

# **Beginners Study Course on Foreign Exchange Management Act**



**Presented by :  
CA Haresh Chheda**

**Western India Regional Council of The ICAI**

# Topics Covered

- Acquisition and Transfer of Immovable Property in India
- Acquisition and Transfer of Immovable Property outside India.
- Borrowing and Lending in Rupees (Loans)
- Borrowing and Lending in Rupees (Deposits)
- Liberalised Remittance Scheme for Resident Individual (LRS)
- Remittance of Assets under USD 1 million facility for Non Residents
- Borrowing and Lending in Foreign Exchange

# Topics Covered

- Acquisition and Transfer of Immovable Property in India
- Acquisition and Transfer of Immovable Property outside India.
- Borrowing and Lending in Rupees (Loans)
- Borrowing and Lending in Rupees (Deposits)
- Liberalised Remittance Scheme for Resident Individual (LRS)
- Remittance of Assets under USD 1 million facility for Non Residents
- Borrowing and Lending in Foreign Exchange

# Acquisition and Transfer of Immovable Property in India by Person Resident Outside India

## Statutory Provisions:

- RBI being the regulatory authority prohibits, restricts or regulates acquisition or transfer of immovable property in India, **other than a lease not exceeding 5 years**, by a person resident outside India - Section 6 (3)(i) and Section 47 (2)
- RBI Notification No FEMA 21/2000-RB dated 3.5.2000, as amended from time to time.
- A permissible class of capital account transaction of a **person resident outside India** – Schedule II to RBI Notification No FEMA 1/2000-RB dated 3.5.2000, as amended from time to time.

## Regulations Cover

- Person resident outside India who is a citizen of India
- Person resident outside India who is a person of Indian origin
- Person resident outside India who is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan
- Person resident outside India who is a citizen of a country other than 8 countries referred to above
- Person resident outside India who has established a place of business in India with special or general permission of RBI
- Foreign Embassies / Diplomats / Consulate Generals

‘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),

- i. who at any time, held Indian passport; or
- ii. 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)

## Parameters of Comparison

The broad analysis of Acquisition and Transfer of Immovable Property shall be on the following criteria:

- Acquisition of Immovable Property
  - Purchase
  - Gift
  - Inheritance
  
- Transfer of Immovable Property
  - Sale
  - Gift

Acquisition by person resident outside India who is a

- Citizen of India (PROI-C) and
- Person of India Origin (PIO)

**A. Acquisition by way of Purchase**

**For PROI-C**

- A PROI-C is permitted to acquire by way of Purchase any Immovable Property in India
- **Except** Agricultural Land, Plantation Property and Farmhouse
- ***from a person resident in India or***
- ***from a person resident outside India who acquired immovable property in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of FEMA.***

**For PIO**

- A PIO is permitted to acquire by way of Purchase any Immovable Property in India
- **Except** Agricultural Land, Plantation Property and Farmhouse
- ***from a person resident in India or***
- ***from a person resident outside India who acquired immovable property in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of FEMA.***



## **B. Acquisition by way of Gift**

### **For PROI-C**

any immovable property, other than agricultural property, plantation, or a farm house,

- from a person resident in India or
- from a person resident outside India who acquired immovable property in accordance with the provisions of (i) the foreign exchange law in force at the time of acquisition or (ii) the provisions of FEMA.

### **For PIO**

any immovable property, other than agricultural property, plantation, or a farm house,

- From Person resident in India
- From PROI-C
- From PIO

**CARE:** *Seek prior approval of RBI for acquisition by way of gift from a foreign national of non-Indian origin.*

## **C. Acquisition by way of Inheritance**

### **For PROI-C**

- can acquire immovable property in India acquired by way of inheritance from a person who was resident in India and hold the same. [Section 6 (5) of FEMA]

**CARE:** *Seek prior approval of RBI for acquiring and holding immovable property in India by way of inheritance from a person who was resident outside India since Section 6(5) of FEMA 1999 permits inheritance only from a resident.*

### **For PIO**

- can acquire immovable property in India acquired by way of inheritance from a person who was resident in India and hold the same. [Section 6 (5) of FEMA]
- From Person resident in India or,
- From Person resident outside India who had acquired the said property, complying with the prevalent FEMA conditions at the time of acquisition of property.

# **Transfer by person resident outside India who is**

- Citizen of India (PROI-C) and
- Person of India Origin (PIO)

## **Transfer by way of Gift and Sale**

### **For PROI-C**

- A PROI-C is permitted to transfer any immovable in India (Gift and Sale) to:
  - person resident in India
  - PROI-C
  - PIO
- **Except Agricultural Land, Plantation Property and Farmhouse**
  - **Agricultural or plantation property or farm house to a person resident in India who is a citizen of India**

### **For PIO**

- A PIO can transfer any immovable property in India:
  - By way of sale  
To a person resident in India
  - By way of Gift  
To a person resident in India, a PROI-C or a PIO
- **Agricultural or plantation property or farm house to a person resident in India who is a citizen of India**

**Care : RBI permission for sale to PROI-C or a PIO**

## Payment for Acquisition by way of Purchase for PROI-C and PIO

- From inward remittance of funds received in India through normal banking channels
- From NRE/FCNR(B)/NRO Account
- **Note:** Payments by way of traveler's cheque/foreign currency notes/ other method than prescribed above is **not allowed**.

## **Prior permission to citizens of certain countries for Acquisition and transfer of immovable property in India**

- A citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran Nepal or Bhutan, cannot acquire or transfer immovable property in India, without prior permission of RBI, irrespective of whether he is resident of India or outside India.
- However, where the immovable property is taken on a lease for a period of 5 years or less, the above restriction is not applicable.

