
READY RECKONER FOR OVERSEAS INDIANS

By

Knowledge Partner on Taxation & FDI of OIFC

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DISCLAIMER

This Ready Reckoner has been compiled/summarised from information available in official documents/circulars/websites of the Govt. of India, RBI and other reliable sources. Every possible care has been taken to provide current and authentic information. This Ready Reckoner for Overseas Indians is intended to serve as a guide to them and does not purport to be a legal document. In case of any variation between what has been stated in this Ready Reckoner and the relevant Act, Rules, Regulations, Policy Statements etc., the latter shall prevail.

PREFACE

Overseas Indians have made the country proud by their hard work and achievements in their adopted countries. Many of the Indian Diaspora who had left the shores of India with only education provided by the country and inherent entrepreneurial capabilities, have established themselves as prominent citizens in their adopted countries as entrepreneurs, businessmen, professionals and skilled workmen. The Overseas Indian Community is today the most diverse, eminently successful and best educated communities wherever it resides seeking avenues to contribute to and benefit from India's progress. The new emergent India, burgeoning with opportunities across sectors is waiting to benefit from the expertise and experience of her expatriate community.

The Overseas Indian Facilitation Center (OIFC) has been established to facilitate and expand the engagement of Overseas Indians with India. The Overseas Indian Facilitation Center (OIFC) is not for profit, public private partnership between the Ministry of Overseas Indian Affairs (MOIA) and the Confederation of Indian Industry (CII).

OIFC has great pleasure in bringing out 'Ready Reckoner for Overseas Indians'. This book has been updated till **November 30, 2007**. It brings together important but otherwise scattered information from the latest press notes, RBI master circulars, websites of Government of India and other reliable sources.

Ready Reckoner for Overseas Indians is divided into three parts. The first part deals with Foreign Exchange Management Act, 1999, the second part deals with Taxation and third part deals with other important matters affecting the Overseas Indians.

We hope the Reader will find this Ready Reckoner handy and user friendly. We look forward to your comments and suggestions.

We are grateful to Hon'ble Minister of Overseas Indian Affairs Shri Vayalar Ravi and officials of the Ministry of Overseas Indian Affairs for their encouragement and guidance in bringing out this book. We acknowledge the efforts made by our knowledge partner on Taxation and Foreign Direct Investment Peeyush Aggarwal & Co. Consultants Pvt Limited for their contribution.

Subha Rajan
CEO, Overseas Indian Facilitation Center

OVERSEAS INDIAN FACILITATION CENTRE (OIFC)

BACKGROUND

Overseas Indians, today constitute significant economic, social and cultural force in the world. They are estimated at over 25 million spread across 130 countries. On these lines the Hon'ble Prime Minister of India, Dr. Manmohan Singh made a promise at Pravasi Bharatiya Divas 2007, organized in New Delhi in January, to assist and facilitate the Overseas Indian Diaspora by opening a facilitation Centre for them.

“Facilitation Centre is envisaged as a source of investment advisory services for overseas Indian Investors. This proposal is being developed on the understanding that an Indian entity, independent of the Government, though supported by us, and set up in partnership with industry, could be an effective instrument to liaise with members of the Indian Diaspora on matters related to investment in our country”. He said.

Following the Prime Minister's announcement, Ministry of Overseas Indian Affairs (MOIA), formed in the year 2003, started the research work to enable the dream come true. After numerous presentations and discussions, MOIA decided to partner with Confederation of Indian Industry (CII) to jointly launch the Centre namely Overseas Indian Facilitation Centre. CII is partner and host institution of this not-for-profit neutral trust.

OBJECTIVES OF OIFC

- Promote overseas Indian investment into India and facilitate business partnership by giving authentic & real time information
- Establish and maintain a Diaspora Knowledge Network by creating a database of Overseas Indians
- Function as a clearing house for all investment related information
- Assist States to project investment opportunities to overseas Indians in the infrastructure and social sectors. The objectives of the OIFC will be to bring the Indian States, Indian Business and potential Overseas Investors on the same platform and to facilitate the investors to identify the investment opportunities.
- Provide a host of advisory services to NRIs and PIOs. These could include matters such as consular questions, stay in India, investment and financial issues etc.

SIGNING OF MOU

On 28 May 2007, Ministry of Overseas Indian Affairs (MOIA) had an agreement with the Confederation of Indian Industry (CII) in New Delhi. CII and MOIA signed a Memorandum of Understanding (MOU) and launched the Overseas Indian Facilitation Centre. The MOU was signed between Joint Secretary of MOIA and Director General of CII.

Speaking at the launch of the Centre Mr Vayalar Ravi, Hon'ble Minister, MOIA mentioned that Centre is opened for the "Overseas Indians to enable them benefit from the numerous investment opportunities in India". He added that the Ministry has given CII full freedom to run the Centre. OIFC would be a one-stop shop centre to help the Overseas Indians to invest in India.

The website (www.oifc.in) was also launched on the occasion by the Hon'ble Minister.

ORGANISATION STRUCTURE

The trust will have a two-tier body for its management. The body will include a Governing Council and an Executive Directorate. The Governing Council will provide a broad policy framework for the programmes and activities of the trust in consonance with the objectives of trust. The Executive Directorate/CEO will evolve strategies and implement the programmes / projects for achieving the goals set by the Governing Council. The Chairman of the trust would be Secretary, MOIA and the Co- Chairman would be Chief Mentor, CII.

OIFC SERVICES

OIFC would be focusing on providing real time services to the NRIs and PIOs.

HANDHOLDING SERVICES

OIFC provides a wide range of consultative, advisory and handholding services in broad sectors like

- Capital Market Investment
- Manufacturing, Service Sector Investment
- Taxation Issue
- Real Estate Investment, etc

INFORMATION

The prime focus of OIFC would be to provide information services to the NRIs and PIOs round the clock. This would include the following:

- One stop shop for all investment related information
- Focus on Sector specific information and location
- Providing specific project investment information
- To explore investment opportunities in India.

CUSTOMISED

OIFC would be providing customized services, with the focus on the following:

- Finding sector and state specific investment project for the individual investors
- Preparing feasibility study reports related to different projects
- Assisting overseas road shows to attract FDI
- Facilitating investors through various forums

BUSINESS TO BUSINESS PARTNERSHIPS

B2B partnerships could focus on the following:

- Preparing sector wise and state wise database of Indian business
- Preparing database of potential Overseas Indian Investors
- Creating a virtual market place for the Overseas Indians
- Organizing sector and region specific investment interaction meet

DIASPORA KNOWLEDGE NETWORK

A strong Diaspora network would enable individual, Government of India & Associations of Overseas Indians to shake hands across the virtual space and identify any project in which they could partner.

These projects may not necessarily be confined to industrial and financial sectors but also could be in the social development sectors.

It would help in promoting joint collaborations in Science and Technology by enabling overseas Indians scientist to explore the R&D opportunities in India.

CONSULAR

The long-term objective of OIFC is to also provide consular services to the NRIs and PIOs. This has been a major cause of concern for the Non Resident Indians.

The services would be on paid up basis and would include facilities such as taking care of Visas, Passport, OCI card of NRIs and PIOs etc.

Later on services such as admission related issues of Overseas Indian Children & Marriage could also be focused upon.

The Governing Council is in the process of discussion and making advices on strengthening OIFC services.

KNOWLEDGE PARTNERS

In order to provide quality services it was decided that the need of the hour was to work with organisations, which have expertise in sectors, considered most important investment hub by the Overseas Indians. To start with, after numerous meetings, we have finalized the following knowledge partners. They are:

- Edelweiss, Levi Consultancy, Client Associates for Investment Opportunities and Wealth Management
- Cushman & Wakefield, Knight Frank, DGS Realtors for Real Estate.
- Peeyush Aggarwal and Co. Consultants Pvt Ltd for Taxation & FDI.

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PART - I
FEMA Provisions
and
Overseas Indians



FOREIGN DIRECT INVESTMENTS

FOREIGN INVESTMENT IN INDIA

Foreign Investment in India is governed by the FDI policy announced by the Government of India and the provision of the Foreign Exchange Management Act (FEMA) 1999. Reserve Bank has issued Notification No. FEMA 20/2000-RB dated May 3, 2000, which contains the Regulation in this regard. This notification has been amended from time to time.

Entry Routes for Investment in India

Foreign Investment is freely permitted in almost all sectors. Foreign Direct Investment can be made under two routes-Automatic Route and Government Route. Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment. Under the Government Route, prior approval of Government of India, Ministry of Finance, Foreign Investment Promotion Board (FIPB) is required.

Prohibition on Investment in India

Foreign Investment in any form is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as Trusts) which is engaged or proposes to engage in the following activities:

- i. Business of chit fund, or
- ii. Nidhi Company, or
- iii. Agricultural or plantation activities, or
- iv. Real estate business, or construction of farm houses
- v. Trading in Transferable Development Rights (TDRs)

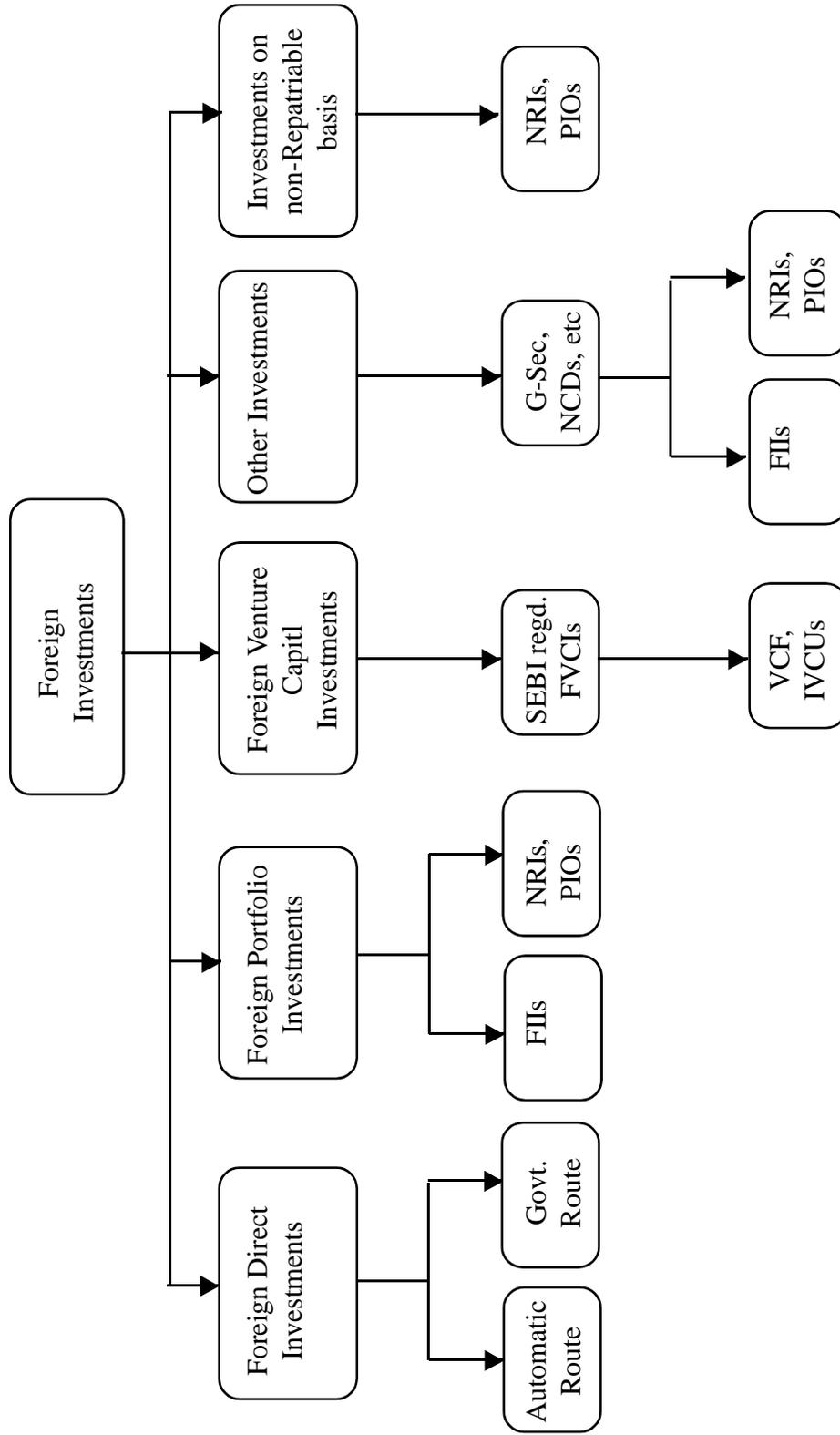
It is clarified that Real Estate Business does not include development of townships, construction of residential/commercial premises, roads or bridges. It is further clarified that partnership firms/ proprietorship concerns having investment as per FEMA regulations are not allowed to engage in Print Media sector.

In addition to the above, investment in the form of FDI is also prohibited in certain sectors such as:

- i. Retail Trading
- ii. Atomic Energy
- iii. Lottery Business
- iv. Gambling and Betting

Agriculture (excluding Floriculture, Horticulure, Development of seeds, Animal Husbandry, Pisciculture and Cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantation (Other than Tea plantations).

Part - I
Foreign Investments in India-Schematic representation :





Eligibility for Investing in India

A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India, (other than an entity incorporated in Pakistan or Bangladesh) can invest in India, subject to the FDI policy of the Government of India.

Erstwhile OCBs, who have converted themselves into companies incorporated outside India, can make fresh investment in India under the FDI Scheme provided they are not under the adverse notice of Reserve Bank/SEBI.

Type of Instruments

Indian companies can freely issue equity shares/convertible debentures and preference shares subject to valuation norms prescribed under FEMA Regulations.

Investment in Small Scale Industrial Units

A foreign investor can invest in an Indian company which is a small-scale industrial unit provided it is not engaged in any activity, which is prohibited under the FDI policy. Such investments are subject to a limit of 24% of paid up capital of the Indian company/SSI unit. An SSI Unit can issue equity shares / fully convertible preference shares /fully convertible debentures more than 24% of its paid up capital if:

- a. It has given up its small scale status,
- b. It is not engaged or does not propose to engage in manufacture of items

reserved for small scale sector, and

- c. It complies with the sectoral caps specified in Annexure 2.

It is clarified that the company /SSI Unit would be reckoned as having given up its SSI status, if the investment in plant and machinery exceeds the limits prescribed under the Micro, Small and Medium Enterprises Development Act, 2006.

Investment in EOU/ FTZs/ EPZs / HTPs and STPs

An SSI Unit which is an Export Oriented Unit or Unit in Free Trade Zone or in Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park.

Issue of shares / convertible debentures/ preference shares exceeding 24% of the paid up capital upto the sectoral caps specified in Annexure-2.

Investment in Asset Reconstruction Companies (ARC)

Person resident outside India Other than Foreign Institutional Investors (FIIs), can invest in the equity capital of Asset Reconstruction companies (ARCs) registered with Reserve bank under the Government Route. Automatic Route is not available for such investments. Such investments have to be strictly in the nature of FDI and investments by FIIs are not permitted. FDI is restricted to 49% of the paid up capital of the ARC.

However, FIIs with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs can invest upto 49% each tranche of scheme of SRs, subject to the condition that investment by single FII in each tranche of scheme of SRs shall not exceed 10% of the issue.

Investment in Infrastructure Companies in the Securities Market

Foreign Investment is permitted in infrastructure companies in securities market namely stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulation and subject to the following conditions:

- i. Foreign Investment upto 49% of the paid up capital, is allowed in these companies with a separate Foreign Direct Investment (FDI) cap of 26% and Foreign Institutional Investment (FII) cap of 23%;
- ii. FDI will be allowed with specific prior approval of FIPB; and
- iii. FIIs can invest only through purchase in the secondary market.

Investment from Nepal & Bhutan

NRIs resident in Nepal & Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in shares and convertible debentures of Indian companies under FDI scheme on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in **free foreign**

exchange through normal banking channels by debit to the NRE/FCNR (B) accounts of NRIs.

Issue of Rights / Bonus Shares

FEMA provision allow Indian companies to freely issue Right / Bonus shares to existing non-resident shares-holders, subject to adherence to sectoral cap, if any. However such issue of bonus / rights shares have to be in accordance with other law/ statutes like the Companies Act 1956, SEBI (Disclosure and Investor Protection) guidelines (in case of listed companies) etc. The price of shares offered on rights basis by the Indian company to non resident shareholders shall not be lower than the price at which such shares are offered to resident shareholders.

Rights Issue to Erstwhile OCBs

As such entitlement of rights shares is not automatically available to Overseas corporate Bodies (OCBs). OCBs have been de-recognized as a class of investors with effect from September 16, 2003. Therefore companies desiring to issue rights shares to such erstwhile OCBs will have to take specific prior permission from the Reserve Bank.

However, bonus shares can be issued to erstwhile OCBs.

Renunciation of Rights by Residents to Non-Residents

Existing non-resident shares-holders are allowed to apply for issue of additional shares/preference shares/convertible



debenture Over and above their rights entitlements. The investee company can allot the additional rights shares out of un-subscribed shares; subject to the condition that the overall issue of shares to non-residents in the total paid up capital of the company does not exceed the sectoral caps.

Acquisition of Shares Under Scheme of Amalgamation / Merger

Mergers & amalgamations of companies in India are usually governed by an order issued by a competent court on the basis of the scheme submitted by the companies undergoing mergers/ amalgamation. Once the scheme of merger or amalgamation of two or more Indian companies has been approved by a court in India, the transferee company or new company is allowed to issue share to the shareholder of the transferor company resident outside India subject to the condition that:

- (i) The percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap.
- (ii) The transferor company or the transferee or the new company is not engaged in activities, which are prohibited in terms of FDI policy.

Issue of Shares Under Employees Stock Option Scheme

Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture of wholly

owned subsidiary abroad, other than citizens of Pakistan. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:

- (i) The scheme has been drawn in terms of relevant regulations issued by the Securities and Exchange Board of India; and
- (ii) The face value of the shares to be allowed under the scheme to the non-resident employees does not exceed 5 percent of the paid-up capital of the issuing company.

If the company is not listed, it has to follow the provisions of the Companies Act, 1956. The Indian company can issue ESOPs to employees who are resident outside India, other than citizens of Pakistan and Bangladesh. The issuing company is required to report the details of such issues to the concerned Regional Office of the Reserve Bank, within 30 days from the date of issue of shares under ESOPs.

Reporting of FDI

Reporting of Inflow

An Indian company receiving investment from outside India for issuing shares / convertible debenture / preference shares under the FDI Scheme, should report the details of the inflow to the Reserve Bank not later than 30 days from the date of receipt. Details to be reported are:

- (i) Name and address of the foreign investors,
- (ii) Date of receipt of funds in foreign currency and its rupee equivalent,

- (iii) Name and address of the Authorised Dealer through whom the funds have been received, and
- (iv) Details of Government approval for the investment, if any.
- c) The company is eligible to issue shares under these Regulation; and
- d) The company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.

Reporting of Issue of Shares

After issue of shares /convertible debentures/ preference shares, the Indian company has to file Form FC-GPR enclosed in Annexure- 6 not later than 30 days from the date of issue. The form can be downloaded from the Reserve Bank's website <http://www.rbi.org.in/Scripts/BSViewFemaForms.aspx>.

Part A of Form FC-GPR has to be duly filled up and signed by the Authorised Signatory and submitted to the Authorised Dealer of the company, who will forward it to the Reserve Bank.

While forwarding the Form, the Authorised Dealer will enclose a KYC Report on the foreign investor. Along with Part A of FC-GPR, the following documents has to be attached by the company:

- i. A certificate from the Company Secretary of the company certifying that
 - a) All the requirements of the Companies Act, 1956 have been complied with;
 - b) Terms and conditions of the Government approval, if any, have been complied with;

- ii. A certificate from Statutory Auditors or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

Both the above reports have to be submitted to the concerned Regional Office of the Reserve Bank under whose jurisdiction the registered office of the company is situated.

Part B of FC-GPR should be filed on an annual basis with the Reserve Bank. This filing has to be done in the month of June every year, for all outstanding investment by way of FDI as well as Portfolio / other investment by way of re-invested earnings for the previous April to March period. (For example, all Indian companies who have received FDI, Portfolio investments, other investments (such as bonds, debentures etc.) from foreign investors during the period April 2006 to March 2007, have report in Part B of Form FC-GPR in the month of June 2007, along with their retained earnings during the period.)

The above mentioned three stage reporting mechanism has to be followed wherever



there is inflow of funds through normal banking channels or debit to NRE/FCNR account for investment purpose. Moreover, issue of bonus/ rights shares or stock options to persons resident outside India directly or stock options to persons resident outside India directly or on amalgamation/merger with an existing Indian company, as well as issue of shares on conversion of ECB/royalty/lump sum technical know-how fee has to be reported in Form FC-GPR.

Issue Price

Price of shares issued to persons resident outside India under the FDI scheme, shall be worked out on the basis of SEBI guidelines in case of listed companies. In case of unlisted companies, valuation of shares has to be done by a Chartered Accountant in accordance with the guidelines issued by the erstwhile Controller of Capital Issues.

Foreign Currency Account

Indian companies, which are eligible to issue shares to persons resident outside India under the FDI Scheme, will be allowed to retain the shares subscription amount in a foreign currency account, with the prior approval of RBI.

FOREIGN VENTURE CAPITAL INVESTMENT

Investments by Venture Capital Funds

A SEBI registered Foreign Venture Capital Investor (FVCI) with specific approval from RBI under FEMA Regulations can invest in

Indian Venture Capital Undertaking (IVCU) or Indian Venture Capital Fund (IVCF) or in a Scheme floated by such IVCFs subject to the condition that the VCF should also be registered with SEBI.

An IVCU is defined as a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI. A VCF is defined as a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capital raised in a manner specified under the said Regulations and which invests in Venture Capital Undertakings in accordance with the said Regulations.

FVCIs can purchase equity/ equity linked instruments/ debt /debt instruments, debentures of and IVCU or of a VCF through initial public offer or private placement in units of schemes / funds set up by a VCF. At the time of granting approval, RBI permits the FVCI to open a foreign currency account or rupee account with a designated branch of an AD bank.

The purchase / sale of shares, debentures and units can be at a price that is mutually acceptable to the buyer and the seller.

Authorized Dealers can offer forward cover to FVCIs to the extent of total inward remittance. In case the FVCI has made any remittance by liquidating some investments, original cost of the investments has to be deducted from the eligible cover.

OTHER FOREIGN INVESTMENTS

Purchase of Other Securities by NRIs

On Non-Repatriation Basis:

NRIs can purchase shares/ convertible debentures issued by an Indian company on non-repatriation bases without any limit. Amount of consideration for such purchase shall be paid by inward remittance through normal banking channels from abroad or out of funds held in NRE / FCNR / NRO account maintained with the AD bank. NRI can also, without any limit, purchase on non-repatriation basis dated Government securities, treasury bills, units of domestic mutual funds, units of Money Marker Mutual Funds. Government of India has notified that NRIs are not permitted to make Investments in Small Savings Schemes including PPF. In case of investment on non-repatriation basis, the sale proceeds shall be credited to NRO account. The amount invested under the scheme and the capital appreciation thereon will not be allowed to be repatriated abroad.

On Repatriation Basis:

A Non- resident Indian can purchase on repatriation bases, without limit, Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds; bonds issued by a public sector undertaking (PSU) in India and shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

Purchase of Other Securities by FIIs

Foreign Institutional Investors can buy dated Government securities / treasury bills, listed non-convertible debentures / bonds issued by Indian companies and units of domestic mutual funds either directly from the issuer of such securities or through a registered stock broker on a recognized stock exchange in India. These purchases are subject to limits notified by SEBI.

Investment by MDBs

A Multilateral Development Bank (MDB), which is specifically permitted by Government of India to float rupee bonds in India, can purchase Government dated securities.

Foreign Investment in Tier I and Tier II Instruments Issued by Banks in India

FIIs registered with SEBI and NRIs have been permitted to subscribe to the perpetual Debt Capital instruments (eligible for inclusion as Tier I capital) and Debt Capital instruments (eligible for inclusion as upper Tier II capital), issued by banks in India, subject to the following conditions.

- a) Investment by all FIIs in Perpetual debt instruments (Tier I) should not exceed an aggregate ceiling of 49 per cent of each issue, and investment by individual FII should not exceed the limit of 10 per cent of each issue.
- b) Investments by all NRIs in perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 percent of the issue.



- c) Investment by FIIs in Debt capital instruments (Tier II) shall be within the limits stipulated by SEBI for FIIs investment in corporate debt.
- d) Investment By NRIs In Debt capital instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments.

The issuing banks are required to ensure compliance with the conditions stipulated above at the time of issue. They are also required to comply with the guidelines notified by the Department of Banking Operations and Development (DBOD), Reserve Bank of India, from time to time.

The issue-wise details of amount raised as perpetual Debt Instruments qualifying for Tier I capital by the bank from FIIs / NRIs are required to be reported in the prescribed format within 30 days of the issue to the Reserve Bank.

Investment by FIIs in Upper Tier II Instruments raised in Indian Rupees will be

outside the limit prescribed by SEBI for investment by FIIs in these instruments will be subject to a separate ceiling of USD 500 million.

The details of the secondary market sales / purchase by FIIs and the NRIs in these instruments on the floor of the stock exchange are to be reported by the custodians and designated banks respectively, to the Reserve Bank of India through the soft copy of the LEC Returns.

Investments by Overseas Corporate Bodies (OCBs)

With effect from November 29, 2001, OCBs are not permitted to invest under the PIS in India. Further, the OCBs which have already made investments under the Portfolio Investment Scheme are allowed to continue holding such share / convertible debentures till such time these are sold on the stock exchange. OCBs have been de-recognized as a class of investors in India with effect from September 16, 2003.

ANNEXURE-1

**SECTORS/ACTIVITIES PROHIBITED/RESTRICTED
UNDER FDI POLICY**

(A) List of activities for which Automatic Route of RBI for investment from person resident outside India is not available.

1	Petroleum Refining (except for private sector oil refining), Natural Gas /LNG Pipelines
2	Investing companies in Infrastructure & Services Sector
3	Defence and Strategic Industries
4	Atomic Minerals
5	Print Media
6	Broadcasting
7	Postal Services
8	Courier Services
9	Development of Integrated Township
10	Tea Sector
11	Establishment & Operation of satellite
12	Asset Reconstruction Companies

(B) List of activities or items for which FDI is prohibited.

1	Retail Trading
2	Atomic Energy
3	Lottery Business
4	Gambling & Betting
5	Housing & Real Estate business
6	Agriculture (excluding floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture & Cultivation of vegetables, Mushrooms etc. under controlled conditions & services related to agro & allied sectors) and Plantations (other than Tea plantations)



Annexure-2

SECTORAL CAP ON INVESTMENTS BY PERSONS RESIDENT OUTSIDE INDIA

S.No.	Sector	Investment cap	Description of Activity / Items / conditions
1.	Private sector banking	74%	Subject to guidelines issued by RBI from time to time
2.	Non-Banking Financial Companies	100%	FDI / NRI investments allowed in the following 19 NBFC activities shall be as per the levels indicated below:
			(a) Activities Covered
			1. Merchant Banking
			2. Under writing
			3. Portfolio Management Services
			4. Investment Advisory Services
			5. Financial Consultancy
			6. Stock broking
			7. Asset Management
			8. Venture Capital
			9. Custodial Services
			10. Factoring
			11. Credit Reference Agencies
			12. Credit Rating Agencies
			13. Leasing & Finance
			14. Housing Finance
			15. Forex broking
			16. Credit Card Business
			17. Money changing Business
			18. Micro credit
			19. Rural credit
			(b) Minimum capitalisation norms for fund based NBFCs
			1. For FDI upto 51% US \$ 0.5 million to be brought in upfront.
			2. If the FDI is above 51% & upto 75% US \$ 5 million to be brought upfront.

