin from Sec 9(a), 9(e) & 47(2)(d), 47(2)(g)
- Provisions of realization and repatriation not to apply in certain cases
- Definition-
 - To Possess or To Retain - in physical form

Limits on possession or retention of foreign currency

- Foreign coins- without any limit by any person
- Foreign currency notes, bank notes and Traveller's cheques - not exceeding USD 2,000 or its equivalent
- Mode of acquisition-
 - 1) payment from services rendered abroad while on a visit outside India- provided it is arising from any business in or anything done in India
 - 2) acquired from non resident who is on a visit to India as honorarium, gift or for services rendered or in settlement of any lawful obligation
 - 3) Was acquired by way of honorarium or gift while on a visit to any place outside India
 - 4) Represents unspent amount of FE acquired by him from an AP for travel abroad

Deposits Scheme under FEMA

Deposits By Non-residents

- Deposit, a capital account transaction referred to in section 6(3)(f) and sub-section (2) of sec. 47 of FEMA, includes deposit of money with a bank, company, proprietary concern, partnership firm, corporate body, trust or any other person.
- Acceptance of deposits by an AD/AB from Person Resident outside India (PROI) would be as under:
 - Non-resident (Ordinary) Account Scheme (NRO Account)
 - Non-resident (External) Account Scheme (NRE Account)
 - Foreign Currency (Non-resident) Account Banks Scheme (FCNR(B) Account)

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 / 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)
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	Two or more NRI of Indian nationality or origin	Same as NRE account

Deposits schemes under FCNR /NRE /NRO account

Particulars	NRO Account	NRE Account	FCNR(B) Account
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.	Same as NRE account
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.	Same as NRE account

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

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	Fund based or non-fund based to or in favour of NRI or to third parties	Same as NRE account

Transfer from NRO to NRE

- By virtue of AP (DIR Series) Circular No. 117 dated May 7, 2012 issued by RBI, transfer of funds from NRO account to NRE account is permitted, subject to the overall ceiling of USD 1 million per financial year and after payment of tax, as applicable (i.e. as applicable if funds were remitted abroad).

Notification No.10- Foreign Currency Accounts by Persons Resident in India

- Draws its origin from Sec 9(b) and 47(2)(e)
- Sec 9(b)- refers to exemption from realization and repatriation in certain cases
- Definition:
 - ‘Foreign Currency Account’ means an account held or maintained in currency other than the currency of India or Nepal or Bhutan
- Exchange Earners Foreign Currency A/c- EEFC
- As the name suggests earnings in FE is a must to have this account (from trade/services)

Foreign Currency Accounts by Residents.. Continued..

- Capital account proceeds such as investment (FDI)/loans etc., cannot be credited to this account
- Presently 100% of FE can be credited to this account
- EEFC A/c offers interest

EEFC ACCOUNT

- Permissible debits include:
 - All permissible current account transactions
 - Trade related loans/advances by an exporter to his importer customer subject to regulations of Notification 3- Borrowing & Lending in FE
 - Sch I to Notification 10 lists down other permissible credits and debits

Resident Foreign Currency A/c – RFC

- Resident Indian can maintain RFC A/c with AD in India out of FE
 - ❑ received as pension/superannuation or other benefits from his employer outside India
 - ❑ Realization on conversion of assets referred to in Sec 6(4) & gift or inheritance from a person referred to in Sec 6(4)
- Bal in RFC is free from all restrictions regarding utilization of foreign currency bal including any restriction on investment in any form

RFC (Domestic) A/c

- Resident Individual can open out of FE in the form of currency notes, bank notes and travelers cheques out of:
 - ❑ fees for services rendered outside India while on a visit outside India- provided services are not arising from any business or anything done in India
 - ❑ from NR who is on a visit to India as honorarium, gift or for services rendered or in settlement of lawful obligation
 - ❑ Unspent amount of FE remaining out of balance acquired for travel outside
 - ❑ Earnings of export of goods / services / royalty / honorarium or any other lawful means

RFC (Domestic) A/c.. Continued..

- Debits - all permissible current & capital account transactions
- RFC Domestic Account does not offer any interest and has to be in the nature of current account

Opening FC A/c outside India

- Regulation 7(4A) of Notification 10:

A firm or a company or a body corporate or proprietary concern may open an office/branch outside India and can have bank account in the name of office or branch outside India

- Remittance toward overseas branch/office can be up to 15% of Avg annual TO of last two years or 25% of net worth whichever is higher for INITIAL EXPENSES and
- 10% of Avg annual TO of last two years for RECURRING EXPENSES
- Purchase of office equipment & other assets will not be regarded as Capital Account transaction

Opening FC A/c outside India.. Contd..

- Lease period of office up to 5 years is also permissible.
- Acquisition of office or lease exceeding 5 years shall be governed by Notification 7 Acquisition of IP outside India- which permits acquisition office by an Indian company having office/branch abroad

CA Manoj Shah