## Foreign Nationals of Non Indian Origin resident outside India

- Can acquire immovable property in India other than Agricultural property, Plantation or Farm House by way of inheritance, Section 6(5).
- Acquisition by way of purchase or gift only with RBI permission.
- However, they can acquire immovable property on lease for a period of 5 years or less.
- Foreign nationals of non- Indian origin, other than specified 8 countries can acquire immovable property in India by way of purchase/gift except Agricultural property, Plantation or Farm House on becoming resident in India

## **Acquisition of Immovable Property by Foreign Embassies/ Diplomats/ Consulate Generals in India**

- Clearance to be obtained from Government of India, Ministry of External Affairs (MEA) for Purchase/Sale (except Farmhouse/ Agricultural Land/ Plantation Property)
- Consideration for acquisition to be from inward remittance of funds

## **Acquisition of Immovable Property by person resident outside India for Permitted activities**

A branch, office or other place of business (excluding Liaison Office) established by person resident outside India for carrying out permitted activities may:

- acquire any immovable property in India, necessary or incidental to carry such activity
- File declaration with RBI in form IPI (Annexure – II), stating compliance of all rules and regulations.
- to be filed within 90 days from acquisition.
- transfer the immovable property by way of mortgage to an AD as a security for any borrowing



# Repatriation of Sale Proceeds of Immovable Property

## **A. Immovable Property acquired by way of purchase.**

- A person acquiring immovable property when he was resident in India or inherited from a person resident in India, or his successor, can repatriate sale proceeds only with prior permission from RBI.
- On the sale of Immovable Property (other than Agricultural Land/Farm House/ Plantation House) by PROI-C or PIO, Authorized Dealer (AD) shall allow repatriation of sale proceeds outside India on following conditions:
  - ❑ The immovable property was acquired by seller in accordance with prevalent FEMA provisions.
  - ❑ amount to be repatriated does not exceed amount paid for acquisition or out of funds held in Foreign Currency Non- Resident Account or foreign currency equivalent amount in NRE A/c.
- In case of residential property, sale proceeds is restricted to maximum 2 properties.

## **B. Immovable Property acquired by way of inheritance/legacy/ out of Rupee Funds**

- A PROI-C / PIO may remit an amount up to a ceiling of USD \$ 1 Million per financial year out of NRO A/c for sale proceeds of assets acquired by way of inheritance/ legacy/out of rupee funds.
- However, documentary evidence supporting acquisition, inheritance or legacy of assets needs to be produced by remitter.
- A tax clearance/ No Objection Certificate (NOC) needs to be obtained from Income Tax Authorities.
- Prior permission of RBI is necessary , where amount of remittance exceeds USD \$ 1 Million.
- In case of remittances through multiple installments, all such remittances shall be made through the same Authorised Dealer.

# *Food for Thought*

- Can a PROIC purchase a Immovable property in India from a person resident outside India?
- Can a PROIC acquire a immovable property in India by way of Gift?
- Can a PROIC acquire a immovable property in India by way of Inheritance?

# Topics Covered

- Acquisition and Transfer of Immovable Property in India
- Acquisition and Transfer of Immovable Property outside India.
- Borrowing and Lending in Rupees (Loans)
- Borrowing and Lending in Rupees (Deposits)
- Liberalised Remittance Scheme for Resident Individual (LRS)
- Remittance of Assets under USD 1 million facility for Non Residents
- Borrowing and Lending in Foreign Exchange

# Acquisition and Transfer of Immovable Property Outside India

- **Statutory Powers: Section 6(3)(h), 47(2)** – RBI makes regulations relating to acquisition and Transfer of immovable property outside India
- Foreign Exchange Management (Acquisition and Transfer of immovable property outside India) Regulations, 2000, effective from 1.6.2000 are notified vide Notification No FEMA 7/2000-RB dated 3.5.2000, as amended from time to time
- ❑ A permissible class of capital account transaction of a **person resident in India** – Schedule I to RBI Notification No FEMA 1/2000-RB dated 3.5.2000, as amended from time to time.

## Restrictions on Acquisition and Transfer

- No person who is a resident of India, without the General or special permission of RBI as applicable, shall acquire or transfer any immovable property situated outside India.

### Exemptions :

The regulations shall not apply to the property:

- Held by a person resident in India who is a national of a foreign state
- Acquired by a person resident in India on or before 8<sup>th</sup> July 1947 and continued to be held by him with the permission of the Reserve bank.

## Modes of acquisition of immovable property outside India by a person resident in India

1. By way of **inheritance** from a person who was resident outside India [section 6 (4) of the Act
2. By way of **purchase** out of balances held in Resident Foreign Currency (RFC)
3. By way of **inheritance or gift** from a person resident in India who had acquired such property while, resident outside India and continue to hold the same under or acquired by way of **inheritance** from a person who was resident outside India section 6 (4) of the Act
4. By way of **inheritance or gift** from a person resident in India who had acquired immovable property outside India prior to 8.7.1947 and held the same with prior permission of RBI
5. By way of **purchase** under LRS

## Acquisition of immovable property outside India under the Liberalised Remittance Scheme (LRS)

- Resident individuals including minors may purchase immovable property
- By drawing foreign exchange from AD up to USD 2,00,000 per financial year
- Resident individual and in case of minor his/her natural guardian may file application-cum-declaration form with AD for remittance
- AD by debit to resident remitter's account may issue draft / effect remittance through normal banking channels