S.No.	Sector	Investment cap	Description of Activity / Items / conditions
			3. If the FDI is above 75% and upto 100%, US \$ 50 million out of which \$ 7.5 million to be brought in upfront and the balance in 24 months.
			(c) Minimum capitalisation norms for non fund based activities Minimum capitalisation norm of US \$ 0.5 million is applicable in respect of non-fund based NBFCs with foreign investment.
			(d) Foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities, subject to bringing in US \$ 50 million as at (b) (3) above (without any restriction on number of operating subsidiaries without bringing in additional capital)
			(e) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities subject to the subsidiaries also complying with the applicable minimum capital inflow i.e. (b) (1) & (b) (2) above.
			(f) FDI in the NBFC sector is put on automatic route subject to compliance with guidelines of the RBI .RBI would issue appropriate guidelines in this regard.
3.	Insurance	26%	FDI upto 26% in the Insurance sector is allowed on the automatic route subject to obtaining license from Insurance Regulatory & development authority.
4.	Telecommunication	49%	(i) In basic, cellular, Value added Services, and Global Mobile Personal Communication by Satellite, FDI is limited to 49%



S.No.	Sector	Investment cap	Description of Activity / Items / conditions
			subject to licensing and security requirements & adherence by the companies (who are investing & the companies in which the investment is being made) to the license condition for foreign equity cap & lock in period for transfer and addition of equity and other license provisions.
			(ii) ISP with gateways, radio paging and end-to-end bandwidth, FDI is permitted upto 74% with FDI, beyond 49% requiring Government approval. These services would be subject to licensing and security requirements.
			(iii) No equity cap is applicable to manufacturing activities.
			(iv) FDI upto 100% is allowed for the following activities in the telecom sector.
			(a) ISPs not providing gateways (both for satellite and submarine cables)
			(b) Infrastructure Providers providing dark fibre (IP Category 1)
			(c) Electronic Mail, and
			(d) Voice Mail
			The above would be subject to the following conditions:
			(a) FDI upto 100% is allowed subject to the condition that such companies would divest 26% of their equity in favour of Indian Public in 5 years, if these companies are listed in other parts of the world.
			(b) The above services would be subject to licensing and security requirements, wherever required

S.No.	Sector	Investment cap	Description of Activity / Items / conditions
			(c) Proposal for FDI beyond 49% shall be considered by FIPB on case-to-case basis.
5.	(i) Petroleum Refining (private Sector)	100%	FDI permitted upto 100% incase of private Indian companies
	(ii) Petroleum Product Marketing	100%	Subject to the existing sectoral policy and regulatory framework in the oil-marketing sector.
	(iii) Oil Exploration in both small & medium sized field	100%	Subject to and under the policy of Government on private participation in
			(a) Exploration of oil and
			(b) the discovered fields of national oil companies.
	(iv) Petroleum product pipelines	100%	Subject to and under the Government Policy & regulations thereof.
6.	Housing and Real Estate	100%	Only the NRIs are allowed to invest in the areas listed below:
			(a) Development of serviced plots and construction of built up residential premises.
			(b) Investment in real estate covering construction of residential and commercial premises including business centers and offices.
			(c) Development of townships.
			(d) City and regional level urban infrastructure facilities including both roads and bridges.
			(e) Investment in manufacture of building material.
			(f) Investment in participatory ventures in (a) to (e) above.
			(g) Investment in housing finance institution which is also opened to FDI as an NBFC.



S.No.	Sector	Investment cap	Description of Activity / Items / conditions
7.	Coal & lignite		(i) Private Indian companies setting up or operating power projects as well as coal & lignite mines for captive consumption are allowed FDI upto 100%.
			(ii) 100% FDI is allowed for setting up processing plants subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.
			(iii) FDI upto 74% is allowed for exploration or mining of coal or lignite for captive consumption.
			(iv) In all the above cases, FDI is allowed upto 50% under the automatic route subject to the condition that such investment shall not exceed 49% of the equity of a PSU.
8.	Venture Capital Fund (VCF) and Venture Capital company (VCC)		Offshore Venture Capital Funds / companies are allowed to invest in domestic Venture Capital undertaking as well as other companies through automatic route, subject to only SEBI regulations and sector specific caps on FDI.
9.	Trading		Trading is permitted under automatic route with FDI upto 51% provided it is primarily export activities, and the undertaking is an export house/trading house/ star trading house/ super trading house. However, under the FIPB route:
			(i) 100% FDI is permitted in case of trading companies for the following activities:

S.No.	Sector	Investment cap	Description of Activity / Items / conditions
			(a) Exports
			(b) Bulk imports with export/ex-bonded warehouses sales;
			(c) Cash and carry wholesale trading.
			(d) Other import of goods or services provided at least 75% is for procurement and sale of the same group and not for third party use or onward transfer/distribution/sales.
			(ii) The following kinds of trading are also permitted, subject to provision of EXIM policy.
			(a) Companies for providing after sales services i.e. not trading per se.
			(b) Domestic trading of products of JVs is permitted at the wholesale level for such trading companies who wish to market manufactured products on behalf of their joint ventures in which they have equity participation in India.
			(c) Trading of hi tech items requiring specialized after sales service
			(d) Trading of items for social sector.
			(e) Trading of hi-tech medical and diagnostic items
			(f) Trading of items sourced from the small scale sector under which, based on technology provided and laid down quality specification, a company can market that item under its brand name.
			(g) Domestic sourcing of products for exports.
			(h) Test marketing of such items for which a company has approval for manufacture provided such test marketing facility will be for a period of two years, and investment in



S.No.	Sector	Investment cap	Description of Activity / Items / conditions
			setting up manufacturing facilities commences simultaneously with test marketing.
			(i) FDI upto 100% permitted for e-commerce activities subject to the condition that such companies would divest 26% of their equity in favour of the Indian public in five years, if these companies are listed in other parts of the world. Such companies would engage only in business to business (B2B) e-commerce and not in retail trading.
10.	Power	100%	FDI allowed upto 100% in respect of project relating to electricity generation, transmission and distribution, other than atomic reactor power plants. There is no limit on the project cost and quantum of foreign direct investment.
11.	Drugs & Pharmaceuticals	100%	FDI permitted upto 100% for manufacture of drugs and pharmaceuticals provided the activity does not attract compulsory licensing or involve use of recombinant DNA technology and specific cell / tissue targeted formulations. FDI proposals for the manufacture of licensable drugs and pharmaceuticals and bulk drugs produced by recombinant DNA technology and specific cell/tissue targeted formulations will require prior Government approval.
12.	Road and highways, Ports and harbours	100%	In project for construction and maintenance of roads, highways, vehicular bridges, toll roads, vehicular tunnels, ports and harbours.
13.	Hotel & Tourism	100%	The term hotels include restaurants, beach resorts and other tourist complexes providing accommodation and/or catering and food facilities to tourists. Tourism related industry include

S.No.	Sector	Investment cap	Description of Activity / Items / conditions
			travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wild life experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment, amusement, sports and health units for tourists and Convention/Seminar units and organizations.
			For foreign technology agreements, automatic approval is granted if
			(i) Upto 3% of the capital cost of the project is proposed to be paid for technical and consultancy
			(ii) Upto 3% of the net turnover is payable for franchising and marketing/publicity support fee, and Upto 10% of gross operating profit is payable for management fee, including incentive fee.
14.	Mining	74%	(i) For exploration and mining of diamonds and precious stones FDI is allowed upto 74% under automatic route
		100%	(ii) For exploration and mining of gold and silver and minerals other than diamonds and precious stones, metallurgy and processing FDI is allowed upto 100% under automatic route
			(iii) Press Note 18 (1998 series) dated 14/12/98 would not be applicable for setting up 100% owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and/or the particular mineral.



S.No.	Sector	Investment cap	Description of Activity / Items / conditions
15.	Advertising	100%	Advertising sector - FDI upto 100% allowed on the automatic route
16.	Films	100%	Film Sector (Film production, exhibition and distribution including related services/products)
			FDI upto 100% allowed on the automatic route with no entry level condition
17.	Airports	74%	Govt. approval required beyond 74%
18.	Mass Rapid Transport Systems	100%	FDI upto 100% is permitted on the automatic route in mass rapid transport system in all metros including associated real estate development
19.	Pollution Control & Management	100%	In both manufacture of pollution control equipment and consultancy for integration of pollution control system is permitted on the automatic route
20.	Special Economic Zones	100%	All manufacturing activities excepts: (i) Arms and ammunition, Explosives and allied items of defence equipments, Defence aircrafts and warships, (ii) Atomic substances, Narcotics and Psychotropic Substances and hazardous Chemicals, (iii) Distillation and brewing of Alcoholic drinks and (iv) Cigarette/cigars and manufactured tobacco substitutes.
21.	Any other Sector/ Activity	100%	If not included in Annexure A
22.	Air Transport Services (Domestic Airlines)	100% for NRIs 49% for others	No direct or indirect equity participation by foreign airlines is allowed
23.	Townships, housing, built-up infrastructure and construction-development projects.	100%	The investment shall be subject to the following guidelines:

S.No.	Sector	Investment cap	Description of Activity / Items / conditions
	The sector would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure		
			(a) Minimum area to be developed under each project shall be as under: (i) In case of development of serviced housing plots - 10 hectares
			(ii) In case of construction development project - 50,000 sq. mtrs.
			(iii) In case of combination project, any one of the above two conditions.
			(b) The investment shall be subject to the following conditions: (i) Minimum capitalization of US\$ 10 Million for wholly owned subsidiaries and US \$5 Million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.
			(ii) Original investment cannot be repatriated before a period of three years from completion o minimum capitalization. However, the investor may be permitted o exit earlier with prior approval of the Government through the FIPB.



S.No.	Sector	Investment cap	Description of Activity / Items / conditions
			(c) At least 50% of the project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor shall not be permitted to sell undeveloped plots.
			(d) The project shall conform to the norms and standards, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government /Municipal / Local Body concerned.
			(e) The investor shall be responsible for obtaining all necessary approvals, including those of the building/ layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules / bye-laws / regulations of the State Government / Municipal / Local Body concerned.
			(f) The State Government / Municipal / Local Body concerned, which approves the building / development plan, shall monitor compliance of the above conditions by the developer.
			Note: For the purpose of these guidelines, "underdeveloped plots" will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body / service agency before he would be allowed to dispose of serviced housing plots

FREQUENTLY ASKED QUESTIONS (FAQs)

Q.1. What are the forms in which business can be conducted by a foreign company in India?

A.1 A foreign company planning to set up business operations in India has the following options:

- As an Incorporated entity by incorporating a company under the Companies Act, 1956 through
- Joint Ventures; or
- Wholly Owned Subsidiaries

As an office of a foreign entity through

- Liaison Office / Representative Office
- Project Office
- Branch Office

Q.2. How does a foreign company invest in India? What are the regulations pertaining to issue of shares by Indian companies to foreign collaborators/ investors?

A.2 Automatic Route

FDI up to 100% is allowed under the automatic route in all activities/ sectors except the following which require prior approval of the Government:

- i. Where provisions of Press Note 1 (2005 Series) issued by the Government of India are attracted.

- ii. Where more than 24% foreign equity is proposed to be inducted for manufacture of items reserved for the Small Scale sector.
- iii. FDI in sectors/activities to the extent permitted under Automatic Route does not require any prior approval either by Government or the Reserve Bank of India.
- iv. The investors are only required to notify the Regional Office concerned of the Reserve Bank of India within 30 days of receipt of inward remittances and file the required documents along with form FC-GPR with that Office within 30 days of issue of shares to non-resident investors.

Government Route

FDI in activities not covered under the automatic route requires prior Government approval and are considered by Investment Promotion Board (FIPB), Ministry of Finance. Application can be made in Form FC-IL, which can be downloaded from <http://www.dipp.gov.in>. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

General Permission of RBI under FEMA

Indian companies having foreign investment approval through FIPB route do not require any further clearance from Reserve Bank of India for receiving inward remittance and



issue of shares to the non-resident investors. The companies are required to notify the concerned Regional Office of the Reserve Bank of India of receipt of inward remittances within 30 days of such receipt and submit form FC-GPR within 30 days of issue of shares to the non-resident investors.

Q.3. Which are the sectors where FDI is not allowed in India, under the Automatic Route as well as Government Route?

A.3. FDI is prohibited under Government as well as Automatic Route for the following sectors:

- i) Retail Trading (except single brand product retailing)
- ii) Atomic Energy
- iii) Lottery Business
- iv) Gambling and Betting
- v) Business of Chit Fund
- vi) Nidhi Company
- vii) Agricultural or plantation activities (cf Notification No. FEMA 94/2003-RB dated June 18, 2003).
- viii) Housing and Real Estate business (except development of townships, construction of residential/commercial premises, roads or bridges to the extent specified in Notification No. FEMA 136/2005-RB dated July 19, 2005)
- ix) Trading in Transferable Development Rights (TDRs).

Q.4. What should be done after investment is made under the Automatic Route or with Government approval?

A.4 A two-stage reporting procedure has been introduced for this purpose.

- On receipt of money for investment:
- Within 30 days of receipt of money from the non-resident investor, the Indian company will report to the Regional office of the Reserve Bank of India, under whose jurisdiction its Registered Office is located, containing details such as:
 - Name and address of the foreign investor/s
 - Date of receipt of funds and their rupee equivalent
 - Name and address of the authorised dealer through whom the funds have been received, and
 - Details of the Government approval, if any.

Upon issue of shares to non-resident investors:

- Within 30 days from the date of issue of shares, a report in Form FC-GPR, PART A together with the following documents should be filed with the concerned Regional Office of the Reserve Bank of India.
 - Certificate from the Company

Secretary of the company accepting investment from persons resident outside India certifying that the company has complied with the procedure for issue of shares as laid down under the FDI scheme as indicated in the Notification No. FEMA 20/2000-RB dated 3rd May 2000 as amended from time to time

- The proposal is within the sectoral policy / cap permissible under the automatic route of RBI and it fulfills all the condition laid down for investments under the Automatic route namely
 - a) Non-resident entity/ies (other than individuals) to whom it has issued shares does / do not have any existing joint venture or technology transfer or trade mark agreement in India in the same field.
 - b) The company is not investing in an SSI unit & the investment limit of 24 % has been observed/ requisite approvals have been obtained.
 - c) Shares have been issued on rights basis and the shares are issued to non-residents at a price that is not lower than that at which shares are/were issued to residents.

OR

- d) Shares issued are bonus shares.

OR

- e) Shares have been issued under a scheme of merger and amalgamation of two or more Indian companies or reconstruction by of demerger or otherwise of an Indian company, duly approved by a court in India.
- Shares have been issued in terms of SIA/FIPB approval No.dated...

Certificate from Statutory Auditors or Chartered Accountant indicating the manner of arriving at the price of the shares persons resident outside India.

Q.5. What are the guidelines for transfer of existing shares from non-residents to residents or residents to non-residents?

A.5 Transfer from Non-Residents to Residents

The term ‘transfer’ is defined under FEMA as including “sale, purchase, acquisition, mortgage, pledge, gift, loan or any other form of transfer of right possession or lien”. (Section 2 (ze) of FEMA, 1999).

The FEMA Regulations give specific permission covering the following forms of transfer i.e. transfer by way of sale and gift. These permissions are discussed below:

Transfer by Way of Sale

A person resident outside India can freely transfer share/convertible



debenture by way of sale to a person resident in India as under

- Any person resident outside India (other than NRIs/OCBs) can transfer by way of sale the shares/convertible debentures to any person resident outside India; subject to the condition that the acquirer or transferee does not have any previous venture or tie-up in India in the same field or sector.
- A non-resident Indian (NRI) or an erstwhile Overseas Corporate Body may transfer by way of sale, the shares/convertible debentures held by him to another NRI only.
- Any person resident outside India may sell share/convertible debenture acquired in accordance with FEMA Regulations on a recognized Stock Exchange in India through a registered broker.

Transfer by Way of Gift

A person resident outside India can freely transfer share/convertible debenture by way of gift to a person resident in India as under

- Any person resident outside India, (not being a non-resident Indian or an erstwhile overseas corporate body), can transfer by way of gift the shares/convertible debentures to any person resident outside India; subject to the condition that the

acquirer or transferee does not have any previous venture or tie up in India in the same field or sector.

- A non-resident Indian (NRI) may transfer by way of gift, the shares/convertible debentures held by him to another NRI only.
- Any person resident outside India may transfer share/convertible debenture to a person resident in India by way of gift.

TRANSFER FROM RESIDENT TO NON-RESIDENT

Transfer by Way of Sale-General Permission under Regulation 10 of Notification No. FEMA 20/2000-RB dated May 2000.

A person resident in India may transfer to a person resident outside India any share/convertible debenture of an Indian Company whose activities fall under the Automatic Route for FDI subject to the Sectoral Limits, **by way of sale** subject to complying with pricing guidelines, documentation and reporting requirements for such transfers, as may be specified by the Reserve Bank of India from time to time.

This general permission is not available where:

- Indian Company whose shares or convertible debentures are proposed to be transferred is in financial service sector. Financial services sector means service rendered by banking and non-

banking companies regulated by the Reserve Bank, Insurance companies regulated by Insurance Regulatory and Development Authority (IRDA) and other companies regulated by any other financial regulator, as the case may be.

- The transfer falls within the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Transfer by Way of Gift

A person resident in India can transfer by way of gift shares to a person resident outside India in the following ways:

- A person resident in India who proposes to transfer to a person resident outside India [other than erstwhile OCBs] any security **by way of gift**, shall make an application to the Central Office of the Foreign Exchange Department, Reserve Bank of India furnishing the following information, namely:
 - Name and address of the transferor and the proposed transferee
 - Relationship between the transferor and the proposed transferee
 - Reasons for making the gift. The gifts are permissible up to a limit of:
 - (i) 5% of the paid up capital of the company per donee, and
 - (ii) Amount does not exceed USD 25,000 per calendar year for each donor. The valuation of these shares shall be in accordance with pricing guidelines prescribed.

Q.6. What if the transfer from resident to non-resident does not fall under the above facility?

A.6. In case the transfer does not fit into any of the above, either the transferor (resident) or the transferee (non-resident) can make an application for the Reserve Bank's permission for the transfer. The application has to be accompanied with the following documents;

- A copy of FIPB approval (if required).
- Consent letter from transferor and transferee clearly indicating the number of shares, name of the investee Company and the price at which the transfer is proposed to be effected.
- The present /post transfer shareholding pattern of the Indian investee company showing the equity participation by residents and non-residents category-wise.
- Copies of the Reserve Bank of India's approvals/acknowledged copies of FC-GPR evidencing the existing holding of non-residents.
- If the sellers/transferors are NRIs / OCBs, the copies of the Reserve Bank of India's approvals evidencing the shares held by them on repatriation / non-repatriation basis.



- Open Offer document filed with SEBI if the acquisition of shares by non-resident is under SEBI Takeover Regulations.
 - Fair Valuation Certificate from Chartered Accountant indicating the value of shares as per the following guideline.
 - In the case of unlisted shares the fair value is worked out as per the erstwhile Controller of Capital Issue/s.
 - For listed shares, the price worked out is not less than the higher of average weekly high and low quotations for 6 months and average of daily high and low quotation or two weeks preceding 30 days prior to the date of making application to FIPB.
- in case of a public limited company.
- In case of listed companies, valuation shall be as per the Reserve Bank of India /SEBI guidelines as follows:
 - The issue price shall be either at:
 - a) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date or
 - b) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the two weeks preceding the relevant date.

Q.7. Are the investments and profits earned in India repatriable?

A.7. All foreign investments are freely repatriable except for the cases where NRIs choose to invest specifically under non-repatriable schemes. Dividends declared on foreign investments can be remitted freely through an Authorised Dealer.

Q.8. What are the guidelines on issue and valuation of shares in case of existing companies?

A.8. • Allotment of shares on preferential basis shall be as per the requirements of the Companies Act, 1956, which will require special resolution

In case of unlisted companies, valuation shall be done in accordance with the guidelines issued by the erstwhile Controller of Capital Issues.

Q.9. What are the regulations pertaining to issue of ADRs/GDRs by Indian companies?

A.9. Indian companies are allowed to raise capital in the international market through the issue of ADRs/GDR. They can issue ADRs/GDRs without obtaining prior approval from RBI if it is eligible to issue ADRs/GDRs in terms of the Scheme for issue of foreign currency Convertible Bonds and Ordinary Shares (Through Depository Receipt

Mechanism) Scheme, 1993 and subsequent guidelines issued by Ministry of Finance, Government of India.

After the issue of ADRs/GDRs, the company has to file a return in the proforma given in Annexure 'C' to the RBI Notification No. FEMA.20/2000-RB dated May 3, 2000. The company is also required to file a quarterly return in a form specified in Annexure 'D' of the same regulations.

There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate stock markets.

Q. 10. What is meant by Sponsored ADR & Two-way fungibility Scheme of ADR/GDR?

A.10. Sponsored ADR/GDR: An Indian company may sponsor an issue of ADR/GDR with an overseas depository against shares held by its shareholders at a price to be determined by the Lead Manager. The Operative guidelines for the same have been issued vide A.P. (DIR Series) Circular No.52 dated November 23, 2002.

Two-way Fungibility Scheme:

Under the limited Two-way fungibility Scheme, a registered broker in India can purchase shares of an Indian company on behalf of a person resident outside India for the purpose of converting the shares so purchased into ADRs/GDRs. The operative guidelines for the same

have been issued vide A.P. (DIR Series) Circular No.21 dated February 13,2002. The Scheme provides for purchase and re-conversion of only as many shares into ADRs/GDRs which are equal to or less than the number of shares emerging on surrender of ADRs/GDRs which have been actually sold in the market. Thus, it is only a limited two-way fungibility wherein the headroom available for fresh purchase of shares from domestic market is restricted to the number of converted shares sold in the domestic market by non-resident investors. So long ADRs/GDRs are quoted at discounts to the value of shares in domestic market; an investor will gain by converting the ADRs/GDRs into underlying shares and selling them in the domestic market. In case of ADRs/GDRs being quoted at premium, there will be demand for reverse fungibility i.e. purchase of shares domestic market for re-conversion into ADRs/GDRs. The scheme is operationalised through the Custodian of securities and stockbrokers under SEBI.

Q.11. Can Indian companies issue Foreign Currency Convertible Bonds (FCCBs)?

A.11. FCCBs can be issued by Indian companies in the overseas market in accordance with Scheme for Issue of foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.



The FCCB issue needs to conform to External Commercial Borrowing guidelines, issued by RBI vide Notification No. FEMA 3/2000 dated May 3, 2000 as amended from time to time.

Q.12. Can I invest through Preference Shares? What are the regulations applicable in case of such investments?

A.12. Foreign investment through preference shares is treated as foreign direct investment. Foreign investment in preference shares is considered as part of share capital and fall outside the External Commercial Borrowing (ECB) guidelines/cap.

Preference shares to be treated as foreign direct equity for purpose of sectoral caps on foreign equity, where such caps are prescribed, provided they carry a conversion option. If the preference shares are structured without such conversion option, they would fall outside the foreign direct equity cap.

Q.13. Can shares be issued against Lumpsum Fee, Royalty and ECB?

A.13. Issue of equity shares against lump sum fee, royalty and external commercial borrowings (ECBs) in convertible foreign currency are permitted, subject to meeting all applicable tax liabilities and sector specific guidelines.

Q.14. Other than issue of shares under Automatic /Government Route, what other general permissions are available under Notification No.FEMA 20 dated 3-5-2000?

A.14 Issue of shares under ESOP by Indian companies to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India directly or through a Trust up to 5% of the paid up capital of the company.

Issue and acquisition of shares by non-residents after merger or de-merger or amalgamation of Indian companies.

Issue shares or preference shares or convertible debentures on rights basis by an Indian company to a person resident outside India.

Q.15. Can I invest in unlisted shares issued by a company in India?

A.15 As per the regulations/guidelines issued by the Reserve Bank of India/ Government of India, investment can be made in unlisted shares of Indian companies.

Q.16. Can a foreigner set up a partnership / proprietorship concern in India?

Only NRIs/PIOs are allowed to set up partnership/proprietorship concerns in India. Even for NRIs/PIOs investment is allowed on non-repatriation basis.

Q.17. Can I invest in Rights shares issued by an Indian company at a discount?

A.17. There are no restrictions under FEMA for investment in Rights shares at a discount, provided the rights shares so issued are being offered at the same price to residents and non-residents.

Q.18. What are the payment parameters for foreign technology transfer under the Automatic Route of Reserve Bank of India? How should royalty be calculated?

A.18. Payments for foreign technology collaboration by Indian companies are allowed under the automatic route subject to the following limits:

- Lump sum payments not exceeding US\$ 2 million.
- Royalty payable being limited to 5 per cent for domestic sales and 8 per cent for exports, without any restriction on the duration of the royalty payments.
- The royalty limits are net of taxes and are calculated according to standard conditions.
- The royalty will be calculated on the basis of the net ex-factory sale price of the product, exclusive of excise duties minus cost of the standard bought-out

components and the landed cost of imported components, irrespective of the source of procurement including ocean freight, insurance, custom duties, etc.

- RBI has delegated the powers to ADs to make payment of royalty under such agreements. The requirement of registration of the agreement with the Regional Office of Reserve Bank of India has been done away with.

Q.19. What should be done, if Automatic Route of Reserve Bank of India for technology transfer is not available?

A.19. Proposals, which do not satisfy the parameters prescribed for automatic route of RBI, require clearance from Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.

Q.20. What are the regulations for Foreign Venture Capital Investment?

A.20. A SEBI registered Foreign Venture Capital Investor with general permission from the Reserve Bank of India can invest in a Venture Capital Fund or an Indian Venture Capital Undertaking, in the manner and subject to the terms and conditions specified in schedule 6 of RBI Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time.



PORTFOLIO INVESTMENTS

PORTFOLIO INVESTMENTS BY NRIS

Portfolio Investment Scheme

Non-Resident Indians (NRIs) are eligible to purchase shares and convertible debentures issued by Indian companies under the Portfolio Investment Scheme (PIS). NRIs can approach the designated branch of any Authorized Dealer (AD) bank authorized by RBI to administer the Portfolio Investment Scheme for permission to open a NRI/NRO account under the Scheme for routing investments.

Investments by Non-Resident Indians (NRIs)

NRIs are allowed to invest in shares of listed Indian companies in recognized Stock Exchange under the PIS. NRIs can invest on repatriation and non-repatriation basis under PIS route upto 5% of the paid up capital of the company/ paid-up value of each series of debentures of listed Indian companies. The aggregate paid-up value of shares/ convertible debentures purchased by all NRIs cannot exceed 10% of the paid-up capital of the company. The aggregate ceiling of 10% can be raised to 24%, if the General Body of the Indian company passes a special resolution to that effect. The NRI investor has to take delivery of the shares purchased and give delivery of shares sold. Payment for purchase of shares and/or debentures on

repatriation basis has to be made by way of inward remittance of foreign exchange through normal banking channels or out of funds held in NRE/FCNR account maintained in India. If the shares are purchased on non-repatriation basis, the NRIs can also utilize their funds in NRO account in addition to the above. The link office of the designated branch of an AD bank shall furnish to the Reserve Bank, a report on a daily basis on PIS transactions undertaken by it, such report can be furnished on-line or on a floppy to RBI.

Shares Purchased by NRIs on the Stock Exchange Under PIS cannot be Transferred by Way of Sale Under Private Arrangement or By Way of Gift to a Person Resident in India or Outside India without Prior Approval of RBI.

NRIs are allowed to invest in Exchange Trade Derivative Contracts approved by SEBI from time to time out of Rupee funds held in India on non-repatriation basis subject to the limits prescribed by SEBI.

Monitoring of Investment Position by RBI Caution List

Reserve Bank monitors the investment position of NRIs in listed Indian companies, reported by Custodian Banks on a daily basis in Forms LEC (NRI). When the total holdings of NRIs under the Scheme reach the trigger

limit, which is 2% below the applicable limit, Reserve Bank will issue a notice to all designated branches of Authorized Dealer banks stating that any further purchases of shares of the particular Indian company will require prior approval of Reserve Bank. (For companies with paid-up capital of Rs. 1000 Crores and above, the trigger limit is 0.5% below the applicable limit).