## Acquisition of immovable property outside India under the Liberalised Remittance Scheme (LRS)

- No part of foreign exchange drawn shall be used for remittance directly or indirectly to countries identified as “non co-operative countries and territories” by Financial Action Task Force
- No remittance shall be made directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan
- Resident individual may retain and reinvest the income if any earned out of immovable property acquired under the Scheme

## Transfer

- A person resident in India who has acquired immovable property under the aforesaid circumstances (Sr. No.2 to 4) may **transfer the same by way of gift** to a person resident in India who is a close relative

## Glossary :

- **Relative:** For the purposes of this regulation, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.
- **Resident Foreign Currency Account (RFC):** Foreign Currency Account' means an account held or maintained in currency other than the currency of India or Nepal or Bhutan

# Topics Covered

- Acquisition and Transfer of Immovable Property in India
- Acquisition and Transfer of Immovable Property outside India.
- Borrowing and Lending in Rupees (Loans)
- Borrowing and Lending in Rupees (Deposits)
- Liberalised Remittance Scheme for Resident Individual (LRS)
- Remittance of Assets under USD 1 million facility for Non Residents
- Borrowing and Lending in Foreign Exchange

## Borrowing and Lending in Rupees

- **Statutory Powers: Under Section 6(3)(e),47(2) of FEMA 1999** – RBI makes regulations relating to borrowing and lending in rupees in whatever form or name between a person resident in India and person resident outside India .
- **Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000- effective – 1.6.2000 notified vide Notification No FEMA 4/2000-RB dated 03.05.2000, as amended from time to time, and replaced by Notification No FEMA 238/2012 – RB dated 25.12.2012**
- Classified as a capital account transaction of a person resident in India - Schedule II to RBI Notification No FEMA 1/2000-RB dated 3.5.2000, as amended from time to time.

## Borrowing and lending in rupees – Prohibition

### A. **Prohibition on borrowing and lending in rupees.**

- Unless otherwise specified to contrary, no person resident in India, shall without the prior permission of RBI borrow/lend in rupees to a person resident outside India.
- **Explanation** – Use of credit card in India by a person resident outside India shall not be deemed to be borrowing or lending in rupees.

## **Definition of Non Resident Indian and Person of Indian Origin**

It is pertinent to note that in this notification the terms Non – Resident Indian (NRI) and Person of Indian Origin (PIO) have not been defined separately. However we draw the meaning of the terms from Notifications 5, 13, 21, 24

### **Definition of Person of Indian Origin (Notification 21)**

'a 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

- (i) at any time, held Indian passport; or
- (ii) who or either of whose father 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);

### **Definition of Person of Indian Origin (Notification 24)**

'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 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);

### **Definition of Person of Indian Origin (Notification 5)**

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

- a) he at any time 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).

### **Definition of Person of Indian Origin (Notification 13)**

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

- a) he at any time 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).

## **Definition of Non Resident Indian (Notification 24)**

'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a person of Indian origin

## **Definition of Non Resident Indian (Notification 5)**

'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a person of Indian origin

## **Definition of Non Resident Indian (Notification 13)**

Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India.

## **Conclusion**

In this regards, the definition of NRI and PIO for the purpose of this notification is construed to be same as specified in Notification 5/2000



# Borrowings

## Points Covered:

- Borrowings in Rupees by Indian Companies from NRI/PIO
- Borrowings in rupees by persons other than Indian Companies from NRI/PIO
- Restrictions on use of borrowed funds

## Borrowing in rupees by Indian Companies

A company incorporated in India may borrow in rupees on repatriation or non-repatriation basis, from a non-resident Indian or a person of Indian origin resident outside India by way of investment in Non-convertible Debentures (NCDs) subject to the following conditions:

- the issue of Non-convertible Debentures (NCDs) is made by public offer;
- the rate of interest on such Non-convertible Debentures (NCDs) does not exceed the prime lending rate of the State Bank of India plus 300 basis points;
- the period for redemption of such Non-convertible Debentures (NCDs) is not be less than three years;
- the borrowing company does not and shall not carry restricted activities
- the borrowing company files with the nearest office of the Reserve Bank, not later than 30 days from the date –  
(A) of receipt of remittance for investment in Non-convertible Debentures (NCDs), full details of the remittances received

(B) of issue of Non-convertible Debentures (NCDs), full details of the investment.

- The borrowing by issue of non-convertible debentures on repatriation basis shall be subject to the following additional conditions, namely:
  - a) the percentage of Non-convertible Debentures (NCDs) issued to Nonresident Indians (NRIs) to the total paid-up value of each series of Non-convertible Debentures (NCDs) issued shall not exceed the ceiling prescribed for issue of equity shares/ convertible debentures under FDI Scheme
  - b) the amount of investment is received by inward remittance or by transfer of funds held in the investor's NRE/FCNR account maintained in India
  
- The borrowing by issue of non-convertible debentures (NCDs) on non-repatriation basis shall be subject to the following additional conditions, namely:
  - a) the amount of investment is received either by inward remittance or by transfer of funds held in the investor's NRE/NRO/FCNR account maintained in India

## Borrowing in rupees by persons other than companies in India.

- Permitted to borrow in Rupees on **non repatriation basis** from a NRI ( Non Resident Indian) or PIO ( Person of Indian Origin), subject to following conditions:
  - The amount of loan should be received by way of inward remittance or debit to NRE Account, NRO Account, FCNR Account, through an authorized dealer or bank.
  - Period of loan should not be more than 3 years.
  - Rate of Interest cannot exceed Bank rate + 2% on the date of avilment of loan.