Ban List

Once the shareholding by NRIs reaches the overall ceiling / sectoral cap / statutory limit, Reserve Bank puts the company on the Ban List. Once a company is placed on the Ban list, no NRI can purchase the shares of the Company under the portfolio Investment Scheme.

FREQUENTLY ASKED QUESTIONS (FAQs)

FOREIGN PORTFOLIO INVESTMENT

Q.1. What are the regulations regarding Portfolio Investments by Foreign Institutional Investors (FIIs)?

- A.1. • Investment by FIIs is regulated under SEBI (FII) Regulations, 1995 and Regulation 5(2) of FEMA Notification No 20 dated May 3, 2000. FIIs include Asset Management Companies, Pension Funds, Mutual Funds, and Investment Trusts as Nominee Companies,

Incorporated / Institutional Portfolio Managers or their Power of Attorney holders, University Funds, Endowment Foundations, Charitable Trusts and Charitable Societies.

- SEBI acts as the nodal point in the registration of FIIs. The Reserve Bank of India has granted General Permission to SEBI Registered FIIs to invest in India under the Portfolio Investment Scheme (PIS).
- Investment by individual FIIs cannot exceed 10% of paid up capital. Investment by foreign registered as sub accounts of FIIs cannot exceed 5% of paid up capital. All FIIs and their sub-accounts taken together cannot acquire more than 24% of the paid up capital of an Indian Company. An Indian Company can raise the 24% ceiling to the Sectoral Cap / Statutory Ceiling, as applicable, by passing a resolution by its Board of Directors followed by passing a Special Resolution to that effect by their General Body.

Q.2. What are the regulations regarding Portfolio Investments by NRIs/PIOs?

- A.2. • Non Resident Indian (NRIs)



and Persons of Indian Origin (PIOs) can purchase/sell shares/convertible debentures of Indian Companies on Stock Exchanges under Portfolio Investment Scheme. For this purpose, the NRI/PIO has to apply to a designated branch of a bank, which deals in Portfolio Investment. All sale/purchase transactions are to be routed through the designated branch.

- An NRI or a PIO can purchase shares up to 5% of the paid up capital of an Indian company. All NRIs/PIOs taken together cannot purchase more than 10% of the paid up value of the company. (This limit can be increased by the Indian company to 24% by passing a General Body resolution).
- The sale proceeds of the repatriable investments can be credited to the NRE/NRO etc. accounts of the NRI/PIO, whereas the sale of non-repatriable investment can be credited only to NRO accounts.

The sale of shares will be subject to payment of applicable taxes.

Investment in Government Securities and Corporate Debt

Q.3. Can a Non-resident Indian invest in Government Securities/Treasury bills and Corporate debt?

A.3. Under the FEMA Regulations only NRIs and SEBI registered FIIs are permitted to purchase Government Securities/Treasury bills and corporate debt. The details are as under;

- I. A Non-resident Indian can purchase,
 - a) Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds;
 - b) bonds issued by a public sector undertaking (PSU) in India;
 - c) Shares in Public Sector Enterprises being disinvested by the Government of India.

They can also invest, on non-repatriation basis, in dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds in India, or National Plan/Savings

Certificates on non repatriation basis. The guidelines for these schemes are framed by the concerned Government agencies.

II. A SEBI registered Foreign Institutional Investor may purchase, on repatriation basis, dated Government securities/ treasury bills, non-convertible debentures/bonds issued by an Indian company and units of domestic mutual funds either directly from such securities or through a registered stockbroker on a recognised stock exchange in India. The FIIs is required to ensure that,

a) The FII allocation of its total investment between equity and debt instruments (including dated Government Securities and Treasury Bills in the Indian capital market) should not exceed the ratio of 70:30.

b) In case the FII is set-up as a 100% debt FII, it can invest the entire corpus in dated Government Securities including Treasury Bills,- non-convertible_debentures/bonds issued by an Indian company subject to limits, if any, stipulated by SEBI in this regard.

The Investment in Government Securities/Treasury Bills and Corporate debt is subject to a ceiling decided in consultation with the Government of India. Investment limit for the FIIs as a group in Government securities currently is USD 3.2 Billion. The limit for Investment in Corporate debt is USD 1.5 billion. At present, the FIIs can also invest in Innovative instruments such as upper tier-II capital upto a limit of USD 500 million.



ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

A person resident outside India who is a citizen of India (NRI) can acquire by way of purchase, any immovable property in India other than agricultural land/plantation property/farm house. He can transfer any immovable property other than agricultural or plantation property or farm house to:

- a) A person resident outside India who is a citizen of India or
- b) A person of Indian origin resident outside India or
- c) A person resident in India. He may transfer agricultural land/ plantation property / farm house acquired by way of inheritance, only to Indian citizens permanently residing in India. Payment for acquisition of property can be made out of:
 - i. Funds received in India through normal banking channels by way of inward remittance from any place of India or
 - ii. Funds held in any non-resident account maintained in accordance with the provisions of the Foreign Exchange

Management Act, 1999 and the regulations made by Reserve Bank Of India from time to time. Such payment can not be made either by traveller's cheque or by foreign currency notes or by other mode than those specially mentioned above.

A person resident outside India who is a person of Indian Origin (PIO) can acquire any immovable property in India other than agricultural land / farm house / plantation property:-

- i. By way of purchase out of funds received by way of inward remittance through normal banking channels or by debit to his NRE/ FCNR(B)/ NRO account.
- ii. By way of gift from a person resident in India or a NRI or a PIO. By way of inheritance from any a person resident in India or a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force or FEMA regulations at the time of acquisition of the property.

A PIO may transfer any immovable property other than agricultural land / Plantation property / farm house in India

By way of sale to a person resident in India.b)
By way of gift to a person resident in India or a Non resident Indian or a PIO.A PIO may transfer agricultural land / Plantation property / farm house in India by way of sale or gift to person resident in India who is a citizen of India.

PURCHASE / SALE OF IMMOVABLE PROPERTY BY FOREIGN EMBASSIES / DIPLOMATS / CONSULATE GENERAL

Foreign Embassy / Consulate as well as Diplomatic personnel in India are allowed to purchase / sell immovable property in India other than agricultural land / plantation property / farm house provided (i) clearance from Government of India , Ministry of External Affairs is obtained for such purchase / sale, and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channel.

ACQUISITION OF IMMOVABLE PROPERTY FOR CARRYING ON A PERMITTED ACTIVITY

A branch, office or other place of business, (excluding a liaison office) in India of a foreign company established with requisite approvals wherever necessary, is eligible to acquire immovable property in India which is necessary for or incidental to carrying on such activity provided that all applicable laws, rules, regulations or directions in force are duly complied with. The entity/

concerned person is required to file a declaration in the form IPI with Reserve Bank, within ninety days from the date of such acquisition. The non-resident is eligible to transfer by way of mortgage the said the said immovable property to an AD bank as a security for any borrowing.

REPATRIATION OF SALE PROCEEDS

In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by NRI / PIO, the authorized dealer will allow repatriation of sale proceeds outside India provided;i.

The immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of FEMA Regulations;ii. The amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of fund held in Foreign currency Non-Resident Account or (b) the foreign currency equivalent as on the date of payment, of the amount paid where such payment was made from the funds held in Non-Resident External account for acquisition of the property.iii. In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.In the case of sale of immovable property purchased out of Rupee funds, ADs may allow the facility of repatriation of funds out of balances held by NRIs/PIO in their Non-resident Rupee (NRO) accounts upto



US\$ 1 million per financial year subject to production of undertaking by remitter and a certificate from the Chartered Accountant in the formats prescribed by the CBDT.

PRIOR PERMISSION FOR ACQUISITION OR TRANSFER OF IMMOVABLE PROPERTY IN INDIA BY CITIZEN OF CERTAIN COUNTRIES

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan shall acquire or transfer immovable property in India, other than lease, not exceeding five years without prior permission of Reserve Bank. **Foreign nationals of non Indian origin** resident outside India are not permitted to acquire any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. Foreign Nationals of non Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of RBI can not transfer such property without prior permission of RBI.

FREQUENTLY ASKED QUESTIONS (FAQs)

ACQUISITION OF IMMOVABLE PROPERTY IN INDIA

Q.1 Who can purchase immovable property in India?

A.1 Under the general permission available, the following categories

can freely purchase immovable property in India:

- i) Non-Resident Indian (NRI)- that is a citizen of India resident outside India
- ii) Person of Indian Origin (PIO)- that is an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who
 1. at any time, held Indian passport, or
 2. who or either of whose father or grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

The general permission, however, covers only purchase of residential and commercial property and not for purchase of agricultural land / plantation property / farm house in India.

Q.2. Whether NRI/PIO can acquire agricultural land/plantation property/farm house in India?

A2. No. Since general permission is not available to NRI/PIO to acquire agricultural land/ plantation property / farm house in India, such proposals will require specific approval of Reserve Bank and the proposals are

- considered in consultation with the Government of India.
- Q.3. Do any documents need to be filed with Reserve Bank of India after purchase?**
- A3. No. An NRI/PIO who has purchased residential/commercial property under general permission, is not required to file any documents with the Reserve Bank.
- Q.4. How many residential/commercial properties can NRI/PIO purchase under the general permission?**
- A4. There are no restrictions on the number of residential/commercial properties that can be purchased.
- Q.5. Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI/PIO?**
- A5. No.
- Q.6. Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?**
- A6. No. A foreign national of non-Indian origin, resident outside India cannot purchase any immovable property in India. But, he/she may take residential accommodation on lease provided the period of lease does not exceed five years. In such cases, there is no requirement of taking any permission of or reporting to Reserve Bank
- Q.7. Can a foreign national who is a person resident in India purchase immovable property in India?**
- A7. Yes, but the person concerned would have to obtain the approvals, and fulfill the requirements if any, prescribed by other authorities, such as the concerned State Government, etc However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of Reserve Bank. Such requests are considered by Reserve Bank in consultation with the Government of India.
- Q.8. Can an office of a foreign company purchase immovable property in India?**
- A8. A foreign company which has established a Branch Office or other place of business in India, in accordance with FERA / FEMA regulations, can acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. The payment for acquiring such a property should be made by way of foreign inward remittance through proper banking channel. A declaration in form IPI should be



filed with Reserve Bank within ninety days from the date of acquiring the property. Such a property can also be mortgaged with an Authorised Dealer as a security for other borrowings. On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of Reserve Bank. Further, acquisition of immovable property by entities who had set up Branch Offices in India and incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of Reserve Bank to acquire such immovable property. However, if the foreign company has established a Liaison Office, it can not acquire immovable property. In such cases, Liaison Offices can take property by way of lease not exceeding 5 years.

Q.9 Whether immovable property in India can be acquired by way of gift?

- A9. (a) Yes, NRIs and PIOs can freely acquire immovable property by way of gift either from
- i) a person resident in India or
 - ii) an NRI or
 - iii) a PIO.

However, the property can only be commercial or residential. Agricultural land/plantation

property/ farm house in India *cannot* be acquired by way of gift.

(b) A foreign national of non-Indian origin resident outside India cannot acquire any immovable property in India through gift.

Q.10. Whether a non-resident can inherit immovable property in India?

- A.10. Yes, a person resident outside India i.e.
- i) an NRI
 - ii) a PIO and
 - iii) a foreign national of non-Indian origin can inherit and hold immovable property in India from a person who was resident in India. However, a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan should seek specific approval of Reserve Bank.

Q.11. From whom can the non-resident inherit immovable property?

- A.11. A person resident outside India (i.e. NRI or PIO or foreign national of non-Indian origin) can inherit immovable property from
- (a) a person resident in India.
 - (b) a person resident outside India.

However, the person from whom the property is inherited should have acquired the same in accordance with the foreign exchange regulations applicable at that point of time.

TRANSFER OF IMMOVABLE PROPERTY IN INDIA

(i) TRANSFER BY SALE

Q.12 Can an NRI/ PIO/foreign national sell his residential / commercial property?

- A.12. (a) NRI can sell property in India to--
- i) a person resident in India or
 - ii) an NRI or
 - iii) a PIO.
- (b) PIO can sell property in India to-
- i) a person resident in India.
 - ii) an NRI or
 - iii) a PIO - *with the prior approval* of Reserve Bank
- (c) Foreign national of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan can sell property in India with prior approval of Reserve Bank to

- i) a person resident in India
- ii) an NRI
- iii) a PIO

Q.13. Can an agricultural land/ plantation property/farm house in India owned/held by a non-resident be sold?

- A.13. (a) NRI/ PIO may sell agricultural land /plantation property/farm house to a person resident in India who is a citizen of India.
- (b) Foreign national of non-Indian origin resident outside India would need *prior approval* of Reserve Bank to sell agricultural land/plantation property/ farm house in India

(ii) TRANSFER BY GIFT

Q.14. Can a non-resident gift his residential/commercial property?

- A.14. Yes.
- (a) NRI/ PIO may gift residential/commercial property to -
- (i) person resident in India or
 - (ii) an NRI or
 - (iii) PIO.
- (b) foreign national of non-Indian origin needs prior approval of Reserve Bank.



Q.15. Can an NRI/PIO/Foreign national holding an agricultural land/plantation property/farm house in India gift the same?

- A.15. (a) NRI/PIO can gift but only to a person resident in India who is a citizen of India.
- (b) foreign national of non-Indian origin needs prior approval of Reserve Bank

(iii) TRANSFER THROUGH MORTGAGE

Q.16. Can residential/commercial property be mortgaged?

- A.16. i) NRI/ PIO can mortgage to:
- (a) an authorised dealer/ housing finance institution in India -without the approval of Reserve Bank.
- (b) a party abroad - with prior approval of Reserve Bank.
- ii) a foreign national of non-Indian origin can mortgage only with prior approval of Reserve Bank
- iii) a foreign company which has established a Branch Office or other place of business in accordance with FERA/FEMA regulations has general permission to mortgage the property with an authorized dealer in India.

Mode of payment for purchase

Q.17. How can an NRI/PIO make payment for purchase of residential/commercial property in India?

- A.17. Payment can be made by NRI/ PIO out of
- (a) funds remitted to India through normal banking channel or
- (b) funds held in NRE/ FCNR (B)/ NRO account maintained in India

No payment can be made either by traveller's cheque or by foreign currency notes.

No payment can be made outside India.

Q.18 What shall be the option if there is refund of application money/ payment made by the building agencies/seller because of non-allotment of flat/plot/cancellation of bookings/ contracts?

- A.18. The amount of refund, together with interest (net of income tax) can be credited to NRE account. This is subject to condition that the original payment was made by way of inward remittance or by debit to NRE / FCNR (B) account.

Q.19. Can NRI/PIO avail of loan from an authorised dealer for acquiring flat/ house in India for his own

residential use against the security of funds held in his NRE Fixed Deposit account/ FCNR (B) account?

- A.19. Yes, such loans are subject to the terms and conditions as laid down in Schedules 1 and 2 to Notification No. FEMA 5/2000-RB dated May 3, 2000 as amended from time to time. However, banks cannot grant fresh loans or renew existing loans in excess of Rupees 20 lakh against NRE and FCNR(B) deposits either to the depositors or to third parties [cf. A.P. (DIR Series) Circular No. 29 dated January 31, 2007].

Such Loans can be Repaid

- (a) by way of inward remittance through normal banking channel or
- (b) by debit to his NRE / FCNR (B) / NRO account or
- (c) out of rental income from such property.
- (d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

Repatriation

- (a) In case the amount has been received from inward remittance or debit to NRE /

FCNR (B)/NRO account for acquiring the property or for repayment of the loan, the principal amount can be **repatriated outside India.**

For this purpose, **repatriation outside India** means the 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

- (b) in case the property is acquired out of Rupee resources and/or the loan is repaid by close relatives in India (as defined in Section 6 of the Companies Act, 1956), the amount can be credited to the NRO account of the NRI/PIO. The amount of capital gains, if any, arising out of sale of the property can also be credited to the NRO account.

NRI/PIO are also allowed by the Authorised Dealers to repatriate an amount up to USD 1 million per financial year out of the balance in the NRO account for all bonafide purposes to the satisfaction of the



authorised dealers, subject to tax compliance.

Q.20. Can NRI/PIO, avail of housing loan in rupees from an authorised dealer or housing finance institution in India approved by the National Housing Bank for purchase of residential accommodation or for the purpose of repairs / renovation/ improvement of residential accommodation? How can such loan be repaid?

A.20. Yes, NRI/PIO can avail of housing loan in rupees from an Authorised Dealer or housing finance institution subject to certain terms and conditions. (Please refer to Regulation 8 of Notification No. FEMA 4/2000-RB dated 3.5.2000 and AP. (DIR) Series Circular No. 95 dated April 26, 2003).

Such a loan can be repaid

- (a) by way of inward remittance through normal banking channel or
- (b) by debit to his NRE / FCNR (B) / NRO account or
- (c) out of rental income from such property.
- (d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India

by crediting the borrower's loan account.

Q.21. Can NRI/PIO avail of housing loan in rupees from his employer in India?

A21. Yes, subject to certain terms and conditions (Please refer to Regulation 8A of Notification

No FEMA 4/2000-RB dated May 3, 2000 and AP. (DIR Series) Circular No.27 dated October 10, 2003).

REPATRIATION OF SALE PROCEEDS OF RESIDENTIAL/COMMERCIAL PROPERTY PURCHASED BY NRI/PIO

Q.22. Can NRI/PIO repatriate the sale proceeds of immovable property? If so, what are the terms?

A.22. NRI/ PIO may repatriate the sale proceeds of immovable property in India

- (a) If the property was acquired out of foreign exchange sources i.e. remitted through normal banking channels *I* by debit to 'NRE / FCNR (B) account

The amount to be repatriated *should not exceed* the amount paid for the property:

- 1. in foreign exchange received through normal banking channel or

2. by debit to NRE account (foreign currency equivalent, as on the date of payment) or debit to FCNR (B) account.

Repatriation of sale proceeds of residential property purchased by NRI/ PIO out of foreign exchange is restricted to not more than two such properties.

Capital gains, if any, may be credited to the NRO account from where the NRI/PIO may repatriate an amount up to USD one million, per financial year, as discussed below.

- (b) If the property was acquired out of Rupee sources, NRI or PIO may remit an amount up to USD one million, per financial year, out of the balances held in the NRO account (inclusive of sale proceeds of assets acquired by way of inheritance or settlement), for all the bonafide purposes to the satisfaction of the Authorized Dealer bank and subject to tax compliance.

Q.23. Can an NRI/PIO repatriate the proceeds in case the sale proceed was deposited in NRO account?

A23. From the NRO account, NRI/PIO may repatriate up to USD one million per financial year (April-March), which would also include the sale proceeds of immovable property.

Q.24. If a Rupee loan was taken by NRI/ PIO from Authorised Dealer or housing finance institution for purchase of residential property can an NRI/ PIO repatriate the sale proceeds of such property?

A.24. Yes, provided the loan has been subsequently repaid by remitting funds from abroad or by debit to NRE/FCNR (B) accounts (Please see AP. (DIR) Series Circular No. 101 dated 5.5.2003)

Q.25. If the property was purchased from foreign inward remittance or from NRE / FCNR (B) account, can the sale proceeds of property be repatriated immediately?

A.25. Yes.

Q.26. Is there any restriction on number of residential properties in respect of which sale proceeds can be repatriated by NRI/ PIO?

A.26. Yes, sale proceeds of not more than two residential properties can be repatriated.

Q.27. If the immovable property was acquired by way of gift by the NRI/ PIO, can he repatriate abroad the funds from sale?

A.27. The sale proceeds of immovable property acquired by way of gift should be credited to NRO account only. From the balance in the NRO account, NRI/PIO may remit up to



USD one million, per financial year, subject to the satisfaction of Authorised Dealer and payment of applicable taxes.

Q.28 If the immovable property was received as inheritance by the NRI/PIO can he repatriate the sale proceeds?

A.28. Yes, general permission is available to the NRIs/PIO to repatriate the sale proceeds of the immovable property inherited from a person resident in India. NRIs/PIO may repatriate an amount not exceeding USD one million, per financial year, on production of documentary evidence in support of acquisition / inheritance of assets, an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No. 10/2002 dated October 9, 2002. [cf. A P. (DIR Series) Circular No.56 dated November 26, 2002].

In case of a foreign national, sale proceeds can also be repatriated even if the property is inherited from a person resident outside India. But this is allowed only with prior approval of Reserve Bank. The foreign national has to approach Reserve Bank with documentary evidence in support of inheritance of the immovable property and the

undertaking and the CA Certificate as mentioned above.

The general permission for repatriation of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan and Iran and he has to seek specific approval of Reserve Bank.

As FEMA specifically permits transactions only in Indian Rupees with citizens of Nepal and Bhutan, the question of repatriation of the sale proceeds in foreign exchange to Nepal and Bhutan would not arise.

PROVISIONS FOR FOREIGN EMBASSIES / DIPLOMATS / CONSULATE GENERALS

Q.29. Can Foreign Embassies/ Diplomats/Consulate General purchase sell immovable property in India?

A.29. Yes, Foreign Embassies / Diplomats / Consulate Generals can purchase and sell any immovable property other than agricultural land / plantation property / farm house in India *with prior clearance from the Government of India*, Ministry of External Affairs. The payment should be made by foreign inward remittance through normal banking channel.

OTHER ISSUES

Q.30. Can NRI/PIO rent out the residential commercial property purchased out of foreign exchange/rupee funds?

A.30. Yes, NRI/PIO can rent out the property without the approval of the Reserve Bank. Rent received can be credited to NRO, NRE account or remitted abroad. Powers have been delegated to the Authorised Dealers to allow repatriation of current income like rent, dividend, pension, interest, etc. of NRIs/PIO who do not maintain an NRO account in India based on an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for. [cf. AP. (DIR Series) Circular No. 45 dated May 14, 2002].

Q.31. Can a person who had bought immovable property when he was a resident, continue to hold such property even after becoming an NRI/PIO?

A.31. Yes, he can continue to hold the residential/commercial property / agricultural land/ plantation property / farm house in India without the approval of the Reserve Bank.

Q.32. In which accounts can the sale proceeds of such immovable property be credited?

A.32. The sale proceeds may be credited to NRO account.

Q.33. Can the sale proceeds of the immovable property referred to in Q.No.31 be remitted abroad?

A.33. Yes, provided the amount to be remitted does not exceed USD one million per financial year, for all bonafide purposes to the satisfaction of Authorised Dealers and subject to tax compliance.

Q.34. Can foreign nationals of non-Indian origin resident in India or outside India who had earlier acquired immovable property under FERA with specific approval of Reserve Bank continue to hold the same? Can they transfer such property?

A.34. Yes, they may continue to hold the immovable property. However, they can transfer the property only with the prior approval of Reserve Bank.

Q.35. Is a resident in India governed by the provisions of Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?

A.35. A person resident in India who is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan is governed by the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property



in India) Regulations, 2000 i.e. he would require prior approval of Reserve Bank for acquisition and transfer of immovable property in India even though he is resident in India. Such requests are considered by Reserve Bank in consultation with the Government in India.

DEFINITIONS

Q.36. Where are the terms a ‘person resident in India’ and a ‘person resident outside India’ defined?

A.36. Section 2 (v) and Section 2 (w) of the FEMA, 1999 defines ‘person resident in India’ and a ‘person resident outside India’ respectively.

Q.37. What is meant by a person resident in India?

A.37. Under FEMA, a person resident in India is defined as a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year (April-March) and who has come to or stays in India either for taking up employment, carrying on business or vocation in India or for any other purpose, that would indicate his intention to stay in India for an uncertain period. In other words, to be treated as ‘a person resident in India’ under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of the preceding financial year) but has also

to comply with the condition of the purpose / intention of stay.

Q.38. What is meant by a person resident outside India?

A.38. The Act defines a ‘a person resident outside India’ as a person who is not a person resident in India’ (As defined in Q.No. 37 above)

Q.39. Who can determine whether a person is resident in India or not?

A.39. Reserve Bank 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.

Q.40. If a foreign national is a person resident in India as per the provisions of Section 2 (v) (i)B of the FEMA, 1999, does he require approval of Reserve Bank to purchase any immovable property in India?

A.40 A foreign national resident in India does not require approval from Reserve Bank from FEMA angle, but approvals if any required in terms of regulations prescribed by other authorities such as the concerned State Government etc. will have to be obtained by him / her. However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan requires specific prior approval of Reserve Bank.

ESTABLISHMENT OF BRANCH/ LIAISON/PROJECT OFFICES IN INDIA

APPLICATION TO RBI

Companies incorporated outside India, desirous of opening a Liaison/Branch office in India have to make an application in form FNC-1 to the Reserve Bank of India, along with the following documents:

English version of the certificate of incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy/ Notary Public in the country of Registration. Latest Audited Balance Sheet of the applicant entity.

LIAISON OFFICES

Companies which are incorporated outside India can establish liaison office in India with the specific approval of the Reserve Bank. A Liaison Office (also known as Representative office) can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office

outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time by the Regional Office of RBI under whose jurisdiction the office is set up. A Liaison Office can undertake the following activities in India:

- 1) Representing in India the parent company/group companies.
- 2) Promoting export import from/to India.
- 3) Promoting technical/financial collaborations Between Parent/group companies and companies in India.
- 4) Acting as a communication channel between the Parent company and Indian companies.

Liaison/representative offices have to file an Annual Activity Certificate from a Chartered Accountant to the Regional Office of RBI. The Certificate is obtained to ensure that the Liaison Office has undertaken only those activities that have been approved by RBI.



LIAISON OFFICE OF FOREIGN INSURANCE COMPANIES

Foreign Insurance companies can establish Liaison Offices in India after obtaining approval from the Insurance Regulatory and Development Authority. Such Insurance companies have been given general permission under FEMA for establishing Liaison Offices in India.

BRANCH OFFICES

Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India with specific approval of the Reserve Bank. Such Branch Offices are permitted to represent the parent/group companies and undertaking the following activities in India:

- (1) Export/import of goods*
- (2) Rendering professional or consultancy Services.
- (3) Carrying out research work, in which the Parent company is engaged.
- (4) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- (5) Representing the parent company in India and acting as buying/selling agent in India.
- (6) Rendering services in Information

Technology and development of software in India.

- (7) Rendering technical support to the products Supplied by parent/group companies.
- (8) Foreign airline / shipping Company.

*Retail trading activities of any nature is not allowed for a Branch Office in India.

A branch office is not allowed to carry out manufacturing, processing activities in India, directly or indirectly. Branch Offices have to submit Annual Activity Certificate from a chartered Accountant to RBI. The branch offices are permitted to acquire property for their own use and to carry out the permitted/incidental activities but not for leasing or renting out the property. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China are not allowed acquire immovable property in India even for a Branch Office. These entities are allowed to take such property on lease basis only. Entities from Nepal are allowed to establish only Liaison Offices in India. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.

BRANCH OFFICE IN SEZS

RBI has given general permission to foreign companies for establishing branch/unit in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is subject to the following conditions:

- 1) such units are functioning in those sectors where 100 Per cent FDI is permitted,
 - 2) such units comply with part XI of the companies Act (Section 592 to 602),
 - 3) Such units function on a stand-alone basis,
 - 4) In the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an Authorized Dealer in Foreign Exchange with the documents mentioned in the paragraph below—“Closure of Office”—except the copy of RBI approval.
- (c) the project has been cleared by an appropriate authority; or
 - (d) a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

However, if the above criteria are not met, the foreign entity has to approach RBI to obtain approval.

Opening of Foreign Currency Account

ADs can open **non-interest** bearing Foreign Currency Account for Project Office in India subject to the following:

BRANCHES OF BANKS

Foreign Banks do not require approval from RBI under FEMA, if such Bank has obtained necessary approval under the provisions of the Banking Regulation Act, 1949

PROJECT OFFICES

Reserve Bank has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India, and

- (a) the project is funded directly by inward remittance from abroad; or
- (b) the project is funded by bilateral or multilateral International Financing Agency; or
- (c) Each Project has only one Foreign Currency Account,
- (d) The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, and remittances from parent/group company Abroad or bilateral/multilateral international financing agency.