## Restrictions on use of borrowed funds

- A person resident in India who has borrowed in rupees from a person resident outside India, shall not use such funds in his business, where the nature of his business is:
  - The business of Chit Fund, or
  - As Nidhi Company, or
  - agricultural or plantation activities or real estate business; or construction of farm houses or
  - trading in Transferable Development Rights (TDRs).
- The said funds shall not be used for any investment, whether by way of capital contribution or otherwise in entity, or for re-lending

**Explanation:** *It should be noted that real estate business as mentioned above shall not include development of townships, construction of residential/ commercial premises, roads or bridges.*

# Lendings

## Points Covered:

- Loans in rupees to Non – Residents Indian by Authorised Dealers
- Loans to NRI Employees of Indian Company for acquisition of shares under ESOPs scheme by Authorised Dealers.
- Housing Loan in Rupees to a Non – Resident by Authorised Dealers and NHB approved institutions
- Rupee Loans to NRI/PIO employees of Indian Body Corporate
- Rupee Loans to Non – Resident by Resident relatives
- Miscellaneous

## Loans in rupees to Non – Residents Indian

An Authorised Dealer in India may grant loan to a non-resident Indian:

- against the security of shares or other securities held in the name of the borrower;

OR

- against the security of immovable property (except restricted properties)

## Loans in rupees to Non – Residents Indian

- against the security of immovable property (except restricted properties)

### **Provided that;**

- Loan is not utilized for restricted purposes
- Loan shall be utilised for meeting borrowers personal requirements or for his own business purposes
- Loan shall not be remitted outside India
- Loan amount not to be credited in to NRE/FCNR Account of the borrower.
- repayment of loans shall be made out of inward remittances or through NRO/NRE/FCNR Accounts or out of sale proceeds of the shares/securities/immovable property against which such loan was granted



## Loans to NRI Employees of Indian Company for acquisition of shares under ESOPs scheme

- An Authorised Dealer in India may grant rupee loans to NRI employees of Indian companies for acquisition of shares under the scheme of ESOPs subject to:
  - Loan amount not to exceed 90% of purchase price of shares or Rs. 20 Lacs per employee whichever is lower.
  - Rate of interest and margins on loans to be decided by the banks
  - The amount shall be paid directly to the company **only**
  - repayment of loans shall be made by the borrower out of Inward remittance or from NRE/NRO/FCNR Accounts

A loan granted to a non-resident by an authorised dealer, in above situations, may be repaid by any relative of the borrower in India by crediting the borrower's loan account through the bank account of such relative.

## Housing Loan in rupees to a Non – Resident (1/2)

- National Housing Bank (NHB) approved dealers and institutions may provide housing loan for acquisition of residential property in India to an NRI/PIO subject to:
  - quantum of loans and other terms to be at par with that provided to a person resident in India
  - Loan amount shall not be credited to NRE/FCNR account of the borrower
  - Repayment of loan installments/interest/other charges, shall be made by inward remittance or out of funds in his NRE/NRO/FCNR account or out of rental income derived from renting out the property acquired by utilisation of the loan

## Housing Loan in rupees to a Non – Resident (2/2)

- Repayment of loan installments/interest/other charges can also be made by any relative of the borrower in India by crediting the borrower's loan account through the bank account of such relative.
- loan to be fully secured by equitable mortgage of the proposed property to be purchased, also by lien on other assets of borrower in India, if necessary.
- Rate of Interest to be in accordance with RBI directives or National Housing Bank.

## Rupee Loans to NRI/PIO employees of Indian body corporate

- Loan to be granted for personal purposes or acquisition of residential property in India
- The loan amount not to be utilised for restricted purposes.
- Amount of loan to be credited to borrower's NRO account
- Repayment of loan to be made by way of inward remittance of from NRE/NRO/FCNR account of **borrower only.**

## Rupee loan to Non – Resident by Resident

A resident individual may grant loan to a **NRI relative** by way of crossed cheque or electronic transfer

Provided:

- loan is interest free and the minimum maturity of loan is 1 year
- the loan amount should be within the limits of Liberalised remittance scheme (LRS) i.e. USD 2,00,000
- loan to be utilised for borrowers personal requirements or for his own business purposes in India (except restricted purposes)
- loan shall not be remitted outside India
- Loan amount should be credited to the NRO Account

## **Continuance of rupee loans in the event of change of residential status of the lender**

- When a resident lender subsequently becomes non – resident, the repayment of the loan by resident to be made to the NRO Account of lender maintained in India.

## **Continuance of rupee loan/overdraft to resident who becomes a person resident outside India**

- Period of loan/overdraft shall not exceed the original period of Loan/overdraft, subsequent to resident becoming a Non-Resident
- Repayment shall be made through inward remittance or from funds held in NRE/NRO/FCNR Account of the borrower

## Applicable rates for Borrowing

- **Bank Rate : 8.25% (w.e.f May 3, 2013)**
  - Borrowing in rupees by persons other than companies in India
  - Regulation 4 Notification No. FEMA 238/2012 – RB dated 25<sup>th</sup> Sep 2012
- **Prime Lending Rate of SBI : 14.45% p.a (w.e.f Feb 4, 2013)**
  - Borrowing in rupees by Indian Companies
  - Regulation 5 Notification No. FEMA 238/2012 – RB dated 25<sup>th</sup> Sep 2012

# Topics Covered

- Acquisition and Transfer of Immovable Property in India
- Acquisition and Transfer of Immovable Property outside India.
- Borrowing and Lending in Rupees (Loans)
- Borrowing and Lending in Rupees (Deposits)
- Liberalised Remittance Scheme for Resident Individual (LRS)
- Remittance of Assets under USD 1 million facility for Non Residents
- Borrowing and Lending in Foreign Exchange



# Deposits

- **Statutory Powers: Under Section 6(3)(f), 47(2) of FEMA 1999** – RBI makes regulations relating to Deposits.
- **Foreign Exchange Management (Deposit) Regulations, 2000** - effective – **1.6.2000** notified vide Notification No FEMA 5/2000-RB dated 3.5.2000, as amended from time to time
- Classified as a capital account transaction of a person resident in India - Schedule II to RBI Notification No FEMA 1/2000-RB dated 3.5.2000, as amended from time to time.