- e) The responsibility of ensuring that only the approved debits and credits are allowed in the Foreign Currency Account shall rest solely with the concerned branch of the AD. Further, the account shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD banks.
- f) The Foreign Currency Account has to be closed at the completion of the Project.

Intermittent Remittances by Project Offices in India

AD branch can permit intermittent remittances by Project Offices pending winding up/completion of the project provided they are satisfied with the bonafides of the transaction and subject to the following:

- a) The Project Office submits an Auditors/Chartered Accountants Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income-Tax etc.
- b) An undertaking from the Project Offices that the remittance will not, in any way, affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad.

Inter Project transfer of funds requires prior permission of the concerned

Regional Office of the Reserve Bank under whose jurisdiction the Project Office is situated.

General Conditions

Partnership/Proprietary concerns set up abroad are not allowed to establish Branch/Liaison Office in RBI.

Branch/Liaison/Project Offices are allowed to open non-interest bearing current accounts in RBI. Such Offices are required to approach their Authorised Dealers for opening the accounts. Transfer of assets of Liaison/Branch Office to subsidiaries or other Liaison/Branch Offices is allowed with specific approval of the Central Office of RBI.

Closure of Officers

At the time of winding up of the Liaison Offices, the company has to approach the respective Regional Office with documents such as:

- Copy of the Reserve Bank's permission for establishing the Office in India
- Auditor's certificate-Indicating the manner in which remittable amount has been arrived and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets.

Confirming that all liabilities in India including arrears of gratuity and other benefits to employees etc. of the

branch/office have either fully met or adequately provided for;

Confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India;

- No-objection or Tax clearance certificate from Income tax authority for the remittance; and
- Confirmation from the applicant that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.

Once Regional Office's approval is obtained, Authorised Dealers can allow remittance of surplus.

At the time of closure of Branch Offices, the entities have to approach the Central Office for approval, with the same set of documents as mentioned above.

FREQUENTLY ASKED QUESTIONS (FAQs)

Q.1. How can foreign companies open Liaison/Project/Branch office in India?

A.1. Foreign company can set up Liaison/Branch Offices in India after obtaining approval from Reserve Bank of India. Reserve Bank of India has given general permission to foreign companies to establish

Project Offices in India subject to certain conditions.

Q.2. What is the procedure to be followed for obtaining Reserve Bank's approval for opening Liaison Office/ Representative Office?

A.2 A Liaison office can carry on only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office abroad. The role of such office is therefore, limited to collecting information about possible market opportunities and providing information about the Company and its products to the prospective Indian customers.

The companies desirous of opening a liaison office in India may make an application in form FNC-1 along with the documents mentioned therein to Foreign Investment Division, Foreign Exchange Department, Reserve Bank of India, Central office Mumbai. This form is available at www.rbi.org.in

Permission to set up such offices is initially granted for a period of 3



years and this may be extended from time to time by the Regional Office in whose jurisdiction the office is set up. Liaison/Representative offices have to file an Activity Certificate on an annual basis from a Chartered Accountant to the concerned Regional Office of the Reserve Bank of India, stating that the Liaison office has undertaken only those activities permitted by Reserve Bank of India.

Q.3. What is the procedure for setting up Project Office?

- A.3
- Foreign companies are granted projects in India by Indian entities. General Permission has been granted by Reserve Bank of India Vide Notification No. FEMA 95/2003-RB dated July 2, 2003 to foreign companies to open Project Office/s in India provided they have secured from an Indian company, a contract to execute a project in India, and
 - the project is funded directly by inward remittance from abroad; or
 - the project is funded by a bilateral or multilateral International Financing Agency; or

- the project has been cleared by an appropriate authority; or
- a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or bank in India for the project.
- However, if the above criteria are not met, or if the parent entity is established in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China, such applications have to be forwarded to Central Office of the Foreign Exchange Department of the Reserve Bank at Mumbai for approval.

Q.4. What is the procedure for setting up Branch office?

Reserve Bank permits companies engaged in manufacturing and trading activities abroad to set up Branch Office in India for the following purposes:

- To represent the parent company/other foreign companies in various matters in India e.g. acting as buying/selling agents in India.
- To conduct research work in the area in which the parent company is engaged.
- To undertake export and import activities and trading on wholesale basis

- To promote possible technical and financial collaborations between the Indian companies and overseas companies
- Rendering professional or consultancy services
- Rendering services in Information technology and development of software in India
- Rendering technical support to the products supplied by the parent/Group companies.
- A branch office is not allowed to carry out manufacturing, processing activities directly/ indirectly. A Branch office is also not allowed to undertake Retail Trading activities of any nature in India. Branch Offices have to submit Activity Certificate from chartered Accountant on an annual basis to the Central Office of FED. For annual remittance of profit Branch office may submit required documents to an authorised dealer.
- Permission for setting up branch offices is granted by the Reserve Bank of India. Reserve Bank of India considers the track record of the Applicant Company, existing trade relations with India, the activity of the company proposing to set up office in India as well as financial position of the company while scrutinising the application.



INVESTMENT IN PARTNERSHIP FIRM / PROPRIETARY CONCERN

INVESTMENT IN PARTNERSHIP FIRM/PROPRIETARY CONCERN

A non-resident Indian or a person of Indian origin resident outside India can invest by way of contribution to the capital of a firm of a proprietary concern in India on non-repatriation basis provided

- i) Amount is invested by inward remittance or out of NRE/ FCNR/ NRO account maintained with AD bank.
- ii) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from) or print media sector.
- iii) Amount invested shall not be eligible for repatriation outside India.

INVESTMENTS WITH REPATRIATION BENEFITS

NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerned/partnership firm with repatriation benefits. The application

will be decided in consultation with the Government of India.

INVESTMENT BY NON-RESIDENTS OTHER THAN NRIS/PIO

A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve bank for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

RESTRICTIONS

An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business i.e. dealing in land and immovable property with a view to earning profit or earning income therefrom or engaged in Print Media.

REMITTANCE FACILITY FOR NRIs/ PIOs/FOREIGN NATIONALS

REMITTANCE OF CURRENT INCOME

Remittance of current income like rent, dividend, pension, interest etc. of NRIs/PIO even those who do not maintain NRO account is freely allowed, on the basis of appropriate certification by a Chartered Accountant certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid / provided for.

NRIs/PIO have the option to credit the current income to their Non-Resident (External) Rupee account, provided the authorized dealer bank is satisfied that the credit represents current income of the non-resident account holder and income tax thereon has been deducted / provided for.

REMITTANCE OF ASSETS BY A FOREIGN NATIONAL OF NON-INDIAN ORIGIN

A foreign national of non-Indian origin who has retired from employment in India or who has inherited assets from a person resident in India or who is a widow of an Indian citizen who was resident in India, may remit an amount not exceeding USD one million, per financial year (April-March), on production of documentary evidence in

support of acquisition /inheritance of assets, an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular NO.10/2002 dated October 9, 2002.

These remittance facilities are not available to citizen of Nepal and Bhutan.

REMITTANCE OF ASSETS BY NRO/PIO

A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) may remit an amount up to USD one million, per financial year, out of the balances held in his Non-Resident (Ordinary) Rupee (NRO) account / sale proceeds of assets (inclusive of assets acquired by way of inheritance of settlement), for all bonafide purposes, to the satisfaction of the authorized dealer bank, on production of an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular NO.10/2002 dated October 9, 2002.

NRI/PIO may remit sale proceed of immovable property purchased by him out of Rupee funds or as a person resident in India as indicated above without any lock-in-period.



In respect of remittance of sale proceed of assets acquired by way of inheritance of legacy or settlement for which there is no lock-in-period, NRI/PIO may submit documentary evidence in support of inheritance or legacy of assets, an undertaking by the remitter and certificate by Chartered Accountant in the prescribed formats. Settlement is also a mode of inheritance from the parent, the only difference being that the property under the settlement passes to the beneficiary on the death of owner/parent without any legal procedures/hassles and helps in avoiding delay and inconvenience in applying probate, etc.

The remittance facility in respect of sale proceeds of immovable property is not available to citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

The facility of remittance of sale proceeds of other financial assets is not available to citizen of Pakistan, Bangladesh, Nepal and Bhutan.

REPATRIATION OF SALE PROCEEDS OF RESIDENTIAL PROPERTY PURCHASED BY NRIS/PIO OUT OF FOREIGN EXCHANGE

Repatriation of sale proceeds of residential property purchased by NRI/PIO is permitted to the extent of the amount paid for acquisition of immovable property in foreign exchange received through banking

channels. The facility is restricted to not more than two such properties.

Authorized dealer banks may permit repatriation of amounts representing the refund of application / earnest money/ purchase consideration made by the house building / seller on account of non-allotment of flat/ plot/ cancellation of booking/ deals for purchase of residential/ commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE/FCNR (B) account of the holder, or remittance from outside India through normal banking channels and the authorized dealer bank is satisfied about the genuineness of the transaction. Such funds may also be credited to the NRE/FCNR (B) account of the NRI/PIO, if they so desire.

Authorized dealer banks may allow repatriation of sale proceeds of residential accommodation purchased by NRIs/PIO out of funds raised by way of loans from the authorized dealer banks/housing finance institutions to the extent of such loans repaid by them out of foreign inward remittances received through normal banking channel or by debit to their NRE/FCNR (B) accounts.

FACILITIES FOR STUDENTS

Students going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA.

As Non-Residents, they will be eligible to receive remittances from India

- (i) up to USD100,000 from close relatives in India on self declaration towards maintenance, which could include remittances towards their studies also and
- (ii) up to USD 1 million per financial year, out of sale proceeds of assets/balances in their account maintained with an AD bank in India.

All other facilities available to NRIs under FEMA are equally applicable to the students.

Educational and other loans availed of by them as residents in India will continue to be available as per FEMA regulations.

INCOME-TAX CLEARANCE

The remittances will be allowed to be made by the authorized dealer banks on production of an undertaking by the remitter and a Certificate from a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No.10/2002 dated October 9, 2002. [cf. A.P.(DIR Series) Circular] No.56 dated November 26, 2002.

INTERNATIONAL CREDIT CARDS

Authorized dealer banks have been permitted to issue International Credit Cards to NRIs/PIO, without prior approval of Reserve Bank. Such transactions may be settled by inward remittance or out of balances held in the cardholder's FCNR (B) /NRE /NRO accounts.



BANK ACCOUNTS

NON RESIDENT ORDINARY RUPEE (NRO) ACCOUNT SCHEME

1. Definitions

Non-Resident Indian (NRI): NRI for this purpose is defined in Regulation 2 of FEMA Notification No. 5 dated May 3, 2000. In terms of this Notification, an NRI is a person resident outside India who is a citizen of India or is a person of Indian origin.

Person of Indian Origin (PIO): PIO for this purpose is defined in Regulation 2 of FEMA ibid as 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 is a spouse of an Indian citizen or a person referred to in sub clause (a) or (b).

2. Eligibility

- a) Any person resident outside India (as per Regulation 2 of FEMA), may open NRO account with an authorised dealer or an authorised bank for the purpose of putting through bonafide transactions denominated in Rupees, not involving any violation of the provision of FEMA rules, Regulation

made thereunder.

- b) Opening of accounts by individuals/entities of Bangladesh /Pakistan nationality /ownership requires prior approval of Reserve Bank.

3. Types of Accounts

NRO accounts may be opened/maintained in the form of current, saving, recurring or fixed deposit accounts. Rate of interest applicable to these accounts and guidelines for opening, operating and maintenance of such accounts shall be in accordance with directives/instructions issued by Reserve Bank from time to time.

4. Joint Accounts with Residents /Non Residents

The accounts may be held jointly with residents and /or with non-residents.

5. Permissible Credits/ Debits

A. Credits

1. Proceeds of remittances from outside India through normal banking channels received in foreign currency, which is freely convertible.
2. Any foreign currency, which is, freely convertible tendered by the account holder during his temporary visit to India. Foreign currency exceeding USD 5000/-or equivalent in form of

cash should be supported by Currency Declaration Form. Rupee funds should be supported by Encashment Certificate, if they represent funds brought from outside India.

3. Transfers from rupee accounts of non-resident banks.
4. Legitimate dues in India of the account holder. This includes current income like rent, dividend, pension, interest, etc. as also sale proceeds of assets including immovable property acquired out of rupee/foreign currency funds or by way of legacy/inheritance.

B. Debit

1. All local payments in rupees including payments for investments in India subject to compliance with the relevant regulations made by the Reserve Bank.
2. Remittance outside India of current income like rent, dividend, pension, interest, etc. in India of the account holder.
3. Remittance upto USD One million permitted financial year (April – March), for all bonafide purposes, to the satisfaction of the authorised dealer bank.

6. Remittance of assets

6.1. Remittance of assets by a foreign national of non Indian origin

A citizen of foreign state, not being a citizen of Nepal or Bhutan or a Person of Indian

Origin, who has retired from an employment in India, or has inherited the assets from a person referred to in sub section (5) of section 6 of the FEMA; or is a widow resident outside India and has inherited assets of her deceased husband who was an Indian citizen resident in India, may remit an amount, not exceeding USD 1,000,000 (US Dollar One Million only) per financial year on production of, documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter and an undertaking by the remitter and certificate by Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No 10/2002 dated October 9, 2002.

6.2 Remittance of Assets by an NRI/PIO

- a) NRI/PIO may remit an amount, not exceeding USD 1,000,000 permitted financial year, out of the balances held in NRO accounts/sale proceeds of assets /the assets in India acquired by him by way of inheritance /legacy, on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No 10/2002 dated October 9,2002.
- b) NRI/PIO may within the overall limit of USD 1 million as stated above, remit sale proceeds of assets acquired under



a deed of settlement made by either of his parents or a close relative (as defined in section 6 of the Companies Act, 1956) and the settlement taking effect on the death of the settler, on production of the original deed of settlement and an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No. 10/2002 dated October 9, 2002.

6.3 Assets Acquired in India Out of Rupee Funds

NRI/PIO may remit sale proceeds of immovable property purchased by him association a resident or out of Rupee funds as NRI/PIO, without any lock –in-period, subject to the above limit of USD 1 million permitted financial year.

6.4 Restrictions

- a) 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.
- b) The facility of remittance of sale proceeds of other financial assets is not available to citizens of Pakistan, Bangladesh, Nepal and Bhutan.

7. Foreign Nationals of Non-Indian Origin on a Visit to India

NRO account (current /saving) can be opened by a Foreign national of non-Indian origin visiting India, with funds remitted

from, outside India through banking channel or by sale of foreign exchange brought by him to India. The balance in the NRO account may be converted by the authorised dealer/bank into foreign currency for payment to the account holder at the time of his departure from India provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

8. Grant of Loans / Overdrafts by Authorised Dealer / Bank to Account Holders and Third Parties

- a) Loans to non resident account holders and to third parties may be granted in Rupees by authorised dealer/bank against the security of fixed deposits subject to the following terms and conditions:
 - (i) The loans shall be utilised only for meeting borrower's personal requirements and /or business purpose and not for carrying on agricultural / plantation activities or real estate business or for re lending.
 - (ii) Regulations relating to margin and rate of interest as stipulated by Reserve Bank from time to time shall be complied with.
 - (iii) The usual norms and considerations as applicable in the case of advances to trade/ industry shall be applicable for

such loans /facilities granted to third parties

- b) Authorised dealer /bank may permit overdraft in the account of the account holder subject to his commercial judgment and compliance with the interest rate etc. directives.

9. Change of Residential Status of Account Holder

(a) From Resident to Non-resident

When a person resident in India leaves India for a country (other than Nepal or Bhutan) for taking up employment or for carrying on business or vocation outside India or for any other purpose indicating his intention to stay outside India for an uncertain period, his existing account should be designated as a Non Resident (Ordinary) Account.

When a person resident in India leaves for Nepal or Bhutan for taking up employment or for carrying on business or vocation or for any other purpose indicating his intention to stay in Nepal or Bhutan for an uncertain period, his existing account will continue as a resident account. Such account should not be designated as a Non-Resident (Ordinary) Account (NRO).

(b) From Non Resident to Resident

NRO accounts may be re-designated as resident rupee accounts on the return of the account holder to India for taking up employment, or for carrying on business or vocation or for any other purpose indicating his intention to stay in India for an uncertain

period. Where the account holder is only on a temporary visit to India, the account should continue to be treated as non-resident during such visit.

10. Treatment of Loans/Overdraft in the Event of Change in the Resident Status of the Borrower

In case of person who had availed of loan or overdraft facilities while resident in India and who subsequently become a person resident outside India, the authorised dealer / bank may at their discretion and commercial judgment allow continuance of the loan / overdraft facilities. In such cases, payment of interest and repayment of loan may be made by inward remittance or out of legitimate resources in India of the person concerned.

11. Payment of funds to Non-Resident / Resident Nominee

The amount due /payable to non-resident nominee from the NRO account of a deceased account holder shall be credited to NRO account of the nominee with an authorised dealer/bank in India. The amount payable to resident nominee from the NRO account of a deceased account holder shall be credited to resident account of the nominee with a bank in India.

12. Operation of NRO Account by Power of Attorney Holder.

Powers have been delegated to the authorised dealers /banks to allow operations



on an NRO account by Power of Attorney granted in favour of a resident by the non-resident individual account holder provided such operations are restricted to (i) all local payments in rupees including payments for eligible investments subject to compliance with relevant regulations made by the Reserve Bank; and (ii) remittance outside India of current income in India of the non resident individual account holder, net of applicable taxes.

The resident Power of Attorney holder is not permitted to repatriate outside India funds held in the account other than to the non resident individual account holder nor to make payment by way of gift to a resident on behalf of the non resident account holder or transfer funds from the account to another NRO account.

13. Facilities to a Person Going Abroad for Studies

Persons going abroad for studies are treated as Non Resident Indians (NRIs) and are eligible for all the facilities available to NRIs. Educational and other loans availed of by them as permitted FEMA regulations.

14. International Credit Cards

Authorised dealer banks have been permitted to issue International Credit Cards to NRI / PIO, without prior approval of Reserve Bank. Such transactions may be settled by inward remittance or out of balances held in the cardholder's FCNR/NRE/NRO Accounts.

15. Income – Tax

The remittances (net of applicable taxes) will be allowed to be made by the authorised dealer banks on production of an undertaking by the remitter and a Certificate from a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No. 10/2002 dated October 9, 2002 [cf' A.P.(DIR Series) Circular No. 56 dated November 26, 2002.]

REPATRIABLE ACCOUNTS

NON-RESIDENT (EXTERNAL) RUPEE ACCOUNT (SAVINGS, CURRENT AND TIME DEPOSIT) (NRE ACCOUNTS)

Opening of an Account

Persons of Indian nationality or origin resident abroad may open, with authorised banks in India, Non-resident (External) Accounts (NRE Accounts), designated in rupees. These accounts can be maintained in the form of savings, current or term deposit accounts. Opening of NRE Accounts jointly in the names of two or more non-residents is permitted, provided all the account holders are persons of Indian nationality or origin. For opening these accounts, the funds are required to be remitted to India through any bank from the country of residence of the prospective account holder.

The account holder has to furnish an

undertaking on the account opening form that he would promptly send an intimation to his bank if and when he returns to India for permanent residence.

Prior to 16th September, 2003 OCBs were allowed to open and maintain NRE bank account in India. However, it may be noted that vide Circular No. 14 dated. 16-9-2003 read with Notification No.101/2003-RB dated. 3/10/2003, OCBs are not permitted to open or maintain NRE accounts in India.

Advantages

Non-residents can enjoy the following advantages by maintaining NRE Accounts:

1. Term deposits for one year and above made by non-residents carry interest at rates higher than those available to residents in India.
2. The interest on deposits and any other income accruing on the balances in the accounts are free of Indian Income-tax.
3. The balances in the accounts are free of Wealth-tax as well.
4. Gifts out of NRE account to close relatives are exempt. However, gifts to persons other than relatives over and above Rs. 50,000 in a year would be taxable in the hands of the recipient. Exemptions are provided for gifts on occasion of marriage, or in contemplation of death or under a will or by way of inheritance.
5. The entire credit balance (inclusive of interest earned thereon) can be repatriated outside India at any time without reference to Reserve Bank.
6. Local disbursement from these accounts can be made freely.
7. Purchase of Units of Unit Trust of India (UTI), Mutual Funds, Central and State Government securities and National Savings Certificates can be made freely from the balances in these accounts.
8. Sale proceeds/maturity proceeds/repurchase price of Units of UTI, securities or certificates originally purchased out of the funds in the accounts can be freely credited to these accounts by banks, without reference to Reserve Bank
9. Account holders are supplied a special series of cheque leaves for operation on these accounts.
10. Account holders can avail of loans/overdrafts from banks against security of fixed deposits from out of their NRE accounts.

Types of Account

All types of accounts, viz. current, savings and term deposit, etc., can be opened under Non-Resident (External) Accounts Scheme. A Non-resident can open a joint account with other non-residents provided all the account holders are persons of Indian nationality or



origin. Opening of a joint account by a non-resident with a person resident in India permitted under NR (E) Scheme.

Non-resident account holders can grant power of attorney (POA) or such other authority to residents in India for operating their NR(E) accounts in India. Such authority is however, restricted to withdrawals for local payments and remittance to the account holder himself. In cases where the account holder or a bank designated by him is eligible to make investments in India, the Power of Attorney holder is permitted by the AD/bank to operate the account to facilitate such investment. RBI has permitted banks/ authorised dealers to allow remittance abroad to the non-resident account holder by his constituted attorney under a specific power in this regard. The resident power of attorney holder can not repatriate Funds held in accounts outside India under any circumstances (other than to the account holder himself) or make payment of gifts on behalf of the account holder, or transfer funds from the said account to another NRE account.

Such account can also be opened by an eligible non resident Indian during his temporary visit to India, against tender of foreign currency traveller cheques/currency notes, provided the bank is satisfied that the prospective account holder has not ceased to be a non-resident. The amount so tendered would be endorsed on the Currency Declaration Form (CDF) where applicable , before crediting the rupee equivalent thereto.

The initial deposit in NR(E) account can be made in an of the following ways:-

- By proceeds of foreign exchange remittances from abroad through banking channels in an approved manner.
- By proceeds of foreign currency notes and traveller cheques brought into India by non-resident while on a temporary visit to India.
- By transfer from an existing Non-Resident (External) FCNR account of the same person.

Operation of Accounts

There are certain restrictions on operation of NR(E) accounts and Form A2/A4 are to be completed for a few transactions. These forms may be completed either by the resident party to the transaction or by the bank after obtaining necessary information from the resident party account holder.

Credits in the Account, i.e. Amounts that can be Deposited into the Account

Transaction where Form A4 is not to be Completed.

- 1 Proceeds of remittances to India in any permitted currency.
- 2 Transfer from FCNR accounts of the same account holder.
- 3 Interest accruing on balances in Non-resident (External) or FCNR accounts of the account holder.

Transactions where Form A4 is to be Completed.

1. Proceeds of foreign exchange remittances, drafts, personal cheques, etc., in the name of the account holder.
2. Proceeds of foreign currency travellers cheques, drafts and personal cheques drawn by account holder on a foreign currency account maintained abroad by him (including instruments expressed in Indian rupees for which reimbursement will be received in foreign currency or in rupees from the account of a non-resident bank) deposited by account holder during his temporary visit to India; provided authorised dealer is satisfied that the account holder is still ordinarily resident abroad, the travellers' cheques/drafts are standing in the name of account holder and have not been endorsed in his favour and in the case of travellers' cheques, they are discharged by the account holder in the presence of the bank officials.
3. Proceeds of foreign currency/bank notes tendered by account holder during his temporary visits to India, provided these are tendered to authorised dealer in person by account holder himself and the authorised dealer is satisfied that account holder is still ordinarily resident outside India.

Notes

- Purchases of travellers cheques/

currency notes/bank notes made in terms of 2 and 3 above should be endorsed on the reverse of Currency Declaration Form (CDF) wherever applicable. A photocopy of CDF should be kept on record by authorised dealer.

- Foreign currency notes/bank notes and travellers' cheques tendered by Power of Attorney holder of any person other than account holder should not be credited to NRE Account.
- Form A4 is to be completed only for transactions of Rs. 1,00,000 and above.

Other Credits

- Refund of share/debenture subscriptions to new issues of Indian companies or portion thereof, if the amount of subscription was paid from the same account or from other NRE/FCNR account of the account holder or by remittances from outside India through normal banking channels.
- Refund of application/earnest money/purchase consideration made by the house building agencies/ seller on account of non-allotment of flat/plot/cancellation of booking/deals for purchase of residential/commercial property together with interest, if any (net of Income-tax payable thereon), provided the original payment was made out of NRE/FCNR account or remittance from outside India through normal banking channels.



- Current Income like rent/dividend, pension, interest, etc., of NRI can be credited to NRE Account by authorised dealer, if the credit represents current income of the NRI account holder and income tax thereon has been deducted/paid/provided for, as the case may be. If NRI/PIOs do not have a taxable income in India, then a simple declaration, in duplicate, from the NRIs/PIOs to the effect that he/She is not a tax-payer in India, is to be submitted to the authorised dealer.

Debits in the Account, i.e. Amounts that can be Withdrawn from the Account.

Transactions where Form A4 is not to be Completed are as Follows.

- All local payments except for purposes of investment.
- Transfer to any other NR(E) or FCNR account of the same person.
- Transfer to NR(E) accounts of persons other than the account holder for *bona fide* personal purposes.

Transactions where Form A4 is Required to be Completed are as Follows:

- Payments for permissible investments by the account holder.
- Payments towards purchase price of immovable property by account holder.
- Any other transaction if covered under general or special permission granted by Reserve Bank.

Note

Form A4 is required to be filled in and retained for scrutiny by auditors of banks.

Transaction Required to be Reported on Form A2

- Remittances abroad.
- Sale of foreign currency, traveller cheques etc. to account holder himself or his representative provided that they hold a ticket showing journey date which shall not be later than thirty days from the date of sale.

All other transactions of credit/debit to these accounts not covered under the above provisions require prior approval of Reserve Bank. Form A4 is to be completed in duplicate in such cases and forwarded to Reserve Bank through the bank with whom the account is maintained. The transaction can be put through the account only after a copy thereto duly approved by Reserve Bank is received by bank.

Interest Rates on Deposits

Interest Rate on NRE Term Deposit Accounts

The Interest rates on NRE Term Deposit for one to three years, w.e.f. April 18, 2004 should not exceed the LIBOR/ SWAP rates for US Dollars of corresponding maturity. The interest rates as determined above for three-year deposits would also be applicable in case the maturity period exceeds three years. The changes in interest rates will also

apply to NRE deposits renewed after their present maturity period.

Interest Rate on NRE Savings Deposit Accounts

The interest rates on NRE savings deposits should not exceed the LIBOR/SWAP rate for six months maturity on US dollar deposits and may be fixed quarterly on the basis of the LIBOR/SWAP rate of US dollar on the last working day of the preceding quarter. For the quarter April-June 2005, the US dollar LIBOR/SWAP rate as on the last working day of March 2005 would be applicable.

Loans against Security of Funds Held in the Account

To Account Holder

Authorised dealers and banks maintaining such accounts are permitted to grant loans in India to the account holder for- :-

- i. Personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/plantation activities or for investment in real estate business. The authorised dealer/bank should ensure that the advances are fully secured by the fixed deposited and regulations relating to normal margin, interest rate, etc. are complied with. Repayment shall be made whether by adjustment of the deposit or by fresh inward remittances from outside India through normal banking channels. The loan can

also be repaid out of local rupee resources in the NRO account of the borrower. The interest on such loans shall be in accordance with directives issued by Reserve Bank from time to time;

- ii. The purpose of making direct investment in India on non-repatriation basis by way of contributions to the capital of Indian firms/ companies subject to compliance with the provisions of the Foreign Exchange Management (Transfer of Indian security by a person resident outside India) Regulations, 2000 and Foreign Exchange Management (Investment in Proprietary or a Partnership Firm) Regulation, 2000.
- iii. The purpose of acquisition of flat/ house in India for own residential use.