## Scope of Notification

The Notification covers broad aspects relating of deposits as below:

1. Acceptance of Deposits by an Authorised Dealer
2. Acceptance of Deposits by persons other than Authorised Dealers

However we shall deal only with Acceptance of deposits by persons other than Authorised Dealers

# Acceptance of deposits by Indian proprietorship concern/firm/LLP or company (including NBFC registered with Reserve Bank) on non-repatriation basis from NRI and PIO resident outside India

## Conditions :

- If the deposit accepting company is a NBFC, it should be registered with the RBI and should have obtained the required credit rating
- The maturity period of deposit shall not exceed 3 years.
- If the deposit accepting company is a NBFC the rate of interest payable on deposits shall be in accordance with RBI Guidelines. In other cases the rate of interest payable on deposits shall not exceed the ceiling rate prescribed from time to time under the Companies (Acceptance of Deposit) Rules, 1975

- 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, after 24.04.2004
- All the entities accepting the deposit shall not utilise the amount of deposits for relending (not applicable to a NBFC) or for undertaking agricultural/plantation activities or real estate business or for investing in any other concern or firm or company engaged in or proposing to engage in agricultural/plantation activities or real estate business.
- The amount of deposits accepted shall not be allowed to be repatriated outside India.

## Applicable rates for Deposit

- **Rate of Interest specified in Companies Acceptance of Deposit Rule, 1975 and NBFC Acceptance of Public Deposit (RB) Directions, 1998: 12.5% p.a**
  - Acceptance of Deposit by a Company incorporated in India on repatriation basis from a NRI or PIO resident outside India
    - Schedule 6 of Notification No. FEMA 5 /2000-RB dated 3<sup>rd</sup> May, 2000
  - Acceptance of Deposit by Indian Proprietorship concern/firm or company on non repatriation basis from NRI or PIO resident outside India
    - Schedule 7 of Notification No. FEMA 5 /2000-RB dated 3<sup>rd</sup> May, 2000

# Topics Covered

- Acquisition and Transfer of Immovable Property in India
- Acquisition and Transfer of Immovable Property outside India.
- Borrowing and Lending in Rupees (Loans)
- Borrowing and Lending in Rupees (Deposits)
- Liberalised Remittance Scheme for Resident Individual (LRS)
- Remittance of Assets under USD 1 million facility for Non Residents
- Borrowing and Lending in Foreign Exchange

# Liberalised Remittance Scheme (LRS)

- **Statutory Provision:**
  - **Section 6(2),6(3) and Section 47(2)** – RBI makes regulations relating to capital account transaction.
  - LRS governed by Regulation 4 of FEMA I(Permissible Capital Account Transaction) notified vide RBI Notification No FEMA I/2000-RB dated 03.05.2000, as amended from time to time.

# Liberalised Remittance Scheme (LRS)

- **Regulation 4: Prohibition:**

- Save as otherwise provided in the Act, Rules or Regulation made thereunder, no person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction.
- Provided that a resident individual may, draw from an authorised person foreign exchange not exceeding USD 200,000 per financial year for a capital account transaction under Liberalised Remittance Scheme.



# Some Important Features of (LRS)

- Draw upto USD 200,000 subject to the provisions of Act or Rules or Regulation or Direction order made there under.
- Withdrawal of foreign exchange is allowed for all permissible capital account transaction as specified in schedule I or permissible current account transactions or a combination of both.

# Schedule I of Capital Account Transaction

- Investment in foreign securities such as;
  - Shares (of listed companies or otherwise)
  - Units of Mutual Fund,
  - Units of Venture Capital Fund,
  - Unrated Debt Securities,
  - Promissory Notes
  - ESOPs
- Repayment of loan availed abroad while non –resident on returning to India.

## Schedule I of Capital Account Transaction Cont.....

- Can acquire and hold immovable property outside India without prior approval of RBI.
- Maintain and hold foreign currency accounts with bank outside India for making remittance under scheme without prior approval of RBI.
- Loans and overdraft (borrowings) from person resident in India.
- Remittance towards gift and donation under Current Account Transaction Rules (Schedule III) subsumed under LRS.

## Some Important Features of (LRS) Cont..

- Resident Individual is permitted to make a rupee loan/gift to NRI/PIO close relative (relative as defined under Companies Act, 1956)
- Purchasing objects of art subject to provisions of other applicable laws.
- The scheme not available for any purpose specifically prohibited under Schedule I or any Item restricted under Schedule II of Current Account Transaction Rules.
- Not available for making remittance directly or indirectly to Bhutan, Nepal, Pakistan and Mauritius.

## Some Important Features of (LRS) Cont..

- Not available for remittance to countries identified by Foreign Action Task Force (FATF) as non co-operative countries and territories.
- Iran
- Democratic People's Republic of Korea (DPRK)
- Ecuador
- Ethiopia
- Indonesia
- Kenya
- Myanmar
- Nigeria
- Pakistan
- Sao Tome and Principe
- Syria
- Tanzania
- Turkey
- Vietnam
- Yemen

## Some Important Features of (LRS) Cont..

- Income earned on investment under LRS can be retained and reinvested abroad.
- **It is Mandatory to have a PAN number to make remittance under the scheme.**
- Resident individual may use Application-cum-declaration form for purchase of foreign exchange under this scheme to be submitted to AD.