To Third Parties

Authorised dealers banks may grant any type of fund based and or non-fund based facilities to resident individuals/firms/ companies in India against the collateral of fixed deposits held in NRE account subject to the following conditions:-

- i. There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities.
- ii. Regulations relating to margin, interest rate, purpose of loan, etc. as stipulated



by Reserve Bank from time to time should be complied with.

- iii. The loan should be utilised for personal purpose or for carrying on business activities other than agricultural/plantation activities or real estate business. The loan should not be utilised for relending.
- iv. The usual norms and considerations as applicable in the case of advances to trade/ industry shall be applicable to such credit facilities as well.

Loans Outside India

Authorised dealers may allow their branches/ correspondents outside India to grant any type of fund based and/or non-fund based facilities to or in favour of non-resident depositor or to third parties at the request of depositor for bona fide purpose against the security of funds held in the NRE accounts in India and also agree to remittance of the funds from India, if necessary, for liquidation of the outstanding.

Change of Status from Non-Resident to Resident

Immediately upon return of account holder to India and on his becoming resident in India, NR(E) account will be redesignated as resident rupee account or converted to RFC account at the option of the account holder. However, if the account holder is only on a short visit to India, the account will continue to be treated as NR(E) account even during his stay in India. In respect of funds

held in fixed deposits in NR(E) Accounts, interest will be payable at the rate originally fixed, provided the deposit is held for the full term, even after conversion into resident account.

International Credit Cards

NRI/PIOs can be issued international credit cards provided the charges for the use of the card are by way of inward remittances from balances in NRO/NRE/FCNR (B) Accounts.

Disadvantages of NR(E) Accounts

- NR(E) accounts are opened in Indian rupees and all foreign exchange remittances received for credit of these accounts are first converted into Indian rupees at buying rates by banks. Any withdrawal in foreign currency will be permitted by bank by converting Indian rupees in the account into foreign currency at selling rate, at the cost/loss of account holder.
- Exchange rates are subject to fluctuation on day-to-day basis and Indian rupee had depreciated against all major foreign currencies in recent past. Balances held in Indian rupees in NR(E) accounts are thus exposed to exchange fluctuation risk.

Foreign Currency (Non-Resident) Account Bank Scheme (FCNRB)

Introduction

Deposits under FCNR scheme were accepted by banks for maturities from 6 months to 3

years. Acceptance of deposits for shorter maturities was discontinued, in a phased manner and with effect from 15th February, 1994, deposits under FCNR scheme can be accepted only for a maturity period of 3 years. However, to enable the NRI depositors to continue with foreign currency deposits of shorter maturities, a new scheme known as Foreign Currency (Non-resident) Accounts (Banks) Scheme [FCNR (Banks)] was introduced, with effect from 15th May, 1993. There is basically no difference between these two schemes except for the period of deposits.

For the banks accepting deposits under this scheme, there are a few changes. Exchange risk cover from Reserve Bank will not be available and will have to be borne by the banks themselves. There will be no obligation under the 'Statutory Liquidity Ratio' or priority sector lending. There is also no obligation for Cash Reserve Ratio. Resources mobilised under the scheme can be invested by the banks without any interest rate stipulation, though, non-resident depositors are not affected by such provisions.

Eligibility

NRIs are eligible to open and maintain these accounts with authorised dealer. However, opening of FCNR(B) accounts in names of NRIs of Bangladesh/Pakistan nationality/ownership require approval of Reserve Bank.

Types of Accounts

1. FCNR(B) account can only be opened in the form of term deposits. The deposits are accepted for terms exceeding one year but less than three years.
2. A non-resident can open a joint account with the other non-resident provided all the account holders are persons of Indian nationality or origin.
3. Opening of a joint account by a non-resident with a person resident in India is not permitted.

Opening of Accounts

1. Accounts can be opened with funds remitted from outside India through normal banking channels or funds received in rupees by debit to account of a non-resident bank maintained with authorised dealer in India or funds which are of repatriable nature in terms of regulations made by Reserve Bank.
2. Accounts can also be opened by transfer of funds from existing NRE/FCNR accounts.
3. Remittances from outside India for opening of or crediting to these accounts should be made in the designated currency in which the account is desired to be opened/maintained.

Without prejudice to the foregoing, if the remittance is made in a currency



other than designated currency (including funds received in rupees by debit to account of a non-resident bank), it should be converted into the latter currency by authorised dealer at the risk and cost of the remitter and account should be opened/credited in designated currency only.

4. In case depositor with any convertible currency other than designated currency desires to place a deposit in these accounts, authorised dealers may undertake with the depositor a fully covered swap in that currency against the desired designated currency, such a swap being possible between any two designated currencies.
5. Where the funds are received in Indian rupees for opening these accounts shall be converted by authorised dealer into designated foreign currency at clean T.T. selling rate for that currency ruling on date of conversion.

Designated Currencies

Deposit of funds in accounts may be accepted in Pound Sterling, US Dollar, Japanese Yen, Euro and such other currencies as may be designated by Reserve Bank from time to time.

Operations of Accounts

(i) Debits in Accounts

All debits as are permissible under NRE Account scheme, are also permissible from this account.

(ii) Credits in Account

- a. All the credits as are permissible under NRE Account scheme are also permissible from this account.
- b. The maturity proceeds of NRNR deposits credited to NRE Account can also be subsequently transferred to FCNR(B) Account.
- c. Non-Resident Indians/Persons of Indian Origin can credit refund of application/earnest money/purchase consideration made by the housing building agencies/seller on account of non-allotment of flat/plot/cancellation of bookings/deals for purchase of residential, commercial property, together with interest, if any (net of income tax payable thereon), to NRE/FCNR account, provided, original payment was made out of NRE/FCNR account of account holder or remittance from outside India through normal banking channels and authorised dealer is satisfied about genuineness of the transaction.

(iii) Maturity proceeds of deposit

Principal Amount and Interest will be payable in the same designated currency. The depositor, thus, will not be exposed to any exchange risk fluctuation. The depositor will have option to convert the foreign currency amount of designated currency into any other convertible currency at appropriate rate of exchange. For the purpose of payment in rupees, the amount shall be converted at

clean T.T buying rate ruling on the date of withdrawal.

(iv) Interest

Interest is payable either half-yearly or on annual basis at option of the depositor. Interest can be either credited to a new FCNR(B) Account or his existing/new NRE/NRO Account.

Rate of Interest

- a) In respect of deposits of one year and above, interest shall be paid within the ceiling rate of LIBOR/SWAP rates for the respective currency/ corresponding maturities minus 25 basis points. On floating rate deposits, interest shall be paid within the ceiling of SWAP rates for the respective currency/maturity minus 25 basis points. For floating rate deposits, the interest reset period shall be six months. However, in respect of Yen deposits, banks have the freedom to set the FCNR (B) deposit rates, which may be equal or less than LIBOR.
- b) The LIBOR/SWAP rates as on the last working day of the preceding week would form the base for fixing ceiling rates for the interest rates that would be offered effective the following week.
- c) Banks would have the option to choose the current SWAP rates quoted on any online screen based information systems while offering FCNR(B) deposits.

Loans/Overdrafts against Security of Funds Held in Account

- a. The terms and conditions as applicable to NRE deposits in respect of loans and overdrafts in India to depositor and to third parties as also loans outside India against security of deposits, shall apply *mutatis mutandis* to FCNR(B) deposits as well.
- b. Authorised dealers are permitted to grant foreign currency loans against the security of funds held in FCNR(B) deposit account only to the account holder.

The margin requirement shall be notionally calculated on the rupee equivalent of deposits.

Change of Resident Status of Account Holder

On change of residential status from resident to non--resident, balances held in EEFC and RFC (D) Accounts are allowed to be credited to FCNR(B) Account at the option/request of the account holder. When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at contracted rate of interest, if so desired by him. However, except for the provisions relating to rate of interest and reserve requirements as applicable to FCNR(B) deposits; for all other purposes, such deposits shall be treated as resident deposits from the date of return of the account holder to India. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible



to open RFC account), at the option of the account holder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.

Miscellaneous

The terms and conditions as applicable to NRE accounts in respect of joint accounts, repatriation of funds, opening of accounts during temporary visit, operation by power of attorney holder, loans/overdrafts against security of funds held in accounts, shall apply mutatis mutandis to FCNR(B) accounts.

International Credit Cards (ICC) to NRIs /PIOs

- NRI/PIOs can obtain International Credit Cards without prior approval of

Reserve Bank of India subject to the conditions that the charges for the use of ICC are paid out of inward remittances of balances in their NRE Accounts/Foreign Currency Non-Resident Accounts.

- However, the Reserve Bank has made further relaxation *vide* Circular No. 59 dated December 9, 2002 where by the NRI/PIOs are allowed to settle/debt the charges/expenses through credit card up to the limit of the card out of funds held in NRO account as well. The debits shall also be subject to the conditions for use of the International Credit Cards by residents.

FEATURES OF VARIOUS DEPOSIT SCHEMES AVAILABLE TO NON-RESIDENT INDIANS (NRIS)

Particulars	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR(B) Account]	Non-Resident (External) Rupee Account Scheme (NRE Account)	Non-Resident Ordinary Rupee Account Scheme (NRO) Account
Who can open an account	NRIs (individual/entities of Bangladesh/ Pakistan nationality/ownership require prior approval of RBI)	NRIs (individual/entities of Bangladesh/ Pakistan nationality/ ownership require prior approval of RBI)	Any person resident outside India other than a person resident Nepal and Bhutan (individual/entities of Bangladesh/ Pakistan nationality/ ownership as well as erstwhile OCBs require prior approval of RBI)
Joint account	In the names of two or more non-resident individuals	In the names of two or more non-resident individuals	May be held jointly with residents

Particulars	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR(B) Account]	Non-Resident (External) Rupee Account Scheme (NRE Account)	Non-Resident Ordinary Rupee Account Scheme (NRO) Account
Nomination	Permitted	Permitted	Permitted
Currency in which account is denominated	Pound Sterling, US Dollar, Jap Yen, Euro, Canadian and Australian Dollar	Indian Rupees	Indian Rupees
Repatriable	Repatriable	Repatriable	Not repatriable except for the following in account –1) Current income 2) Upto USD 1 million per financial year (April-March), for any bonafide purpose out of the balances in NRO account /sale proceeds of assets in India acquired by way of inheritance /legacy inclusive of assets acquired out of settlement subject to certain conditions
Type of Account	Term deposit only	Saving, Current, Recurring, Fixed Deposit	Saving, Current, Recurring, Fixed Deposit
Period for fixed deposit	For terms not less than 1 year and not more than 5 years.	At the discretion of the bank	As applicable to resident accounts.
Rate of interest	Subject to cap: LIBOR /SWAP rates for the respective currency/ corresponding maturities minus 25 basis points	Subject to cap: <u>Fixed Deposits:</u> LIBOR /SWAP rates, as on the last working day of the previous month, for US dollar of corresponding maturities plus 50 basis points with effect from	Banks are free to determine interest rates for term deposits.



Particulars	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR(B) Account]	Non-Resident (External) Rupee Account Scheme (NRE Account)	Non-Resident Ordinary Rupee Account Scheme (NRO) Account
		close of business on January 31, 2007. <u>Saving Bank Account</u> Interest rate shall be at the rate applicable to domestic savings account with effect from close of business in India on 17-1-2005.	
Operations by Power of Attorney in favour of a resident by the non-resident account holder	Operations on the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.	Operations on the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.	
Loans a. In India To the Account holder To Third Parties	Permitted upto Rs. 20 lakhs Permitted upto Rs. 20 lakhs	Permitted upto Rs. 20 lakhs Permitted upto Rs. 20 lakhs	Permitted Permitted
b. Abroad To the Account holder To Third Parties	Permitted upto Rs. 20 lakhs Permitted upto Rs. 20 lakhs	Permitted upto Rs. 20 lakhs Permitted upto Rs. 20 lakhs	Not Permitted Not permitted
c. Foreign Currency Loans in India			

Particulars	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR(B) Account]	Non-Resident (External) Rupee Account Scheme (NRE Account)	Non-Resident Ordinary Rupee Account Scheme (NRO) Account
To the Account holder	Not permitted	Not permitted	Not permitted
To Third Parties	Not permitted	Not permitted	Not permitted
Purpose of Loan a. In India To the Account holder	i. Personal purpose or for carrying on business activities.*	i. Personal purpose or for carrying on business activities.*	*Personal requirement and/ or business purpose.*
	ii. Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies.	ii. Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies.	
	iii. Acquisition of flat /house in India for his own residential use.	iii. Acquisition of flat /house in India for his own residential use.	
To Third Party	Fund based and /or non-fund based facilities for personal purposes or for carrying on business	Fund based and /or non-fund based facilities for personal purposes or for carrying on business activities*	Personal requirement and/ or business purpose. * activities*
b. Abroad To the account holder and third party	Fund based and /or non-fund based facilities for bonafide purposes.	Fund based and /or non-fund based facilities for bonafide purposes.	Not permitted

* The loans cannot be utilised for the purpose if Regulation-lending or for carrying on agriculture or plantation activities or for investment in real estate business.



Note:

- a) When a person resident in India leaves India for Nepal and Bhutan for taking up employment or for carrying on business or vocation or for any other purpose indicating his intention to stay in Nepal and Bhutan for an uncertain period, his existing account will continue as a resident Rupee account. Such account should not be designated as Non-Resident (Ordinary) Account (NRO).
- b) ADs may open and maintain NRE/FCNR (B) Accounts of the persons resident in Nepal and Bhutan who are citizens of India or of Indian Origin, provided the funds for opening these accounts are remitted in free foreign exchange. Interest earned in NRE/FCNR (B) accounts can be remitted only in Indian rupees to NRIs and PIO resident in Nepal and Bhutan.
- c) In terms of Regulation 4(4) of the Notification No FEMA 5/2000-RB dated May 3,2000, ADs may open and maintain rupee accounts for a person resident in Nepal /Bhutan.

MISCELLANEOUS REMITTANCES FROM INDIA

RELEASE OF FOREIGN EXCHANGE BY AUTHORISED DEALERS

A.1 General

1.1 For release of foreign exchange to persons resident in India for various current account transactions, authorized dealers are to be guided by the Rules made by the Government of India under Section 5 of Foreign Exchange Management Act, 1999 which are detailed in the Foreign Exchange Management (Current Account Transactions) Rules, 2000 (Annexure I) notified by the Government of India vide Notification No. G.S.R.381 (E) dated 3rd May 2000 (Rules). In terms of the said Rules, drawal of exchange for certain categories of transactions as listed in Schedule I is expressly prohibited. Exchange facilities for transactions included in Schedule II to the Rules may be permitted by the authorised dealers provided the applicant has secured the approval from the Ministry/Department of Government of India as specified therein. In respect of transactions included in Schedule III, prior approval of the Reserve Bank would be required for remittance exceeding specified values. The

release of foreign exchange up to the threshold values specified in Schedule III stands delegated to Authorised Dealers. All applications for release of exchange as prescribed in Schedule III to the Rules should be referred to the Regional office of the Foreign Exchange Department of the Reserve Bank, under whose jurisdiction the applicant is functioning/residing.

1.2 “Drawal” of foreign exchange includes use of International Credit Cards (ICC), includes International Debit Cards (IDC), ATM cards, etc. “Currency”, inter alia, includes ICC, IDC, and ATM Cards. Accordingly, all Rules, Regulation made and directions issued under the Act apply to the use of ICC, IDC, and ATM Cards.

1.3 In order to provide adequate foreign exchange facilities and efficient customer service, the Reserve Bank has decided to grant licences to certain entities by authorizing them as Authorised Dealer- Category – II to undertake a range of miscellaneous non-trade current account transactions. Accordingly, Authorised Dealer-Category – II are authorised to release/remit foreign exchange for the following non trade current account



transactions:

- a) Private visits,
- b) Remittance by tour operators / travel agents to overseas agents/ principals/hotels,
- c) Business travel,
- d) Fee for participation in international events/ competitions (towards training, sponsorship and prize money),
- e) Fee for participation in global conferences and specialized training,
- f) Film shooting,
- g) Medical treatment abroad,
- h) Disbursement of crew wages,
- i) Overseas Education,
- j) Remittance under educational tie up arrangements with universities abroad,
- k) Remittance towards fees for examinations held in India and abroad and additional score sheets for GRE, TOEFL etc.
- l) Employment and processing, assessment fees for overseas job applications,
- m) Emigration and Emigration Consultancy Fees,
- n) Skills /credential assessment fees for intending migrants,

- o) Visa fees,
- p) Processing fees for registration of documents as required by the Portuguese /other Governments, Registration /Subscription/ Membership fees to International Organisations.

1.4 Release of foreign exchange is not admissible for travel to and transaction with residents of Nepal and Bhutan. (cf. Clause (b) of rule 3 of the Rules.)

A.2 Sale of Exchange

2.1 Where approvals have been granted by the Reserve Bank /Government of India, foreign exchange may be sold within the period of validity stated in the approval and the details of the sale should be endorsed on the reverse of the original approval.

2.2 On the basis of a declaration given by the traveller regarding the amount of foreign exchange availed of during a calendar year; authorised dealers may release foreign exchange for travel and private purposes.

2.3 In case of issue of travellers cheques, the traveller should sign the cheques in the presence of an authorised official and the purchaser's acknowledgement for receipt of the travellers cheques should be held on record.

2.4 Out of the overall foreign exchange being sold to a traveller, exchange in the form of foreign currency notes and

coins may be sold upto the limit indicated below:

- a) Travellers proceeding to countries other than Iraq, Libya, Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States not exceeding USD 2000 or its equivalent.
- b) Travellers proceeding to Iraq or Libya, not exceeding USD 5000 or its equivalent.
- c) Travellers proceeding to Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States. Full exchange may be released.

2.5 The form A2 relating to sale of foreign exchange should be retained for a period of one year by the authorised dealers, together with the related documents, for the purpose of verification by their Internal Auditors. However, in respect of remittance applications for miscellaneous non-trade current account transactions of value less than USD 5,000 authorised dealers may obtain simplified Application cum Declaration Form (Form A2).

2.6 In cases where the remittances are allowed on the basis of self-declaration, the onus of furnishing the

correct details in the application will remain with the applicant who has certified the details relating to the purpose of such remittance.

A.3 Medical Treatment

3.1 With a view to enable residents to avail of foreign exchange for medical treatment abroad without any hassles and any loss of time, authorised dealers may release foreign exchange upto an amount of USD 1,00,000 or its equivalent, on the basis of self declaration that the applicant is buying exchange for medical treatment outside India without insisting on any estimate from a hospital/doctor.

3.2 For amount exceeding the above limit, estimate from the doctor in India or hospital/ doctor abroad, is required to be submitted to the authorised dealers.

3.3 A person who has fallen sick after proceeding abroad may also be released foreign exchange by an authorised dealer for medical treatment outside India.

A.4 Cultural Tours

Dance troupes, artistes, etc., who wish to undertake tours abroad for cultural purposes should apply to the Ministry of Human Resources Development (Department of Education and Culture), Government of India, for their foreign exchange requirements. Authorised dealers may release foreign exchange, on the strength of the sanction from the concerned Ministry,



to the extent and subject to conditions indicated therein.

A.5 Private Visits

Foreign exchange for private visit can also be released to persons who are availing of foreign exchange for travel outside India for any purpose upto the limit specified in Schedule III to the Rules.

A.6 Business Visits

Foreign exchange for undertaking business travel or attending a conference or specialised training or for maintenance expenses of a patient going abroad for medical treatment or check up abroad or for accompanying as attendant to a patient going abroad for medical treatment /check up to the limits specified in Specified in Schedule III to the Rules.

A.7 Period of surrender of foreign exchange

In case foreign exchange purchased for a specific purpose is not utilized for that purpose, it could be utilized for any other eligible purpose for which drawal of foreign exchange is permitted under the relevant Regulation.

General permission is available to any resident individual to surrender received / realized / unspent / unused foreign exchange to an authorised person within a period of 180 days from the date of receipt / realization / purchase / acquisition / date of return of the traveller, as the case may be.

In all other cases, the regulations /directions

on surrender requirement shall remain unchanged. (cf Notification No. FEMA 9/2000-RB dated May 3rd 2000, as amended from time to time).

A.8 Unspent Foreign Exchange

8.1 As stated above, unspent foreign exchange brought back to India by a resident individual should be surrendered to an authorised person within 180 days from the date of return of the traveller. Exchange so brought back can be utilised by the individual for his /her subsequent visit abroad.

8.2 However, a returning traveller is also permitted to retain with him, foreign currency travellers cheques and currency notes upto an aggregate amount of USD 2000 and foreign coins without any ceiling (cf Notification No. FEMA 9/2000-RB dated May 3rd 2000). Foreign exchange so retained, can be utilised by the traveller for his subsequent visit abroad.

8.3 A person resident in India can open, hold and maintain with an authorised dealer in India, a **Resident Foreign Currency (Domestic) Account**, out of foreign exchange acquired in the form of currency notes, bank notes and travellers cheques from any of the sources like, payment for services rendered abroad, as honorarium, gift, services rendered or in settlement of any lawful obligation from any person not resident in India.

8.4 The account may also be opened / credited with foreign exchange earned abroad, including proceeds of export of goods and /or services, royalty, honorarium, etc and /or gifts received from close relatives (as defined in the Companies Act) and repatriated to India through normal banking channels by resident individuals.

8.5 The eligible credits to the Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, bank notes and travellers cheques, are as under:

- a) Acquired by him, from an authorised person for travel abroad and represents the unspent amount thereof, or
- b) Acquired by him, while on a visit to any place outside India, by way of payment for services not arising from any business in or anything done in India and by way of honorarium or gift, or
- c) Acquired by him, from any person not resident in India, and who is on a visit to India, as honorarium, gift, for services rendered or in settlement of any lawful obligation.

Note: Where a person approaches an authorised person for surrender of unspent / unutilised foreign exchange after the prescribed period, authorised person should not refuse to purchase the foreign exchange

merely on the ground that the prescribed period has expired.

A.9 Remittances for Tour arrangements, etc.

9.1 Authorised dealers may remit foreign exchange upto a reasonable limit, at the request of a traveller towards his hotel accommodation, tour arrangement, etc. in the countries proposed to be visited by him, provided it is out of the foreign exchange purchased by the traveller from an authorised person (including exchange drawn for private travel abroad) in accordance with the Rules, Regulations and Directions in force.

9.2 Authorised dealers may effect remittances at the request of agents in India who have tie up arrangements with hotels / agents, etc abroad for providing hotel accommodation or making other tour arrangement for travellers from India, provided the authorised dealer is satisfied that the remittance is being made out of the foreign exchange purchased by the concerned traveller from an authorised person (including exchange drawn for private travel abroad) in accordance with the Rules, Regulations and Directions in force.

9.3 Authorised dealer may open foreign currency accounts in the name of agents in India who have tie up arrangements with hotels/agents etc. abroad providing



hotel accommodation or making other tour arrangements for travellers from India provided:

- a) The credits to the account are by way of depositing
 - i. Collection made in foreign exchange from travellers and
 - ii. Refunds received from outside India on account of cancellation of bookings /tour arrangements etc. and
- b) The debits in foreign exchange are for making payments towards hotel accommodation, tour arrangements, etc. outside India, in accordance with 8.2 above

9.4 Authorised dealer may allow tour operators to remit the cost of rail/road/water transportation charges outside India without any prior approval from the Reserve Bank, net of commission /mark up due to the agent. The sale of passes/ticket in India can be made either against the payment in Indian Rupees or in foreign exchange released for visits abroad. The cost of passes/tickets collected in Indian Rupees need not be adjusted in the travellers' entitlement of foreign exchange for private visit.

9.5 In respect of consolidated tours arranged by travel agents in India for foreign tourists visiting India and neighbouring countries like Nepal, Bangladesh, Sri Lanka, etc. against

advance payments/reimbursement through an authorised dealer, part of the foreign exchange received in India against such consolidated tour arrangement, may require to be remitted from India to these neighbouring countries for services rendered by travel agent and hoteliers in these countries. Authorised dealers may allow such remittances after verifying that the amount being remitted to the neighbouring countries (inclusive of remittances, if any, already made against the tour) does not exceed the amount actually remitted to India and the country of residence of the beneficiary is not Pakistan.

A.10 Payment in Rupees

Authorised dealers may accept payment in cash upto Rs.50,000 only against sale of foreign exchange for travel abroad (for private visit or for any other purpose). Wherever the sale of foreign exchange exceeds the amount equivalent to Rs.50,000 the payment must be received only by a

- i. Crossed Cheque drawn on the applicant's bank account, or
- ii. Crossed Cheque drawn on the bank account of the firm/company sponsoring the visit of the applicant, or
- iii. Banker's Cheque /Pay Order / Demand Draft.

Note: Where the rupee equivalent of foreign

exchange drawn exceeds Rs.50,000 either for any single drawal or more than one drawal reckoned together for a single journey/visit, it should be paid by cheque or draft.

A.11 Advance Remittance-Import of Services

Authorised dealers may allow advance remittance for providing services under current account transaction for which the release of foreign exchange is admissible. However, where the amount exceeds USD 1,00,000 or its equivalent, a guarantee from a bank of International repute situated outside India or a guarantee from an authorised dealer in India, if such a guarantee is issued against the counter-guarantee of a bank of International repute situated outside India, should be obtained from the overseas beneficiary. The authorised dealer should also follow up to ensure that the beneficiary of the advance remittance has fulfilled his obligations under the contract or agreement with the remitter in India.

A.12 Issue of Guarantee-Import of Service

Authorised dealer may issue guarantee on behalf of their customers importing services, provided:

- a) The guarantee amount does not exceed USD 100,000;
- b) Authorised dealer is satisfied about the bonafides of the transaction;

- c) Authorised dealer ensures submission of documentary evidence for import of services in the normal course; and
- d) The guarantee is to secure a direct contractual liability arising out of contract between a resident and a non-resident.

Incase of invocation of the guarantee, the authorised dealer is required to submit to the Chief General manager, Foreign Exchange Department, Foreign investments Division (EPD), Reserve Bank of India, Central office, Mumbai-400001 a report on the circumstances leading to the invocation of the guarantee.

A.13 Liberalised Remittance Scheme of USD 2,00,000

- 13.1 Under this scheme, authorised dealer may freely allow remittances by individuals upto USD 2,00,000 per financial year (April- March) for any permitted current or capital account transactions or a combination of both.
- 13.2 The limit of USD 2,00,000 under the Scheme would also include remittances towards gift and donation by a resident individual.
- 13.3 Remittances under the scheme are allowed only in respect of permissible current or capital account transactions or combination of both. All other transactions Which are otherwise not



permissible under FEMA and those in the nature of remittance for margins or margin calls to overseas exchanges/overseas counterparty are not allowed under the scheme.

- 13.4 Resident individuals are free to acquire and hold immovable property or shares or any other assets outside India without prior approval of the Reserve Bank.
- 13.5 Individuals can also open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the scheme without prior approval of the Reserve Bank. The foreign currency accounts may be used for putting through all transactions connected with or arising from remittances eligible under this scheme.
- 13.6 Banks should not extend any kind of credit facilities to resident individuals to facilitate remittances under the Scheme.
- 13.7 Liberalised Remittance Scheme is not available for remittance to countries identified by Financial Action Task Force (FATF) as non co-operative countries and territories as available on FATF website www.fatf-gafi.org or as notified by the Reserve Bank.
- 13.8 For understanding transactions under the Liberalised Remittance Scheme of USD 2,00,000 resident individuals

may use the Application –cum-Declaration Form.

A.14 Documentation

- 14.1 The Reserve Bank will not, generally, prescribe the documents, which should be verified by the authorised dealers while releasing foreign exchange. In this connection, attention of authorised dealers is drawn to sub-section (5) of Section 10 of the FEMA, 1999 which provides that an authorised person shall require any person wanting to transact in foreign exchange to make such a declaration and to give such a information as will reasonably satisfy him that the transaction will not involve and is not designed for the purpose of any contravention or evasion of the provision of the FEMA or any rule, regulation, notification, direction or order issued thereunder.
- 14.2 Authorised dealers are also require to keep on record any information / documentation, on the basis of which the transaction was undertaken, for verification by Reserve Bank. In case the applicant refuses to comply with any such requirement or makes unsatisfactory compliance therewith, the authorised dealer shall refuse, in writing to undertake the transaction and shall, if he has reasons to believe that any contravention /evasion is contemplated by the person, report the matter to Reserve Bank.