# Topics Covered

- Acquisition and Transfer of Immovable Property in India
- Acquisition and Transfer of Immovable Property outside India.
- Borrowing and Lending in Rupees (Loans)
- Borrowing and Lending in Rupees (Deposits)
- Liberalised Remittance Scheme for Resident Individual (LRS)
- Remittance of Assets under USD 1 million facility for Non Residents
- Borrowing and Lending in Foreign Exchange

# Remittance of Assets (USD 1 Million Scheme)

- **Statutory Powers:** Section 47 – RBI makes regulations relating to remittance outside India by a person whether resident in India or not, of assets.
- Notification No FEMA 13/2000-RB dated 03.05.2000, as amended from time to time



# Prohibition & Permission

- **Prohibition on remittance outside India of assets held in India**

Unless otherwise provided, no person whether resident in India or not, shall not make remittance of any asset held in India by him or by any other person, without prior approval from RBI.

- **Permissible Remittances**

All current incomes such as rent, dividend, pension, interest etc are allowed to be repatriated on the basis of appropriate certificate by Chartered Accountant.

***Note: Remittance under USD 1 Million Scheme is generally allowed to NRI/PIO and under certain circumstances to the Foreign Nationals***

## Remittance of assets by NRI/PIO

A NRI/PIO may remit an amount, upto maximum of USD 1 million per financial year,

- From balances held in NRO, the sales proceeds of the assets which were acquired by him by way of inheritance/legacy on production of necessary documents.
- In case settlement is done without retaining any life interest in the property i.e. during the lifetime of the owner/parent, it would be tantamount to regular transfer by way of gift. Therefore, if the property is received by NRI/PIO by way of settlement without the settler retaining life interest, it may be reckoned as 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 of assets by NRI/PIO

- The remittance facility in respect of sale proceeds of immovable property is not available to citizens of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan. A person or his successor who has acquired immovable property in accordance with Section 6(5) of FEMA, 1999 cannot repatriate sale proceeds of such property outside India except with prior permission of the Reserve Bank.
- The facility of remittance of sale proceeds of other financial assets is not available to citizens of Pakistan, Bangladesh, Nepal and Bhutan.

# Topics Covered

- Acquisition and Transfer of Immovable Property in India
- Acquisition and Transfer of Immovable Property outside India.
- Borrowing and Lending in Rupees (Loans)
- Borrowing and Lending in Rupees (Deposits)
- Liberalised Remittance Scheme for Resident Individual (LRS)
- Remittance of Assets under USD 1 million facility for Non Residents
- Borrowing and Lending in Foreign Exchange

# Borrowing and Lending in Forex

- **Statutory Powers:** Section 6(3)(d),47(2) – RBI makes regulations relating to borrowing and lending in Forex in whatever form or name by a person resident in India.
- Foreign Exchange Management (Borrowing and lending in Foreign Exchange) Regulations, 2000- effective – 1.6.2000
- Notification No FEMA 3/2000-RB dated 03.05.2000, as amended from time to time

# Restriction on Borrowing and Lending

- No person who is a resident of India shall borrow or lend in foreign exchange from or to a person resident in or outside india.
- However, RBI for sufficient reasons permit a person to borrow or lend in foreign exchange.

# Borrowing and Lending in Foreign Exchange by Person other than Authorised Dealer

- An Indian entity may lend in forex to its WOS or JV abroad in accordance with FEMA (Transfer or issue of foreign security) Regulation, 2000.
- A person resident in India may borrow, by way of loan or over draft or any other credit facility from a bank suited outside India for:
  - Execution outside India of a turnkey project or
  - Civil construction or
  - In connection of export on deferred payment term.
  - Provided the terms and condition stipulated by the authority which has granted the approval to the project or contract or export in accordance with FEMA (Export of goods and services) Regulation, 2000.

## Borrowing and Lending in Foreign Exchange by Person other than Authorised Dealer Cont.....

- An importer in India may, for import of goods avail forex credit provided by supplier of goods for a period not extending 6 months and subject to certain condition.
- A person resident in India may lend in forex from funds held in EEFC A/c to his overseas importer.
- An individual resident in India may borrow a sum not extending USD 250,000 or its equivalent from his close relatives (as defined in companies act) outside india subject to condition:
  - The minimum maturity is of 1 year.
  - Its interest free loan and
  - The amount is received from inward remittance or by debit to NRE/FCNR a/c.



## Borrowing and Lending in Foreign Exchange by Person other than Authorised Dealer Cont.....

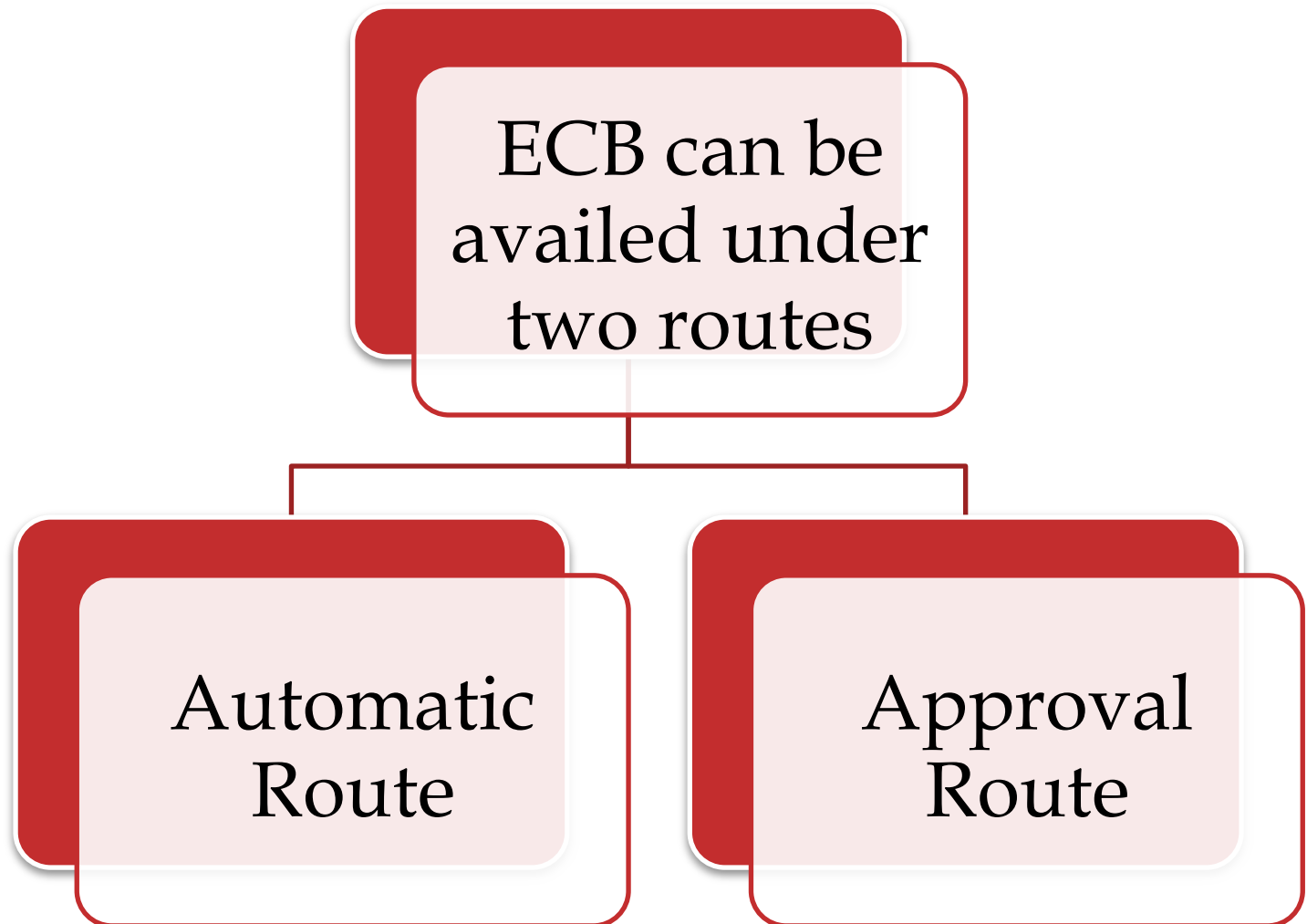
- Indian companies may grant loan to the employees of their branches outside india provide the same is granted in accordance with Lender's Staff Welfare scheme/Loan rules .

# External Commercial Borrowings-Meaning

- ECB refers to commercial loan
- In the form of Bank loans , buyer's credit, supplier's credit, securitized instruments (e.g. floating rate notes and fixed rate bonds)
- Availled from non-resident lenders
- With a minimum average maturity of 3 yrs.



# External Commercial Borrowings-Meaning



# Automatic Route :

Under Automatic Route, the perspective borrower is not required to take any approval provided it follows the terms and conditions which are discussed hereunder

- Eligible Borrowers
- Recognized Lenders
- Amount
- Maturity
- Purpose (End-Use)
- All-In-Cost Ceilings
- Guarantees
- Security
- Prepayment
- Parking of Funds
- Procedure