14.3 Further the authorised dealers have specifically been advised that they may release foreign exchange upto USD 1,00,000 each for employment, emigration, maintenance of close relative, education and medical treatment abroad without insisting on any supporting documents but on the basis of self declaration incorporating certain basic details of the transactions and submission of Form A2.

A.15 Endorsement on Passport

It is not mandatory for authorised dealers to endorse the amount of foreign exchange sold for travel abroad on the passport of the traveler. However, if requested by the traveler, they may record under their stamp, and signature, details of foreign exchange sold for travel.

A.16 International Credit Cards

16.1 The restrictions contained in Rule 5 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 will not be applicable for use of International Credit Cards (ICCs) by residents for making payment towards expenses, while on a visit outside India.

16.2 Residents can use ICCs on internet for any purpose for which exchange can be purchased from an authorised dealer in India, e.g. for import of books, purchase of downloadable softwares or import of any other item permissible

under EXIM Policy.

16.3 ICCs cannot be used on internet or otherwise for purchase of prohibited items like lottery tickets, banned or prescribed magazines, participation in sweepstakes, payment for call-back services, etc. since no drawal of foreign exchange is permitted for such items / activities.

16.4 There is no aggregate monetary ceiling separately prescribed for use of ICCs through internet.

16.5 Resident individuals maintaining foreign currency accounts with an authorised dealer in India or a bank abroad, as permissible under Foreign Exchange Regulations, are free to obtain ICCs issued by overseas banks and other reputed agencies. The charges incurred against the card either in India, or abroad, can be met out of funds held in such foreign currency account/s of the card holder or through remittances, if any, from India only through a bank where the card holder has current or saving account. The remittance for this purpose should also be made directly to the card-issuing agency abroad and not to a third party.

16.6 The applicable credit limit will be the limit fixed by the card issuing banks. There is no monetary ceiling fixed by the Reserve Bank for remittances, if any, under this facility.



A.17 International Debit Cards

17.1 Banks authorize to deal in foreign exchange (AD Banks) are issuing International Debit Cards (IDCs) which can be used by a resident for drawing cash or making payment to establishment overseas during his visit abroad. It is clarified that IDCs can be used only for permissible current account transaction and the item wise limits as mentioned in the schedules to Rules as amended from time to time, are equally applicable to payments made through use of these cards.

17.2 The IDCs cannot be used on internet for purchase of prohibited items like lottery tickets, banned or prescribed magazines, participation in sweepstakes, payment for call-back services, etc i.e. for such items/activities for which drawal of foreign exchange is not permitted.

A.18 Store Value Cards/Charge Cards/ Smart Cards etc.

Certain authorised dealer banks are also issuing Store Value Card /Charge Card/ Smart Card to residents traveling on private/ business visit abroad which are used for

making payments at overseas merchant establishments and also for drawing cash from ATM terminals. No prior permission from Reserve Bank is required for issue of such cards. However, the use of such cards is limited to permissible current account transactions and subject to the prescribed limits under the Rules, as amended from time to time.

A.19 Acquisition of Foreign Securities Under Employees Stock Option Plan (ESOP)

Resident individuals who are either employees or director of an Indian office or a branch of a foreign company in which foreign holding is not less than 51% are permitted to acquire foreign securities under ESOP Scheme without any monetary limit. They are also permitted to freely sell the shares provided the proceeds thereof are repatriated to India.

A.20 Income–Tax Clearance

Remittances to non-residents will be allowed to be made by the authorised dealers on production of an undertaking by the remitter and a Certificate from Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes.

ANNEXURE-1

**FOREIGN EXCHANGE MANAGEMENT
(CURRENT ACCOUNT TRANSACTIONS) RULES, 2000**

Prohibition on Drawal of Foreign Exchange

Drawal of foreign exchange by any person for the following purpose is prohibited, namely;

- a. a transaction specified in the schedule I; or
- b. a travel to Nepal and/or Bhutan; or
- c. a transaction with a person resident in Nepal or Bhutan

Provided that the prohibition in clause (c) may be exempted by RBI subject to such terms and conditions as it may necessary to stipulate by special or general order.

Prior Approval of Govt. of India

No person shall draw foreign exchange for a transaction included in the Schedule II without prior approval of the Government of India;

Provided that this rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.

Prior Approval of Reserve Bank

No person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of Reserve Bank;

Provided this rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) account of the remitter.

Prior approval of Government of India and Reserve Bank is not required for drawal made out of funds held in Exchange Earners' Foreign Currency (EEFC) account of the remitter.

Use of International Credit Card while Outside India

Prior approval of Reserve Bank for a transaction included in Schedule III is not required for use of International Credit card for making payment by a person towards meeting expenses while such person is on a visit outside India.



SCHEDULE I
TRANSACTION WHICH ARE PROHIBITED
(SEE RULE 3)

1. Remittance out of lottery winning.
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.
4. Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6. Payment of commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of export of tea and tobacco.
7. Payment related to “Call Back Services” of telephones.
8. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

SCHEDULE II	
TRANSACTIONS WHICH REQUIRE PRIOR APPROVAL OF THE CENTRAL GOVERNMENT	
(SEE RULE 4)	
Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
1. Cultural Tours	Ministry of Human Resources Development, (Department of Education and Culture)
2. Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings	Ministry of Finance, (Department of Economic Affairs)
3. Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport, (Chartering Wing)
4. Payment of import by a Govt. Department or a PSU on c.i.f. basis (i.e. other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport, (Chartering Wing)
5. Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
6. Remittance of hiring charges of transponders by (a) TV Channels (b) Internet Service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology
7. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of shipping)



Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
8. Remittances under technical collaboration agreements where payment of royalty exceeds 5% on local sales and 8% on exports and lump-sum payment exceeds USD 2 million	Ministry of Industry and Commerce
9. Remittance of prize money/ sponsorship of sports activity abroad by a person other than International / national / state Level sports bodies, if the amount involved exceeds USD 100,000.	Ministry of Human Resources Development (Department of Youth Affairs and Sports)
10. Remittance for membership of P&I Club	Ministry of Finance, (Insurance Division)

Schedule III

(See Rule 5)

1. Release of exchange exceeding USD 10,000 or its equivalent in one calendar year, for one or more private visits to any country (except Nepal and Bhutan).
 - (b) is a citizen of India, who is on deputation to the office or branch or subsidiary or joint venture in India of such foreign company.
2. Gift remittance exceeding USD 5,000 per remitter/donor per annum.
 - ii. Exceeding USD 100,000 per year, per recipient, in all other cases.
3. Donation exceeding USD 5,000 per remitter/donor per annum and remittances exceeding 1% of the foreign exchange earnings during the previous three financial years or USD 5 million whichever is less for specified purposes.
4. Exchange facilities exceeding USD 100,000 for persons going abroad for employment.
5. Exchange facilities for emigration exceeding USD 100,000 or amount prescribed by country of emigration.
6. Remittance for maintenance of close relatives abroad,
 - i. Exceeding net salary (after deduction of taxes, contribution to provident fund and other deductions) of a person who is resident but not permanently resident in India and -
 - (a) is a citizen of a foreign State other than Pakistan; or
 - (b) is a citizen of India, who is on deputation to the office or branch or subsidiary or joint venture in India of such foreign company.
7. Release of foreign exchange, exceeding USD 25,000 to a person, irrespective of period of stay, or attending a conference or specialised training or for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.
8. Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.

Explanation : For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignment; the duration of which does not exceed three years, is a resident but not permanently resident.



9. Release of exchange for studies abroad exceeding the estimate from the institution abroad or USD 100,000 per academic year, whichever is higher.
 10. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more.
 11. Remittance exceeding USD 1,000,000
 12. Remittance exceeding USD 100,000 or 5% of the investment brought into India whichever is higher on the basis of certification from the statutory auditor by an entity in India by way of reimbursement of pre-incorporation expenses.
- per project, for any consultancy service procured from outside India. For infrastructure projects, this limit is USD 10,000,000.

FREQUENTLY ASKED QUESTIONS

GUIDELINES ON TRAVEL RELATED MATTERS

Q.1. Who is a resident?

A.1. A 'person resident in India' is defined in Section 2(v) of FEMA, 1999 as:

A person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include -

A) a person who has gone out of India or who stays outside India, in either case-

for or on taking up employment outside India, or

for carrying on outside India a business or vocation outside India, or

for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than - for or on taking up employment in India, or

for carrying on in India a business or vocation in India, or

for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

any person or body corporate registered or incorporated in India,

an office, branch or agency in India owned or controlled by a person resident outside India,

an office, branch or agency outside India owned or controlled by a person resident in India;

That is to qualify as a resident the person concerned will have to fulfill the criterion regarding (a) the duration of stay and (b) the purpose of stay.

The term Person Resident Outside India is defined in the Act as a person who is not a person resident in India.

Q.2. From where one can buy foreign exchange ?

A.2. Foreign exchange can be purchased from any authorised dealer. Besides authorised dealers, Full-Fledged money changers are also permitted to release exchange for business and private visits.

Q.3. Who is an Authorised Dealer?

An Authorised Dealer is normally a bank specifically authorised by the Reserve Bank under Section 10(1) of FEMA, 1999, to deal in foreign



exchange or foreign securities (List available on www.fedai.orgjn).

Q.4. How much exchange is available for a business trip?

A.4. Authorised Dealers can release foreign exchange up to USD 25,000 for a business trip to any country other than Nepal and Bhutan. Release of foreign exchange exceeding USD 25,000 for a travel abroad (other than Nepal and Bhutan) for business purposes, irrespective of period of stay, requires prior permission from Reserve Bank. Visits in connection with attending of an international conference, seminar, specialised training, study tour, apprentice training, etc., are treated as business visits. Maintenance expense of a patient going abroad for medical treatment and/or check up or for accompanying as assistant to the patient going abroad for medical treatment / check-up also falls within this category.

Incidentally, no release of foreign exchange is admissible for any kind of travel to Nepal and Bhutan or for any transaction with persons resident in Nepal and Bhutan.

Q.5. Can one obtain foreign exchange for medical treatment outside India?

A.5. Authorised Dealers may release

foreign exchange upto USD 100,000 or its equivalent to resident Indians for medical treatment abroad on self declaration basis of essential details, without insisting on any estimate from a hospital/doctor in India/abroad. A person visiting abroad for medical treatment can obtain foreign exchange exceeding the above limit, provided the request is supported by an estimate from a hospital/doctor in India/abroad. This exchange is to meet the expenses involved in treatment. In addition to the amount referred to in Answer to Question No.4 above may also be availed.

Q.6. How much exchange is available for studies outside India?

A.6. ADs may release an amount of USD 100,000 per academic year or the estimate received from the institution abroad, whichever is higher.

Students going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA. In addition, they can receive remittances up to USD 100,000 from close relatives (as defined in Section 6 of the Companies Act, 1956) from India on self-declaration, towards maintenance, which could include remittances towards their studies also. Educational and other loans availed of by students as resident in India can be allowed to continue.

- There is no dilution in the existing remittance facilities to students in regard to their academic pursuits.
- Q.7. How much foreign exchange can one buy when traveling abroad on private visits to a country outside India?**
- A.7. In connection with private visits abroad, viz., for tourism purposes, etc., foreign exchange up to USD10,000, in any financial year may be obtained from an authorised dealer on a self- declaration basis. The ceiling of USD10,000 is applicable in aggregate and foreign exchange may be obtained for one or more than one visit provided the aggregate foreign exchange availed of in one financial year does not exceed the prescribed ceiling of USD10,000 {The facility was earlier called B.T.Q or F.T.S.}. This limit of USD10,000 per financial year can be availed of by a person along with foreign exchange for travel abroad for any purpose, including for employment or immigration or studies. However, no foreign exchange is available for visit to Nepal and/or Bhutan for any purpose.
- Q.8. How much foreign exchange is available to a person going abroad on employment?**
- A.8. Person going abroad for employment can draw foreign exchange up-to USD100,000 from any authorised dealer in India on the basis of self-declaration.
- Q.9. How much foreign exchange is available to a person going abroad on emigration?**
- A.9. Person going abroad on emigration can draw foreign exchange upto USD100,000 on self- declaration basis from an authorised dealer in India or the amount prescribed by the country of emigration. This amount is only to meet the incidental expenses in the country of emigration. No amount of foreign exchange can. be remitted outside India to become eligible or for earning points or credits for immigration. All such remittances require prior permission of the Reserve Bank.
- Q.10. Is there any category of visit which requires prior approval from the Reserve Bank or Govt. of India?**
- A.10. Dance troupes, artistes, etc., who wish to undertake cultural tours abroad, are required to obtain prior approval from the Ministry of Human Resources Development, Government of India, New Delhi.
- Q.11. How much foreign exchange can be purchased in foreign currency notes while buying exchange for travel abroad?**



A.11 Travellers are allowed to purchase foreign currency notes/coins only up to USD 2000. Balance amount can be taken in the form of travellers cheque or banker's draft. Exceptions to this are (a) travellers proceeding to Iraq and Libya can draw foreign exchange in the form of foreign currency notes and coins not exceeding USD 5000 or its equivalent; (b) travellers proceeding to the Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States can draw entire foreign exchange released in the form of foreign currency notes or coins.

Q.12. Do same Rules apply to persons going for studies abroad?

A.12. For the purpose of studies abroad, exchange for maintenance expenses is released in the form of (i) currency notes up to USD 2,000, (ii) the balance foreign exchange may be taken in the form of travellers cheques or bank draft payable overseas.

Q.13. How much in advance one can buy foreign exchange for travel abroad?

A.13. The foreign exchange acquired for any purpose has to be used within 60 days of purchase. In case it is not possible to use the foreign exchange within the period of 60 days, it

should be surrendered to an authorised dealer.

Q.14. Can one pay by cash full rupee equivalent of foreign exchange being purchased for travel abroad?

A.14. Foreign exchange for travel abroad can be purchased from authorized banks against rupee payment in cash up to Rs.50,000/-. However, if the rupee equivalent exceeds Rs.50,000/-, the entire payment should be made by way of a crossed cheque/banker's cheque/pay order/demand draft only.

Q.15. IS there any time frame for a traveller for surrender of foreign exchange on his return to India?

A.15. On his return to India, the traveller is required to surrender the unspent foreign exchange, whether in the form of currency notes or travellers cheques, within 180 days from the date of return. However, a traveller can retain up to USD 2000 or its equivalent, either in the form of currency notes or travellers cheques, for future use. Further, the traveller also has the facility of retaining the entire unspent foreign exchange in his Resident Foreign Currency (Domestic) Account. In this regard please see Question 29 (c) below.

Q.16. On return to India can one retain foreign exchange?

A.16. Yes. Resident travellers, on return to

India, can retain unspent foreign exchange up to USD 2,000 or its equivalent, either in the form of currency notes or travellers cheques. The traveller can also credit the foreign currency amount to their RFC (Domestic) Account, without any limit, where the foreign exchange has been acquired by the traveller by any of the following modes: (Please see Question 29 (c) below)

- a. while on a visit abroad as payment for services not arising from any business in or anything done in India; or
- b. as honorarium or gift or for services rendered or in settlement of any lawful obligation from any person who is not resident in India and who is on a visit to India; or
- c. as honorarium or gift while on a visit to any place outside India; or
- d. from an authorised person for travel abroad and represents the unspent amount thereof.

Q.17. Is one required to surrender foreign coins also to an authorised dealer?

A.17. There is no restriction on residents holding foreign coins.

Q.18. How much foreign exchange can a resident individual send as gift / donation to a person resident outside India?

A.18. Limit of USD 200,000 per financial year under the Liberalised Remittance Scheme would also include remittances towards gift and donation by a resident individual. Accordingly, under the Scheme, any resident individual, if he so desires, may remit the entire limit of USD 200,000 in one financial year as gift to a person residing outside India or as donation to a charitable/ educational/ religious/cultural organization outside India. Remittances exceeding the limit will require prior permission from the Reserve Bank.

Q.19. How much foreign exchange can other residents send as gift / donation to a person resident outside India?

A.19. Other residents like corporates, partnership firms, trusts etc., are free to remit up to USD 5000 per annum per donor/remitter each as gift and donation. Remittances exceeding the limit will require prior permission from the Reserve Bank.

Q.20. Is one permitted to use International Credit Card (ICC) for undertaking foreign exchange transactions?



A.20. Use of the International Credit Cards (ICCs) / ATMs/ Debit Cards can be made for making personal payments like subscription to foreign journals, internet subscription, etc., and for travel abroad in connection with various purposes. The entitlement of foreign exchange on International Credit Cards (ICCs) is limited by the credit limit fixed by the card issuing authority only. With ICCs one can (i) meet expenses/make purchases while abroad (ii) make payments in foreign exchange for purchase of books and other items through internet in India. If the person has a foreign currency account in India or with a bank overseas, he/she can even obtain ICCs of overseas banks and reputed agencies.

Use of these instruments for payment in foreign exchange in Nepal and Bhutan is not permitted.

Q.21. While coming into India how much Indian currency can be brought in?

- A.21. A person coming into India from abroad can bring in with him Indian currency notes within the limits given below:
- a. up to Rs. 5,000 from any country other than Nepal or Bhutan, and
 - b. any amount in denomination not exceeding Rs.100 from Nepal or Bhutan.

Q.22. While going abroad how much foreign exchange, in cash, can a person carry?

A.22. Residents are free to carry the foreign exchange purchased from an authorised dealer or full fledged money changer in accordance with the Rules. They are, however, allowed to carry foreign exchange in the form of currency notes/coins up to USD 2,000 or its equivalent only. Balance amount can be carried in the form of travellers cheque or banker/s draft. (In this connection please see item No.11).

Q.23. While going abroad how much Indian currency, in cash, can a person carry?

A.23. Residents are free to take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 5,000/- per person. They may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

Explanation: ‘Commemorative Coin’ includes coin issued by Government of India Mint to commemorate any specific occasion or event and expressed in Indian currency.

A person can take or send out of India

to Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs. 100);

Q.24. While coming into India how much foreign exchange can be brought in?

A.24. A person coming into India from abroad can bring with him foreign exchange without any limit. However, if the aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in exceeds USD 10,000/- or its equivalent and/or the value of foreign currency exceeds USD 5,000/- or its equivalent, it should be declared to the Customs Authorities at the Airport in the Currency Declaration Form (CDF), on arrival in India.

Q.25. Is one required to follow complete export procedure when a gift parcel is sent outside India?

A.25. A person resident in India is free to send (export) any gift article of value not exceeding Rs. 5,00,000 provided export of that item is not prohibited under the extant Foreign Trade Policy.

Q.26. How much jewellery one can carry while going abroad?

A.26. Taking personal jewellery out of India is governed by Baggage Rules

framed under Foreign Trade Policy by the Government of India. No approval of Reserve Bank is required in this case.

Q.27. Can a resident extend local hospitality to a non-resident?

A.27. A person resident in India is, free to make any payment in Indian Rupees towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India who is on a visit to India.

Q.28. Can residents purchase air tickets in India for their travel not touching India?

A.28. Residents may book their tickets in India for their visit to any third country. That is, residents can book their tickets for travel, for instance from London to New York, through domestic/foreign airlines in India itself.

Q.29. Can a resident open a foreign currency denominated account in India?

A.29. Persons resident in India are permitted to maintain foreign currency accounts in India under the following three Schemes:

a. Exchange Earners' Foreign Currency (EEFC) Accounts:-

All categories of resident



foreign exchange earners can credit up to 100 per cent of their foreign exchange earnings, as specified in the paragraph 1 (A) of the Schedule to Notification No. FEMA.10/2000-RB dated 3rd May, 2000 and as amended from time to time, to their EEFC Account with an authorised dealer in India. Funds held in EEFC account can be utilised for all permissible current account transactions and also for approved capital account transactions as specified by the extant Rules/Regulations/Notifications/Directives issued by the Government/RBI from time to time.

b. Resident Foreign Currency (RFC) Accounts :-

Returning Indians, i.e., those Indians, who were non-residents earlier, and are returning now for permanent stay; are permitted to open, hold and maintain with an authorised dealer in India a Resident Foreign Currency (RFC) Account to keep their foreign currency assets. Assets held outside India at the time of return can be credited to such accounts. The foreign exchange (i) received or acquired as gift

or inheritance from a person referred to sub-section (4) of section 6 of FEMA,1999 or (ii) referred to in clause (c) of section 9 of the Act or acquired as gift or inheritance therefrom may also be credited to this account or (iii) received as the proceeds of life insurance policy claims/maturity/surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

The funds in RFC account are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment outside India.

c. RFC (Domestic) Account:-

A person resident in India can open, hold and maintain with an authorized dealer in India, a Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, Bank notes and travellers cheques from any of the sources like, payment for services rendered abroad, as honorarium, gift, services

rendered or in settlement of any lawful obligation from any person not resident in India. The account may also be credited with/opened out of foreign exchange earned like proceeds of export of goods and/or services, royalty, honorarium, etc., and/or gifts received from close relatives (as defined in the Companies Act) and repatriated to India through normal banking channels by resident individuals. The account shall be maintained in the form of Current Account and shall not bear any interest. There is no ceiling on the balances in the account.

Q.30. Can a person resident in India hold assets outside India?

A.30. In terms of sub-section 4, of Section (6) of the Foreign Exchange Management Act, 1999, a person resident in India is free to 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. (Please also refer to the Liberalised Remittance Scheme of USD 200,000 discussed below).

LIBERALISED REMITTANCE SCHEME OF USD 200,000

LIBERALISED REMITTANCE SCHEME

Q.31. What is the Liberalised Remittance Scheme of USD 200,000?

A.31. This is a facility extended to all resident individuals under which, they may freely remit upto USD 200,000 per financial year for any permissible current or capital account transaction or a combination of both.

Q.32. Who is eligible to avail of this Liberalised Remittance Facility?

A.32. The facility is available to resident individuals only.

Q.33. Is there any frequency for the remittance?

A.33. There is no restriction on the frequency. However, the total amount of foreign exchange purchased from or remitted through, all sources in India during the current financial year should be within the limit of USD 200,000/-.

Q.34. What are the purpose's for which remittance can be made under the Scheme?

A.34. This facility is available for making remittance/s for any permissible



current or capital account transaction or a combination of both. It is not available for purposes specifically prohibited (Schedule I) or regulated by the Government of India (Schedule II) of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Q.35. Can residents avail of this facility for acquiring immovable property and other assets abroad?

A.35. Yes. Individuals are free to use this Scheme to acquire and hold immovable property, shares or any other asset outside India without prior approval of Reserve Bank.

Q.36. Can individuals open foreign currency account abroad for making remittance under the Scheme?

A.36. Yes. Individuals are free to open, hold and maintain foreign currency accounts with a bank outside India for making remittances under the Scheme without the prior approval of Reserve Bank. The account can be used for putting through any transaction connected with or arising from remittances under the Scheme.

Q.37. What is the impact of the Scheme on the existing facilities for private/business travel, studies, medical treatment etc./items covered in Schedule III of Foreign Exchange Management (Current

Account Transactions) Rules, 2000?

A.27. The facility under the Scheme is in addition to those already available under Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Q.38. Can an individual send remittance under the Scheme to any country?

A.38. Remittance cannot be made directly or indirectly to Bhutan, Nepal, Mauritius or Pakistan. The facility is also not available for making remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as 'non-co-operative Countries or Territories, from time to time.

For the current list of such countries/territories please visit www.fatf-gafi.org.

Further, remittance under the facility cannot be made to individuals and entities identified as posing significant risk or committing acts of terrorism as advised to banks by Reserve Bank from time to time.

Q.39. What are the requirements to be complied with by the remitter?

A.39. The individual will have to designate a branch of an AD through which all the remittances under the Scheme will be made. The applicants should have maintained the bank account with the

bank for a minimum period of one year prior to the remittance. He has to furnish an application--cum-declaration in the specified format regarding the purpose of the remittance and declare that the funds belong to him and will not be used for purposes prohibited or regulated under the Scheme.

Q.40. If an investment of USD 200,000 rises in value within the year, can one book profits and invest abroad again?

A.40. The investor is free to book profit or loss abroad and to invest abroad again. He is under no obligation to repatriate the funds remitted abroad.

Q.41. Can an individual, who has repatriated the amount remitted during the financial year, avail of the facility once again?

A.41. Once a remittance is made for an amount upto USD 200,000 during the financial year, he would not be eligible to make any further remittances under this route, even if the proceeds of the investments have been brought back into the country.

Q.42. Can remittances be made only in US Dollars?

A.42. The remittances can be in any currency equivalent to USD 200,000 in a financial year.

Q.43. Last year, resident individuals could invest in overseas companies

listed on a recognised stock exchange abroad and which has the shareholding of at least 10 per cent in an Indian company listed on a recognised stock exchange in India. Does this condition still exist?

A.43. Investment by resident individual in overseas companies is subsumed under the Scheme of USD 200,000. The requirement of 10 per cent reciprocal shareholding in the listed Indian companies by such overseas companies has since been dispensed with.

GUIDELINES FOR FINANCIAL INTERMEDIARIES OFFERING SPECIAL SCHEMES, PROTECTION UNDER THE SCHEME.

Q.44. Are intermediaries expected to seek specific approval for making overseas investments available to clients?

A.44. Banks including those not having operational presence in India are required to obtain prior approval from Reserve Bank for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

Q.45. Are there any restrictions on the kind/quality of debt or equity instruments an individual can invest in?



- A.45. No ratings or guidelines have been prescribed under the Liberalised Remittance Scheme of USD 200,000 on the quality of the investment an individual can make. However, the individual investor is expected to exercise due diligence while taking a decision regarding the investments which he or she proposes to make.
- Q.46. Whether minor resident individuals would be permitted to open, maintain and hold such foreign currency accounts, if the same is permissible as per local law in the country of the overseas branch?**
- A.46. Banks may take necessary steps in the matter based on the settled legal position regarding enforcement of the declaration in case the remittance is made on behalf of a minor.
- Q.47. Whether credit facilities in Indian Rupees or foreign currency would be permissible against security of such deposits?**
- A.47. No. The Scheme does not envisage extension of credit facility against the security of the deposits.
- Q.48. Can bankers open foreign currency accounts in India for residents under the Scheme?**
- A.48. No. Banks in India can not open foreign currency accounts in India for residents under the Scheme.
- Q.49. Can an Offshore Banking Unit (OBU) in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?**
- A.49. No. For the purpose of the Scheme, an OBU in India is not treated as an overseas branch of a bank in India.

PART - II
Tax Provisions
and
Overseas Indians



TAX PROVISIONS AND OVERSEAS INDIANS

RESIDENTIAL STATUS FOR TAX PURPOSES

In India, as in many other countries, the charge of income tax and the scope of taxable income varies with the factor of residence. There are two categories of taxable entities viz. (1) residents and (2) non-residents. Residents are further classified into two sub-categories (i) resident and ordinarily resident and (ii) resident but not ordinarily resident. The law prescribes two alternative technical tests of residence for individual taxpayers. Each of the two tests relate to the physical presence of the taxpayer in India in the course of the “previous year” which would be the twelve months from April 1 to March 31.

A person is said to be “resident” in India in any previous year if he

- (a) is in India in that year for an aggregate period of 182 days or more; or
- (b) having within the four years preceding that year been in India for a period of 365 days or more, is in India in that year for an aggregate period of 60 days or more.

The above provisions are applicable to all individuals irrespective of their nationality. However, as a special concession for Indian

citizens and foreign citizens of Indian origin, the period of 60 days referred to in Clause (b) above, will be extended to 182 days in two cases: (i) where an Indian citizen leaves India in any year for employment outside India; and (ii) where an Indian citizen or a foreign citizen of Indian origin (NRI), who is outside India, comes on a visit to India.

In the above context, an individual visiting India several times during the relevant “previous year” should note that judicial authorities in India have held that both the days of entry and exit are counted while calculating the number of days stay in India, irrespective of however short the time spent in India on those two days may be.

A “non-resident” is merely defined as a person who is not a “resident” i.e. one who does not satisfy either of the two prescribed tests of residence.

An individual, who is defined as Resident in a given financial year is said to be “not ordinarily resident” in any previous year if he has been a non-resident in India 9 out of the 10 preceding previous years or he has during the 7 preceding previous years been in India for a period of, or periods amounting in all to, 729 days or less.

Till 31st March 2003, “not ordinarily resident” was defined as a person who has

not been resident in India in 9 out of 10 preceding previous years or he has not during the 7 preceding previous years been in India for a period of, or periods amounting in all to, 730 days or more.

Section 6 of the Income-tax Act, 1961, prescribes the tests for determining the residential status of a person. Section 6, as amended, reads as follows:-

For the purposes of this Act,-

- (1) An individual is said to be resident in India in any previous year, if he-
 - a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or
 - b) [* * *]
 - c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Explanation.- In the case of an individual,--

- (a) being a citizen of India, who leaves India in any previous year [as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purpose of employment outside India, the provisions of sub-clause (c) shall apply

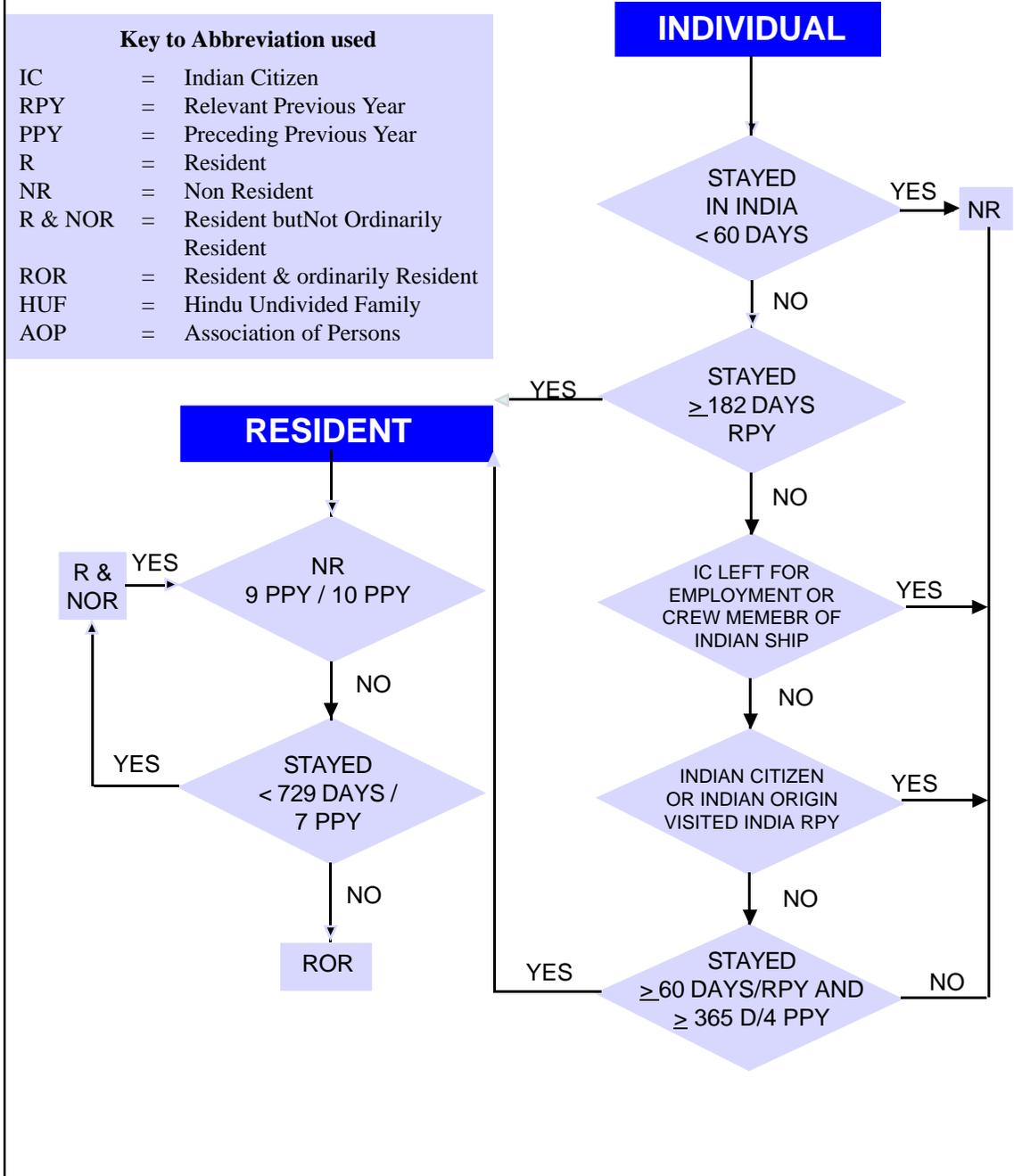
in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and eighty-two days” had been substituted

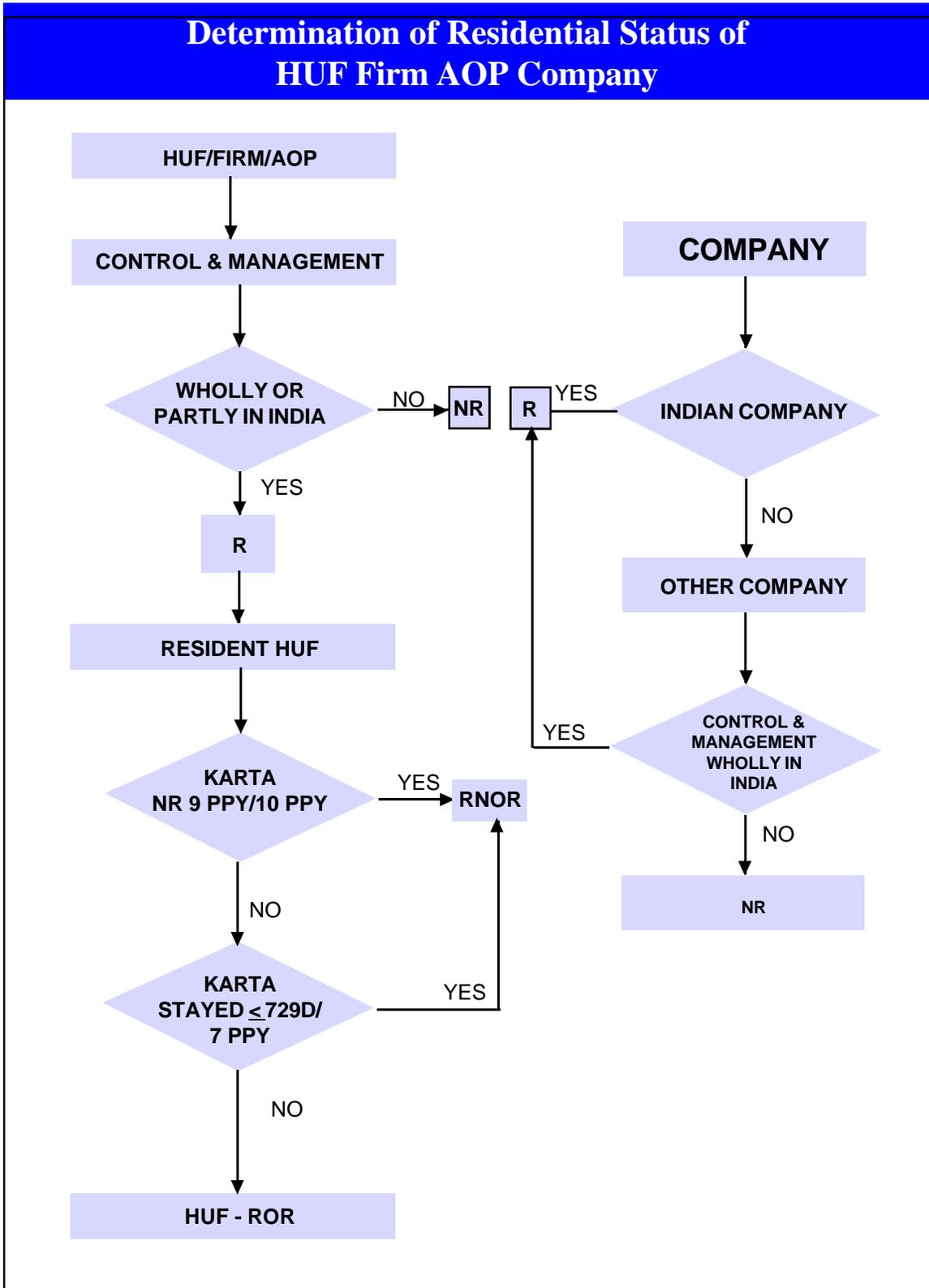
- (b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and eighty-two days” had been substituted.
- (2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.
- (3) A company is said to be resident in India in any previous year, if-
 - a. it is an Indian company; or
 - b. during that year, the control and management of its affairs is situated wholly in India.
- (4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.
- (5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income,



Determination of Residential Status of An Assessee Under the Income Tax Act

The Tests for determining the Residential status of an assessee under the Income Tax Act can be explained with the help of Flow Charts as follows:







he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

(6) A person is said to be “not ordinarily resident” in India in any previous year if such person is

(a) an individual who has not been a non-resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or

(b) a Hindu undivided family whose manager has not been non-resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.

An analysis of the above provisions would indicate that -

1. To become a non-resident for income-tax purposes, an Indian citizen leaving India for the first time to take up employment abroad should be out of the country latest by 28th September and should not return to India before

1st April of the next year. However, in case of a person leaving India for taking up a business or profession, the criteria of 60 days will apply, as defined earlier.

2. An NRI individual, whose total stay in India in 4 preceding years exceeds 364 days, will not lose his non-resident status in the following year(s) if his total stay in India in that year (from April 1 to March 31) does not exceed-

(a) 181 days, if he is on a “visit” to India; or

(b) 59 days, if he comes to India on “transfer of residence”.

3. An NRI who has returned to India for settlement, whose total stay in India for 4 preceding years does not exceed 364 days will not lose his non-resident status in the following year(s) if his total stay in India in such year(s) (from April 1 to March 31) does not exceed 181 days.

4. A new-comer to India would be treated as “not ordinarily resident” for the first two years of his stay in India or if treated as Non Resident in the year of arrival then for the second and third year of his stay in India. An individual (whether Indian or foreign citizen) who has left India and remains non-resident for at least nine years preceding his return to India or whose stay in 7 years preceding the year of return has not exceeded 729 days would, upon his

return, be treated as “non-resident” or “not ordinarily resident” depending upon the number of days stay in India in the year of return. The status of “not ordinarily resident” will remain effective for 2 years including or following the year of return as the case may be.

Important Points to be Borne in Mind while Determining the Residential Status of an Individual

- (a) Residential status is always determined for the Previous Year because the assessee has to determine the total income of the Previous Year only. In other words, as the tax is on the income of a particular Previous Year, the enquiry and determination of the residence qualification must confine to the facts obtaining in that Previous Year.
- (b) If a person is resident in India in a Previous Year in respect of any source of income, he shall be deemed to be resident in India in the Previous Year relevant to the Assessment Year in respect of each of his other sources of Income. [Section 6(5)]
- (c) Relevant Previous Year means, the Previous Year for which residential status is to be determined
- (d) It is not necessary that the stay should be for a continuous period.
- (e) It is not necessary that the stay should be at one place in India.

- (f) Both the day of entry and the day of departure should be treated as the day of stay in India [Petition No.7 of 1995 225 ITR 462 (AAR)]
- (g) Presence in territorial waters in India would also be regarded as stay in India.
- (h) A person is said to be of Indian Origin if he or either of his parents or any of his grand parents was born in undivided India [Section 115C]
- (i) Official tours abroad in connection with employment in India shall not be regarded as employment outside India.
- (j) A person may be resident of more than one country for any Previous Year.
- (k) Citizenship of a country and residential status of that country are two separate concepts. A person may be an Indian national/Citizen but may not be a resident in India and vice versa.

Points to be Considered by NRIs

- Previous Year is period of 12 months from 1st April to 31st March. Number of days stay in India is to be counted during this period.
- Both the Day of Arrival into India and the Day of Departure from India are counted as the days of stay in India (i.e. 2 days stay in India).
- Dates stamped on Passport are normally considered as proof of dates of departure from and arrival in India.
- It is advisable to keep several



photocopies of the relevant passport pages for present and future use.

- Ensure that date stamped on the passport is legible.
- Keep track of no. of days in India from year to year and check the same before making the next trip to India. It is advisable to maintain a chart for the number of days stay in the current and in the preceding seven (7) previous years.
- In the 1st year of leaving India for employment outside India, ensure that you leave before 29th September. Otherwise total income of the financial year (including the foreign income) will be taxable in India if it exceeds the basic exemption limit.
- During the last year of stay abroad, on transfer of residence to India, ensure to come back on or after Feb 1st (or Feb 2nd in case of a leap year). Since arrival before this date will result in stay in India exceeding 59 days. However, a person whose stay in India in preceding four (4) previous years does not exceed 365 days, he may return after September 30th of the relevant year without loss of non-resident status.

Implications of Residential Status for NRIs/PIOs

The complexities of determining the residential status for individual NRI/PIO under various statutes and regulations will be obvious from the provisions outlined

above and in this context it would be important to note the following:

1. The concepts and rules for determining the residential status income-tax laws and FEMA are quite different and it would be possible to be a resident under one law and non-resident under the other.
2. For exemption of income tax in respect of NRE and FCNR deposits investor should be non-resident under FEMA.
3. The special tax rate concessions on income and long-term capital gains on specified assets, purchased in convertible foreign exchange are available to non-residents under the Income-tax Act.

CHARGEABLE INCOME

Section 5 of the Income-tax Act lays down the scope of total income of any previous year of any person. The Section reads as follows:

- (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which-
 - (a) is received or is deemed to be received in India in such year by or on behalf of such person ;or
 - (b) accrues or arises or is deemed to accrue or arise to him in India during such year; or
 - (c) accrues or arises to him outside India during such year:

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of Section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

- (2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which
- (a) is received or is deemed to be received in India in such year by or on behalf of such person; or
 - (b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.-Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2.-For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.”

Thus, it is clear from the above that the incidence of tax depends upon a person’s Residential Status and also upon the place and time of accrual and receipt of income.

In tabular form, the above may be stated as under:-

Sources of Income	R & OR	R & NOR	NR
Indian Income Income received or deemed to be received in India during the current financial year.	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise in India during the current financial year.	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise outside India, but first receipt is in India during the current financial year	Taxable in India	Taxable in India	Taxable in India



Sources of Income	R & OR	R & NOR	NR
Foreign Income Income accruing or arising or deemed to accrue or arise outside India and received outside India, during the current financial year.	Taxable in India	Taxable in India	Not Taxable in India
Income accruing or arising outside India from a Business/ Profession controlled in/from India during the current financial year.	Taxable in India	Taxable in India	Not Taxable in India
Income accruing or arising outside India from any source other than Business Profession controlled from India.	Taxable in India	Taxable in India	Not Taxable in India

As stated earlier, the charge of income tax varies with the factor of residence in the previous year and the general position with regard to the three categories of taxpayers can be summarised as follows:

1. Taxpayers in all categories are chargeable on income, from whatever source derived, which is received or is deemed to be received in India by or on behalf of them or which accrues or arises or is deemed to accrue or arise to them in India other than income specified as exempt income.

In the above context, it may be noted that the 'receipt' of income refers to the first occasion when the recipient gets the money under his own control and it is the first receipt that determines the year and place of receipt for the purposes of taxation. If the income is already received outside India, no tax liability will arise when the whole or any part of such income is remitted to India.

2. A "resident and ordinarily resident" pays tax in India on his entire world income, wherever accrued or received.
3. A "non-resident" pays tax only on his taxable Indian income and his foreign income (earned and received outside India) is totally exempt from Indian taxes.

4. A "not ordinarily resident" pays tax on taxable Indian income and on foreign income derived from a business controlled in or a profession set up in India.
5. An individual upon acquiring the status of "not ordinarily resident" would not pay tax, for a period of two years, on the interest on :
 - (a) the continued Foreign Currency Non-Resident (FCNR) account;
 - (b) the Resident Foreign Currency (RFC) account; and
 - (c) on income earned from foreign sources unless such income is directly received in India or is earned from a business controlled in or a profession set up in India.

SPECIAL PROVISIONS RELATING TO CERTAIN INCOME OF NRIS

Some of the special tax concessions for NRIs/PIO investing in India were introduced in the Finance Act, 1983, which became effective on June 1, 1983. The tax provisions were further liberalised by subsequent Finance Acts and other amending laws.

Special Concessions

Investment income from 'foreign exchange assets' comprising shares and debenture of and deposits with Indian companies and central government securities, subscribed to or purchased in convertible foreign exchange, is charged to income tax at a flat

rate of 20%. No deductions are, however, allowed and tax is levied on gross income. The basic exemption, below which income is not taxed in India, is also not allowed.

Under these special concessions a reduced rate of 10% is applied to the long-term capital gains on transfer of any foreign exchange asset held by the NRI/PIO. In order to qualify for long-term capital gains, the minimum holding period for shares held in a company or any other security listed in a recognised Stock Exchange in India or units of Unit Trust of India or of a specified Mutual Fund is 12 months and for other assets it is 36 months. Long-term capital gains on foreign exchange assets are, however, exempted from tax if the net proceeds realized on transfer are re-invested, within six months of such transfer, in any specified securities and the new assets are retained for at least three years.

The Finance Act, 2003 has withdrawn the taxing provision in respect of dividend received by the shareholders on shares held in Indian companies. Accordingly, dividend received by the shareholders of Indian companies will be exempt from tax. The income received from units of Unit Trust of India and of specified mutual funds will also be exempt.

Finance Act 2004 has:

- (a) granted tax exemption as regards long term capital gains arising from transfer of equity shares in a company and/or units of equity oriented schemes of



Mutual Funds, which are subject to securities transaction tax; and

- (b) fixed at 10% the tax on short-term capital gains arising from such shares and! or units.

The tax concessions in respect of investment income (and not long term capital gain) will continue to apply even after the NRI/PIO returns to India but such exemption would be available only in respect of foreign exchange assets other than shares in Indian companies and the exemption will continue until such time as the assets are transferred or converted into money. However, as dividend is exempt income from 1st April 2003, exclusion of shares from said provision is redundant.

In the circumstances where the income of NRI/PIO from such foreign exchange assets is below the taxable limit or the average level of tax is below 20%, he may elect not to be governed by the special tax concessions referred to above. He would then have to furnish a Return of Income in the normal course together with a declaration of such election and he would be entitled to claim a refund of the whole or a part of the tax deducted at source, as may be appropriate.

As mentioned above, short-term capital gains arising from transfer of equity shares and/or units of equity-oriented schemes of Mutual Funds, which are subject to securities transaction tax, are taxed at 10%. Other Short-term capital gain is taxable at normal slab rates as applicable to residents, and the return of income has to be filed by the NRI/

PIO making such gain.

Capital gain from transfer of shares or debentures of Indian companies will be computed by converting the cost of acquisition, expenses incurred in connection with such transfer and the sale price of the capital asset into the same foreign currency as was initially used in the purchase of these assets and the capital gain so computed in such foreign currency will be reconverted into Indian currency. This computation effectively gives the NRI/PIO the benefit of claiming exchange loss, if any, on all capital gains arising from sale of shares or debentures of Indian companies, whether these are long term or short term. It may be noted that the aforesaid benefit is available only if the investment is made from convertible foreign exchange. In respect of investment made from funds other than convertible foreign exchange, and if the asset is a long-term capital asset benefit of indexation can be availed. However, indexation is not available in respect of debentures.

TAX EXEMPTIONS FROM INCOME TAX

Income from the following investments made by NRIs/PIO out of convertible foreign exchange is totally exempt from tax.

- (a) Deposits in under mentioned bank accounts :
 - (i) Non Resident External Rupee Account (NRE)

- (ii) Foreign Currency Non-resident Account (FCNR)
- (b) Units of Unit Trust of India and specified mutual funds, other specific securities, bonds and savings certificates (subject to conditions prescribed limits under the Income-tax laws and regulations).
- (c) Dividend declared by Indian company.
- (d) Long term capital gains arising from transfer of equity shares in a company and/or equity oriented schemes of Mutual Funds, which are subject to securities transaction tax.

It should be noted that the tax exemptions relating to NRE bank deposits will cease immediately upon the NRI/PIO becoming a resident in India whereas the interest on FCNR bank deposits will continue to be tax free as long as the NRI maintains the status of Resident but Not Ordinarily Resident or until maturity, whichever is earlier.

TAX EXEMPTIONS FROM WEALTH TAX

Where an NRI/PIO returns to India for permanent residence, moneys and the value of assets brought by him into India and the value of assets acquired by him out of such moneys within one year immediately preceding the date of his return and at any time thereafter are totally exempt from Wealth-tax for a period of seven years after return to India.

The above exemption may not have much relevance now since the Finance Act 1992 has considerably reduced the scope of Wealth-tax. With effect from 1st April, 1993, Wealth-tax is being levied only on non-productive assets like urban land, buildings (except one house property), jewellery, bullion and vehicles, cash over Rs.50,000/- etc. The current rate of Wealth-tax is 1 % on the aggregate market value of chargeable assets as on 31st March every year in excess of Rs.1.5 million.

However, it may be noted that NRIs are also liable to pay wealth tax if the market value of taxable assets as on 31st March exceeds Rs.1.5 million.

TAX EXEMPTIONS FROM GIFT TAX

Gift Tax Act, 1958 has been repealed with effect from 1st October, 1998 and as such, Gift Tax is not chargeable on any gifts made on or after that date.

With regard to gifts of foreign exchange or specified assets made by NRIs to their relatives in India, it should be noted that

1. Gifts made by an NRI/PIO to his or her spouse, minor children or son's wife will involve clubbing of income and wealth in the hands of the donor-NRI/PIO.
2. In the case of gifts to minor children the clubbing of income, as above, will cease upon such children attaining the age of 18 years.



3. The clubbing provisions will apply, in case of gift to spouse or son's wife in India, only to the first-stage of income from the original gift. Second-stage income arising from investment of the income from the original gift is not clubbed and this will constitute the separate wealth/income of the donee spouse.

Generally, the income of minor children, from any source (including income from gifts from parents) is clubbed with the income of the parent whose total chargeable income is greater.

Other matters to be noted regarding gifts are

1. All gifts received by residents from NRIs/PIO may be subject to the tax authorities requiring the recipient to provide evidence as regards the identity and financial capacity of the donor and genuineness of the gift.
2. Under the Foreign Exchange Management Act, 1999 no approval from Reserve Bank of India (RBI) is necessary for the resident donee to hold gifted immovable property outside India provided the said property is gifted by a person resident outside India. General permission, subject to certain conditions, is granted by RBI for the resident donees to hold foreign moveable properties such as shares and securities gifted by NRI/PIO donors.
3. The Income Tax Act has provided that any sum of money exceeding

Rs.50,000 received without consideration (i.e., gift) by an individual or Hindu undivided Family from any person on or after 1st April, 2006 the whole of such sum will be chargeable to income-tax in the assessment of recipient (i.e., donee) under that head "Income from other sources" for and from assessment year 2007-08 and onwards. Any sum of money exceeding Rs. 25,000 received without consideration (i.e. gift) by an individual or Hindu undivided family from any person on or after September 1, 2004 but before April 1, 2006, the whole of sum will be chargeable to income tax.

However, the above provisions will not apply to any sum of money /gift received:

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer; or
- (e) from a local authority; or
- (f) from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10 (23C); or
- (g) from a charitable institute registered under section 12AA.

The term "relative" is defined as:

- (1) spouse of the individual;
- (2) brother or sister of the individual;
- (3) brother or sister of the spouse of the individual;
- (4) brother or sister of either of the parents of the individual;
- (5) any lineal ascendant or descendant of the individual;
- (6) any lineal ascendant or descendant of the spouse of the individual; and
- (7) spouse of the person referred to in (2) to (6).

Scope of Receipts

- 1 As per plain reading of the provision, any receipt without consideration, save exclusions, whether capital or otherwise, may be considered as income.
- 1 Similar receipts by any person (such as, a partnership firm, a company, and AOP etc.), other than an individual or a Hindu undivided Family, would not constitute income in its hands.
- 1 The provision would apply to an individual irrespective of his residential status. Accordingly, any receipt in India by a non-resident of the nature discussed above would be considered as income in his hands.
- 1 Gifts on occasion other than marriage, for example, birthday, marriage

anniversary and other social occasions, religious ceremonies etc., would be taxable as income. Gifts received on the occasion of the marriage of the individual, irrespective of any limit, (but within reasonable limits) would not constitute income.

- 1 The receipts should be in the form of money. Accordingly, any gift in kind would not be taxable.
- 1 The receipts must be without consideration, implying in the nature of gift.

PRESUMPTIVE TAX PROVISIONS

Certain provisions have been incorporated in the Income-tax Act whereby the total income of certain non-resident assessee is computed on the basis of certain percentage of their gross total receipts. This estimated income approach is expected to reduce areas of uncertainty and resultant tax litigation. However, a non-resident assessee has the option to maintain books of account and get his books of account audited u/s 44AB ("Tax Audit") and offer lower profits and gains for taxation in India than the profits and gains estimated under Sections 44BB and 44BBB on presumptive basis.

Special provisions applicable to non-residents for computing their income under the head "Business Income"

Shipping Business (Sections 44B & 172)

Section 44B contains special provisions for



computing profits and gains of shipping business of a non-resident assessee. In the case of non-residents, such profits and gains will be taken at an amount equal to 7.5% (seven and a half per cent of the amount paid or payable to the non-resident or to any other person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any Indian port as also of the amount received or deemed to be received in India on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

Section 172, which is a complete code in itself, contains provisions for taxation of occasional shipping business of non-residents in respect of profits made by them from carriage of passengers, livestock, mail or goods shipped at a port in India.

Business of Providing Services and Facilities in Connection with Exploration etc. of Mineral Oils (Section 44BB)

Section 44BB contains special provisions for computation of taxable income of a non-resident assessee engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire, used or to be used, in the prospecting for, or extraction or production of, mineral oils. It provides that 10% of the amount paid or payable to, or the amount received or receivable by, the assessee for provision of such services or facilities or supply of plant and machinery shall be deemed to be the taxable income of such non-resident assessee.

Business of Operation of Aircraft (Section 44BBA)

Section 44BBA contains special provisions for computing profits and gains of the business of operation of aircraft of non-residents. It provides for determination of the income of non-resident taxpayers on presumptive basis at a flat rate of 5% of the amount received or receivable for carriage of persons, livestock, mail or goods from any place in India or the amount received or deemed to be received within India on account of such carriage from any place outside India.

Profits and Gains of Foreign Companies Engaged in the Business of Civil Construction or Erection of Plant And Machinery or Testing or Commissioning thereof, in Connection with certain Turnkey Power Projects (Section 44BBB)

Section 44BBB provides that, notwithstanding anything to the contrary contained in Sections 28 to 44AA of the Income-tax Act, the income of foreign companies who are engaged in the business of civil construction or erection or testing or commissioning of plant or machinery in connection with a turnkey power project shall be deemed at 10 per cent of the amount paid or payable to such assessee or to any person on his behalf, whether in or out of India. For this purpose, the turnkey power project should be approved by the Central Government. It has also been clarified that erection of plant or machinery or testing or

commissioning thereof will include laying of transmission lines and systems.

Taxation of Non-Resident's Royalty Income or Fees for Technical Services (Section 44DA)

Royalties and fees for Technical Services received from the Government or an Indian concern by a Non-Resident or a foreign company in pursuance of an agreement entered into after 31-3-2003 shall be computed under the head "Business Income" in accordance with the provisions of the Income Tax Act i.e. after allowing deduction for various permissible expenses and allowances.

Section 44DA does not Permit Deduction of following Expenses

- (i) expenditure which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India, and
- (ii) amounts reimbursed by permanent establishment to its head office or to any of its other offices (Other than, reimbursement of actual expenses).

Restriction on Deduction of Head Office Expenses (SECTION 44C)

Section 44C is intended to be made applicable only in the cases of those non-residents who carry on business in India through their branches.