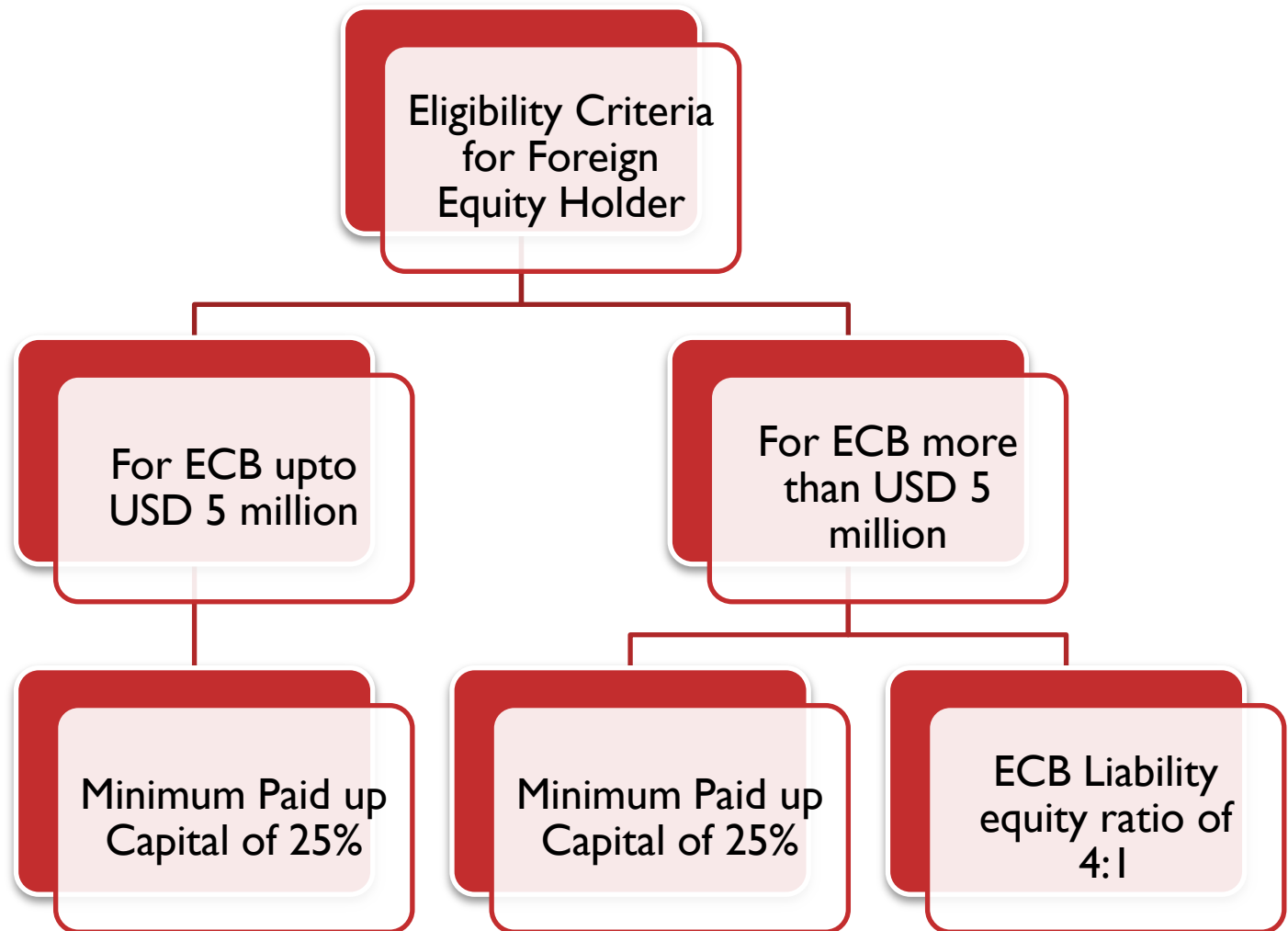
# Eligible Borrowers

- Company registered under the Companies Act, 1956 other than financial intermediaries
- Non-Government Organizations engaged in Micro-Finance Activities
- Units in SEZ. However, they cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff Area.
- Individuals, trusts and non-profit making organizations are not eligible to raise ECB.

# Recognized Lenders

- International Banks
- International Capital Markets
- Export Credit Agencies
- Suppliers of Equipment
- Foreign Collaborators
- **Foreign Equity Holders\***

# Recognized Lenders



# Amount And Maturity

<b>Amount</b>	<b>Maturity</b>
ECB upto USD 20 million	Minimum Average Maturity of 3 years
ECB above USD 20 million to USD 750 million	Minimum Average Maturity of 5 years



# Purpose (End Use)

## Permitted

- Import of Capital Goods
- New Projects
- Modernization/Expansion of existing production Units

## Not Permitted

- Real Estate Sector subject to exceptions
- Working Capital, general corporate purposes and repayment of existing rupee loan subject to exceptions
- On-lending or investment in capital market

# All-In-Cost Ceilings

- All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees.

<b>Average Maturity Period</b>	<b>All-in-cost Ceilings over 6 month LIBOR*</b>
Three years and up to five years	350 basis points
More than five years	500 basis points

# Guarantees , Security , Prepayment & Parking of Funds

- Issue of Guarantees, letter of credit, comfort letter not permitted
- Choice of security is left to the borrower
- Creation of charge over immovable property, financial securities and corporate or personal guarantee are allowed subject to certain terms and conditions prescribed
- Prepayment of ECB upto USD 500 million may be allowed by Authorized Dealer (AD) subject to compliance with the stipulated minimum average maturity period as applicable to the loan
- ECB proceeds meant only for foreign currency expenditure can be retained abroad and invested there in specified instruments

# Procedure

- Loan Agreement stating the terms & conditions of the loan subject to compliance with ECB Guidelines.
- Obtain Loan Registration Number before drawing down the ECB.

# Approval Route

- Any thing other than that mentioned in automatic route requires RBI approval and hence falls under approval route.
- For instance, change in rate of interest, amount of loan, maturity period, changes in end-use.
- However, on-lending or investment in capital market, real estate sector, working capital, general corporate purpose and repayment of existing loan.
- An application in form ECB is required to be submitted for obtaining ECB.

# Reporting Requirements

- Obtain Loan Registration Number (LRN)
- Submit ECB-2 Return certified by the AD bank on monthly basis within 7 days from the close of month to which it relates

# Trade Credits

- Foreign currency credit/loan extended for import into india by overseas supplier, bank and financial institution for original maturity of less than 3 years is hereinafter referred to as Trade Credits.

Purpose	Amount	Maturity
Import of all item permissible under Foreign Trade Policy	USD 20 million per import transaction	Upto 1 year.
Capital goods	USD 20 million per import transaction	More than 1 year and less than 3 year

- No rollover/extension permitted.
- For trade credit above USD 20 million prior approval of RBI will be required.



# Thank you.....

**CA Haresh Chheda**  
**Partner, Ghalla & Bhansali Chartered Accountants**  
**Email ID : [haresh@ghalla-bhansali.com](mailto:haresh@ghalla-bhansali.com)**  
**Web site : [www.ghalla-bhansali.com](http://www.ghalla-bhansali.com)**