The deduction in respect of head office expenses will be limited to:

- a) An amount equal to 5 per cent of the "adjusted total income" for the relevant year: or
- b) The actual amount of head office expenditure attributable to the business in India,
whichever is least.

TAX INCENTIVES FOR INDUSTRIES

Tax holidays in the form of deductions are available for private sectors and incentives to industries located in special area/regions are listed below:

Infrastructure Sectors

Deduction of 100% of the profits from business for a period of 10 years for:

- a. Development or operation and maintenance of ports, airports, roads, highways, bridges, rail systems, inland water ways, inland ports, water supply projects, water treatment systems, irrigation projects, sanitation and sewage projects, and solid waste management systems.
- b. Generation and distribution of power that commence before 31.3.2006.
- c. Development, operation and maintenance of Industrial Park or Special Economic Zone.



Hotels and Convention Centre in NCR (Sec 80-ID)

Deduction of 100% of the profits from business of hotels and convention centres for a period of 5 years for:

- a. Hotel and Convention Centre is located in National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad.
- b. Hotel is constructed and has started or starts functioning at any time during April 1, 2007 and March 31, 2010. Likewise, the Convention Centre is constructed at any time during April 1, 2007 and March 31, 2010.

Undertakings in North Eastern States (Sec 80-IE)

Deduction of 100% of the profits from business for a period of 10 years for:

- a. Manufacture or production of goods or undertakes substantial expansion during April 1, 2007 and March 31, 2017. Providing eligible services during April 1, 2007 and March 31, 2017.
- b. Deduction is not available in respect of manufacture or production of tobacco, pan masala, plastic carry bag of less than 20 microns or goods produced by petroleum and gas refineries.
- c. Eligible services are hotel (2 star or above), nursing home(25 beds or

more), old age homes, vocational training institutes for hotel management, catering and food crafts, entrepreneurship development, nursing and paramedical, civil aviation related training, fashion designing and industrial training, IT related training centres, IT hardware manufacture units and bio-technology.

- d. The aforesaid activity takes place in any North-Eastern States(i.e., Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura).

Tax Exemptions

Following tax exemptions are available in different sectors:

Deduction of 100% of the Profit from Business of

- (a) Development or operation and maintenance of ports, airports, roads, highways, bridges etc. (Sec 80-IA).
- (b) Generation, distribution and transmission of power (Sec 80-IA).
- (c) Development, operation and maintenance of an Industrial Park or SEZ (Sec 80-IAB).
- (d) By undertakings set up in certain notified areas or in certain thrust sector industries in the North Eastern states and Sikkim (Sec 80-IC).
- (e) By undertakings set up in certain notified areas or in certain thrust sector

industries in Uttaranchal and Himachal Pradesh (Sec 80-IC).

- (f) Derived from export of articles or software by undertakings in FTZ, EHTP/STP (Sec 10A).
- (g) Derived from export of articles or software by undertakings in SEZ (Sec 10A).
- (h) Derived from export of articles or software by 100% EOU (Sec 10B).
- (i) An offshore banking unit situated in SEZ from business activities with units located in the SEZ (Sec 80-LA).
- (j) Derived by undertakings engaged in the business of developing and building housing projects (Sec 80-IB).
- (k) Derived by an undertaking engaged in the integrated business of handling, storage and transportation of food grains (Sec 80-IB).
- (l) Derived by an undertaking engaged in the commercial production or refining of mineral oil (Sec 80-IB).
- (m) Derived by an undertaking from export of wood based handicraft (Sec 10BA).

AUTHORITY FOR ADVANCE RULINGS

Introduction

The Finance Act, 1993 has inserted a new Chapter XIX-B entitled Advance Rulings in respect of transaction involving non-residents.

The Authority and Its Powers

The authority is constituted by the Central Government and is known as "Authority for Advance Ruling" (AAR) [Section 245-O (1)].

AAR consist of three member, viz :

- 1 Chairman (who is a retired judge of the Supreme Court)
- 1 An IRS officer (who is qualified to be a member of CBDT); and
- 1 An ILS officer (who is qualified to be an additional secretary to the Government of India) [Section 245-O(2)]

The AAR enjoys all powers of a Civil Court under the code of Civil Procedure, 1908, as are referred to in Section 131 of the Income Tax Act, 1961 [Section 245U(1)]

The AAR also enjoys the status of a Civil Court for the purpose of section 195 of the Code of Criminal Procedure, 1973. [Section 245U(2)].

Every proceedings before the AAR is deemed to be a judicial proceedings within the meaning of Sections 193 & 228 and for the purpose of Section 196 of the Indian Penal Code,1860.

Meaning of "Advance Ruling"

The term "Advance ruling" is defined in Section 245N(a) of the Act. Following are the main features of the definition:

- 1 Advance ruling means the



determination of a question specified in the application by the applicant;

- 1 Such question may be a question of law or a question of fact. Such question must be in relation to a transaction and cannot be a hypothetical or academic question;
- 1 The transaction may be the one which is already undertaken or the one which is proposed to be undertaken by the applicant;
- 1 The determination of such question on such a transaction is to be done by the AAR.

This term also indicates the determination or decision in respect of an issue pending before:

- (i) An Income-tax Authority; or
- (ii) The Appellate Tribunal.

Such determination could be determination on a question of law or on a question of fact.

Who can Apply

An application for advance ruling can be made by a NON-RESIDENT as also by a resident in respect of a transaction with a non-resident. Besides, a resident falling within a notified class or category may also make an application. The class or category so notified by the Government till date are:

- 1 Public Sector Company; and
- 1 A resident seeking advance ruling in relation to the tax liability of a non-

resident arising out of a transaction with a non-resident.

In case of resident applicants, no Income-tax Authority or the Appellate Tribunal shall proceed to decide any issue in respect of which an application has been made.

Procedure for Making an Application

The application has to be made in following forms:

- 1 By Non-Residents : Form 34C
- 1 By resident in relation to transaction with Non-Residents : Form 34D
- 1 By residents notified by the Government : Form 34E
- 1 Application must be made in quadruplicate.
- 1 It should be presented by the applicant in person or by an authorized representative or may be sent by post;
- 1 The AAR, at present, holds its sittings at its headquarters at Delhi. The address is as follows :-

Authority for Advance Ruling

Mayur Bhavan, 4th Floor, Connaught Circle, New Delhi-110 001, Fax No.(011) 23313675

- 1 The application must be accompanied by draft of Rs. 2500 drawn in favor of "Authority of Advance Ruling" payable at New Delhi.
- 1 The secretary may send the application back to the applicant if it is defective in any manner for removing the defect.

The application must be signed as per the provisions of Rule 44E (2) of the Income Tax Rule, 1962.

Enclosures to the Application

- 1 A statement listing question(s) relation to the transaction on which the advance ruling is required. This is optional. The question(s) may be stated in the application form itself. If, however, space provided is insufficient, separate enclosure may be used for this purpose.

It may be noted that the question(s) raised in the application should be exhaustively drafted covering all aspects of the issue involved and all alternative claims that the applicant may wish to make without prejudice to each other. This is because if at a later stage the applicant desires to raise any additional question which is not set-forth in the application, he may have to obtain permission of the AAR. Granting of such permission is at the discretion of the AAR.

- 1 A statement of relevant facts having a bearing on the question(s) on which the advance ruling is required.
- 1 A statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the question(s) on which the advance ruling is required.
- 1 Where the application is signed by an authorized representative, the power of attorney authorizing him to sign.

- 1 Where the application is signed by an authorized representative, an affidavit setting out the unavoidable reasons which entitles him to sign.

- 1 Separate enclosures may be used where the space provided for any of the items in the relevant forms is insufficient.

- 1 In the covering letter, the applicant may make a request for being heard before pronouncing the ruling.

Procedure After Making of the Application

- 1 On receipt of the application, the AAR will forward a copy to the Commissioner.

- 1 Commissioner may be called upon to furnish the relevant records.

- 1 AAR shall examine the application and such records.

- 1 After examination, an order shall be passed u/s 245R(2) to either allow or reject the application

- 1 A copy of order u/s 245R(2) is sent to the applicant and to the commissioner.

- 1 If the application is allowed vide order u/s 245R(2), the AAR shall :-

- (i) Examine such further material as may be placed before it by the applicant;
- (ii) Examine such further material as may be obtained by the Authority suo moto; and



- (iii) Pronounce its advance ruling on the question specified in the application within six months of the receipt of the application either with or without giving the assessee a hearing.

DOUBLE TAX AVOIDANCE AGREEMENT (DTAA)

The Government of India has entered into double taxation avoidance agreements (tax treaties) with several countries with the principal objective of evolving a system for the respective countries to allocate the right to tax different types of income on an equitable basis. Tax treaties serve the purpose of providing full protection to taxpayers against double taxation and also aim at preventing discrimination between the taxpayers in the international field. The NRIs/PIO would, therefore, be well advised to take advantage of such treaties in tax planning for their investments in India.

DTAA can be defined as an "international agreement between two sovereign States reaching an understanding as to how their residents will be taxed in respect of cross order transactions in order to avoid double taxation on the same income".

In yet another way, DTAA can be defined as "an agreement of compromise between two contracting States whereby each country agrees to give up something in consideration of the other country giving up something in its favour".

It may sometime happen that owing to reduction in tax rates under the domestic law-taking place after coming into existence of the treaty, the domestic rates become more favorable to the NRIs/PIO. Since the object of the tax treaties is to benefit the NRIs/PIO, they have, under such circumstances, the option to be assessed either as per the provisions of the treaty or the domestic law of the land.

In order to avoid any demand or refund consequent to assessment and to facilitate the process of assessment, the concerned authorities in India have provided that tax shall be deducted at source out of payments to NRIs/PIO at the prevailing rates at which the particular income is made taxable under the tax treaties.

PART - III
Other Important
Matters and
Overseas Indians



OVERSEAS CITIZENSHIP OF INDIA (OCI)

OCI SCHEME IS OPERATIONAL FROM 02.12.2005

The Constitution of India does not allow holding Indian citizenship and citizenship of a foreign country simultaneously. Based on the recommendation of the High Level committee on Indian Diaspora, the Government of India decided to grant **Overseas Citizenship Of India (OCI) commonly known as ‘dual Citizenship’**. Persons of Indian Origin (PIOs) of certain category as has been specified in the Brochure who migrated from India and acquired citizenship of a foreign country other than Pakistan and Bangladesh, are eligible for grant of **OCI** as long as their home countries allow dual citizenship in some form or the other under their local laws.

1. Application for registration as **OCI** can be made **online**. Before filing the application, **Instructions** may be perused so that there is no mistake in submission of application. Further the details regarding **Fee** and **offices where applications have to be filed** may also be perused.
2. Persons registered as **OCI** have not been given any voting rights, election

to Lok Sabha / Rajya Sabha / Legislative Assembly / Council, holding Constitutional posts such as President, Vice President, Judge of Supreme Court / High Court etc. Registered **OCIs** shall be entitled to following benefits:

- (i) Multiple entry, multi-purpose life long visa to visit India;
 - (ii) Exemption from reporting to Police authorities for any length of stay in India; and
 - (iii) Parity with NRIs in financial, economic and educational fields except in the acquisition of agricultural or plantation properties.
- 3 Any further benefits to OCIs will be notified by the Ministry of Overseas Indian affairs (MOIA) under section 7B (1) of the citizenship Act, 1955.
 - 4 A person registered as OCI is eligible to apply for grant of Indian citizenship under section 5(1) (g) of the citizenship Act, 1955 if he/she is registered as OCI for five years and has been residing in India for one year out of the five years before making the application.

BROCHURE ON OVERSEAS CITIZENSHIP OF INDIA (OCI)

1. Eligibility Criteria

A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 and his/her children and grand children, provided his/her country of citizenship allows dual citizenship in some form or other under the local laws, is eligible for registration as Overseas Citizenship Of India (OCI). Minor children of such person are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

2. Application Form and Procedure

A family consisting of spouses and upto two minor children can apply in the same form i.e. Form XIX. The form can be filed online or downloaded from our website www.mha.nic.in.

The following documents shall be enclosed for each application:

1. Proof of present citizenship.
2. Evidence of self or parents or grand parents,
 - (a) Being eligible to become a citizen of India at the time of commencement of the Constitution; or

- (b) Belonging to a territory that became part of India after 15th August, 1947; or
- (c) Being citizen of India on or after 26th January, 1950

These could be:

- (i) Copy of the passport: or
 - (ii) Copy of the domicile certificate issued by the Competent authority; or
 - (iii) Any other proof.
3. Evidence of relationship as parent / grand parent, if their Indian origin is claimed as basis for grant of **OCI**.
 4. Application fee by way of Demand Draft (US \$ 275 for each applicant or equivalent in local Currency; US \$ 25 or equivalent in local currency for each PIO cardholder.)
 5. PIO cardholders should submit a copy of his/her PIO card.

The application form completed in all respects along with enclosures should be submitted in duplicate to the Indian Mission / Post of the country of applicant's citizenship or where he/she is not in the country of citizenship to the Indian Mission / Post of the country in which he / she is ordinarily resident. If the applicant is in India, he / she can apply to the Foreigners Regional Registration Officer (FRRO) at Delhi, Mumbai, Kolkata or Amritsar or Chief Immigration Officer (CHIO) Chennai or to



the Under Secretary, OCI Cell, Citizenship Section, Foreigners Division, Ministry of Home Affairs (MHA), Jaisalmer House, 26 Mansingh Road, New Delhi – 110011.

3. Procedure for Granting Registration

After Preliminary scrutiny, if there is no adverse information available against the applicant, the Indian Mission / Post shall register a person as OCI within 30 days of application and the case shall be referred to MHA for post verification of the antecedents of the applicant. If during the post verification, any adverse information comes to the knowledge of the MHA, the registration as OCI already granted by the Indian Mission / Post shall be cancelled by an order under section 7D of the Citizenship Act, 1955.

After preliminary scrutiny, if there is any adverse information against the applicant, prior approval of MHA, shall be required before grant of registration. MHA may approve or reject the grant of registration within 120 days from the date of the receipt of the application. If the grant of registration as OCI is approved by MHA, the Indian Mission / Post shall register the person as OCI.

If the application is filed in India, registration shall be granted by MHA by following the above procedure.

After grant of registration, a registration certificate in the form of booklet will be issued and a multiple entry, multi-purpose life long OCI 'U' visa sticker will be pasted on the foreign passport of the applicant.

4. OCI for PIO Card Holders

PIO card holders who are otherwise eligible for registration as OCI may apply in the same Form i.e. Form XIX and they will be considered for grant of registration in the same manner as other applicants. PIO card holders have to pay a fee of US \$ 25 or equivalent in local currency instead of US \$ 275 for normal applicant. PIO cardholders will have to surrender his/her PIO card after knowledge of acceptance of application.

5. OCI for Persons who have Applied on the Earlier Prescribed Application Form

All such applications will be considered for grant of OCI on the same line as in 3 above without seeking fresh application and fees.

6. Cancellation of OCI Registration

If it has been found that the registration as an OCI was obtained by means of fraud, false representation or concealment of any material fact or the registered OCI has shown disaffection towards the Constitution of India or comes under any of the provisions of section 7D of the Citizenship Act, the registration of such person will not only be cancelled forthwith but he / she will also be blacklisted for visiting India.

7. Benefits to OCI

Following benefits will accrue to OCI:

- (i) A Multiple entry, multi purpose life long visa for visiting India.
- (ii) Exemption from registration with local police authority for any length of stay in India.

- (iii) Parity with Non resident Indians (NRIs) in respect of economic, financial and educational fields except in relation to acquisition of agricultural or plantation properties.

Any other benefits to OCIs will be notified by the Ministry of Overseas Indian Affairs (MOIA) under Section 7B(1) of the Citizenship Act, 1955.

8. Benefits to which OCI is Not Entitled to

The OCI is not entitled to vote, be a member of Legislative Assembly or Legislative Council or Parliament, cannot hold constitutional posts such as President, Vice President, Judge of Supreme Court or High Court etc. and he / she cannot normally hold employment in the Government.

9. Help Desk

For any clarification/query on the scheme, please visit our website www.mha.nic.in, or visit the website of the local Indian Mission / Post or contact the Indian Mission / Post or OCI Cell, Citizenship Section, Foreigners Division, Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi – 110011.

APPLICATION FEES

For application to be filled in India, an amount of Rs. 12,650 has to be paid for each applicant by demand Draft in Favour of **“Pay and Account Officer (Secretariat), Ministry of Home Affairs”** payable at New

Delhi. In case of PIO Card holder, an amount of Rs 1,150 has to be paid.

In case of application to be filled outside India, for the amount of fee to be paid in local currency, please visit the web site of the respective Indian Mission / Post.

FREQUENTLY ASKED QUESTION

Q.1. Who is eligible to apply?

A.1 A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at any time after 26.01.1950 or belonged to a territory that become part of India after 15.08.1947 and his/her children and grand children, provided his/her country of citizenship allows dual citizenship in some form or other under local laws, is eligible for registration as Overseas citizen of India (OCI). Minor children of such person are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

Q.2. Who was eligible to become Citizen of India on 26.01.1950?

A.2 Any person who or either of whose parents or grand-parents were born in India as defined in the Government of India Act, 1935(as originally enacted), and who was ordinarily residing in any country



- outside India was eligible to become citizen of India on 26.01.1950.
- 3. Which territories became part of India after 15.08.1947 and from what date?**
- A.3 The territories, which became part of India after 15.08.1947 are:
- | | |
|----------------------------|------------|
| (i) Sikkim | 26.04.1975 |
| (ii) Pondicherry | 16.08.1962 |
| (iii) Dadra & Nagar Haveli | 11.08.1961 |
| (iv) Goa, Daman and Diu | 20.12.1961 |
- Q.4. Can the spouse of the eligible person apply for OCI?**
- Q.4 Yes, if he/she is eligible in his /her own capacity.
- Q.5. Who is a minor?**
- A.5. A person who has not attained the age of 18 years is considered minor.
- Q.6. Are minor children whose both parents are Indian citizens, eligible for OCI?**
- A.6 NO.
- Q. 7. Can children of parents, wherein one of the parents is eligible for OCI, apply for OCI?**
- A.7 Yes.
- Q.8. In what form should a person apply for OCI and where are the forms available?**
- A.9 A family consisting of spouses and upto two minor children can apply in the same form i.e. Form XIX, which can be filed online or downloaded from our website www.mha.nic.in/oci/oci-main.htm
- Q.9. Can application form be filled and submitted on line?**
- A.9 Yes. Part A of the application form can be filed online. Upon submission of part A online, Part B is downloaded instantly and it can be printed on computer or by hand in Block letters. Printed Part A and Part B of the application form have to be submitted to the Indian Mission/ Post/Office.
- Q.10. What documents have to be submitted with the application?**
- A.10. The following documents shall be enclosed for each applicant:
1. Proof of present citizenship
 2. Evidence of self or parents or grand parents,
 - (a) Being eligible to become a citizen of India at the time of commencement of the Constitution; or
 - (b) Belonging to a territory that became part of India after 15th

- August, 1947; or
- (c) Being citizen of India on after 26th January, 1950

These could be:

- (i) Copy of the passport: or
- (ii) Copy of the domicile certificate issued by the Competent authority; or
- (iii) Any other proof.
3. Evidence of relationship as parent / grand parent, if their Indian origin is claimed as basis for grant of OCI.
4. Application fee by way of Demand Draft (US \$ 275 for each applicant or equivalent in local currency; US \$ 25 or equivalent in local currency for each PIO cardholder)
5. PIO cardholders should submit a copy of his/her PIO card.

Q.11. What documents would qualify for “Any other proof” for evidence of self or parents or grand parents being eligible for grant of OCI?

- A.11 Any documentary evidence like a school certificate, land ownership certificate, birth certificate, etc. which may reasonably ascertain eligibility.

12. How many copies of application have to be submitted?

- A.12. Application has to be submitted in duplicate for each applicant.

Q.13. Whether applicant(s) have to go in person to submit the application(s)?

- A.13. No. Application(s) can be sent by post.

Q.14. Whether the applicant(s) have to take oath before the Counsel of the Indian Mission/Post?

- A.14 No. Earlier provision in this regard has been done away with.

15. Where to submit the application?

- A.15 To the Indian Mission / Post of the country of citizenship of the applicant. If the applicant is not in the country of citizenship, to the Indian Mission / Post of the country where he is ordinarily residing. If the applicant is in India, to the FRRO Delhi, Mumbai, Kolkata or Amritsar or to the Under Secretary, OCI Cell, Citizenship Section, Foreigners Division, Ministry of Home Affairs (MHA), Jaisalmer House, 26 Mansingh Road, New Delhi – 110011.

Q.16. Can a person apply in the country where he is ordinarily residing?

- A.16 Yes.

Q.17. What are the consequences of furnishing wrong information or suppressing material information?



A.17. All the applications will be subject to pre or post enquiry depending on whether any adverse information is voluntarily reported in the application or not. If the Government comes to the know that any false information was furnished or material information was suppressed, the registration as OCI already granted shall be cancelled by an order under section 7D of the Citizenship Act, 1955. The persons will also be blacklisted thereby banning his/her entry into India.

Q.18. What is the fee for application for registration as an OCI?

A.18. US \$ 275 or equivalent in local currency for each applicant. In case of PIO card holder, US \$ 25 or equivalent in local currency for each applicant.

Q.19. What is the time taken for registration as OCI?

A.19. Within 30 days of the application, if there is no adverse information available against the applicant. If any adverse information is available against the applicant, the decision to grant or otherwise is taken within 120 days.

Q.20. If the registration as OCI is not granted, what amount will be refunded?

A.20. An amount of US \$ 250 or equivalent

in local currency shall be refunded, if registration is refused. US \$ 25 is the processing fees, which is non-refundable.

Q.21. Can a PIO cardholder apply?

A.21. Yes, provided he/she is otherwise eligible for grant of OCI like any other applicant.

Q.22. Will the PIO Cardholder be granted an OCI registration gratis?

A.22. No. He/she has to make a payment of US \$ 25 equivalent in local currency along with the application.

Q.23. Will the PIO Card be honored till the time they are valid even after acquisition of OCI?

A.23. No. PIO Card will have surrendered to Indian Mission/Post/MHA for grant of OCI registration certificate and OCI 'U' visa sticker.

Q.24. What will be issued after registration as an OCI?

A.24. A registration certificate in the form of a booklet will be issued and a multiple entry, multi-purpose OCI 'U' visa sticker will be pasted on the foreign passport of the applicant. For this purpose, the applicant has to send the original passport to the Indian Mission / Post after receipt of the acceptance letter/ verifying the status of the application online.

- A.24. In case of application filed in India with FRRO, applicants should go to the concerned FRRO in person/authorized person with passport. In case of applications filed in India with MHA, applicants should go to OCI Cell, MHA, New Delhi in person/authorized person with passport.
- Q.25. Will a separate OCI passport be issued?**
- A.25 No.
- Q.26. Will a duplicate certificate of registration, as an OCI will be issued?**
- A.26. Yes. For this purpose, an application has to be made to the Indian Mission / Post with evidence for loss of certificate. In case of mutilated/damaged certificate an application has to be made enclosing the same. The applications in both the cases have to be made to the same Indian Mission / Post which issued the certificate alongwith with payment of fee of US \$ 25 or equivalent in local currency.
- Q.27. Will a new OCI visa sticker be issued on the new foreign passport after the expiry of the old passport?**
- A.27. Yes. On payment of requisite fee, a new OCI 'U' visa sticker will be issued. However, the applicant can continue to carry the old passport wherein the OCI 'U' Visa sticker was pasted along with new passport for visiting India without seeking a new visa, as the visa is lifelong.
- Q.28. Will the applicant lose his citizenship after registering as an OCI?**
- A.28. No. As only citizen of the country which allows dual citizenship under the local laws in some form or the other are eligible for applying for registration as an OCI, losing foreign citizenship does not arise.
- Q.29. Can a person registered as an OCI travel to protected area/restricted area without permission?**
- A.29. No. He/she will be required to seek PAP/RAP for such visits.
- Q.30. Would the Indian civil/criminal laws be applicable to persons registered as OCI?**
- A.30. Yes. For the period OCI is living in India.
- Q.31. Can a person registered as an OCI be granted Indian citizenship?**
- A.31. Yes. As per the provisions of section 5(1)(g) of the citizenship Act, 1955, a person who is registered as an OCI for 5 years and residing in India for 1 Year out of the above 5 Years, is eligible to apply for Indian citizenship.



Q.32. Will OCI be granted gratis to certain categories of people?

A.32. No.

Q.33. Can OCI be granted to foreign nationals who are not eligible for OCI, but married to persons who are eligible for OCI?

A.33. No.

Q.34. Will foreign-born children of PIOs be eligible to become an OCI?

A.34. Yes, provided one of the parents is eligible to become an OCI.

35. What are the benefits of an OCI?

A.35. Following benefits will be allowed to an OCI:

- a. Multi-purpose, multiple entries, lifelong visa for visiting India.
- b. Exemption from NRIs with local police authority for any length of stay in India.
- c. Parity with NRIs in respect of economic, financial and educational fields except in matters relating to acquisition of agricultural/ plantation properties.

Q.36. Will any other benefit be granted to OCI?

A.36. Any other benefits to OCI will be notified by the ministry of Overseas Indian Affairs (MOIA) under Section 7B (1) of the Citizenship Act, 1955.

Q.37. Is the OCI is entitled to voting rights?

A.37. No.

38. Is the OCI is entitled to hold Constitutional post in India?

A.38. No.

Q.39. Is the OCI is entitled to hold Government post in India?

A.39. No, except for the posts specified by an order by the Central Government.

40. If a person is already holding more than one nationality, can he/she apply for OCI?

A.40. Yes, as long as the local laws of at least one of the countries allow dual citizenship in some form or the other.

Q.41. What are the advantages of OCI when compared to PIO cardholders?

A.41.(a) An OCI is entitled to life long visa with free travel to India whereas for PIO cardholder, it is only valid for 15 years.

(b) PIO cardholder is required to register with the local police authority for any stay exceeding 180 days in India on any single visit whereas an OCI is exempted from registration with police authority for any length of stay in India.

(c) An OCI gets a specific right to become an Indian Citizen as in 31, whereas the PIO card holder does not have this.

Q.42. Whether an OCI be entitled to apply for and obtain a normal Indian passport, which is given to a citizen of India?

A.42. No. Indian Passport is given only to Indian citizen.

Q.43. Whether national of commonwealth countries are eligible for OCI?

A.43. Yes, if they fulfill the eligibility criteria.

Q.44. Can a person renounce OCI?

A.44. Yes. He/she has to declare intention of renunciation in Form XXII to the Indian Mission /Post where OCI registration was granted. After receipt of the declaration, the Indian Mission/Post shall issue an acknowledgement in Form XXII A.

Q.45. Do the applicants who have applied on the earlier prescribed application form have to apply again in the new form?

A.45. No. All such application will be considered for registration as OCI without seeking fresh applications and fee.

ADDRESSES OF OFFICES TO FILE OCI APPLICATIONS

Applicants outside India can file applications to

1 The Indian Mission /Post having

jurisdiction over the country of which applicant is a citizen; or

1 If he/she is not living in the country of his/her citizenship, to the Indian Mission /post having jurisdiction over the country of which the applicant is **ordinarily resident.**

Applicants any where in India can File with Ministry of Home Affairs (MHA) at the following Address:

Under Secretary (OCI), Foreigners Division, Ministry of Home Affairs, 26-Mansingh Road, Jaisalmer House, New Delhi-110011. Tel. No. 011-110011 e-mail: usoci-mha@nic.in

Applicants in Delhi, Mumbai, Chennai, Kolkata and Amritsar can also file with respective Foreigners Regional Registration Officers (FRROs) at the following addresses:

- i. FRRO, East Block- VIII Level-2 Sector-1, R.K. Puram, New Delhi-110066. Tel.No. 011-26711384
- ii. FRRO, Badruddin Tayyabji Marg, Mumbai-1 Tel.No. 022-26571998
- iii. FRRO, Shastri Bhavan Annexe, 26, Haddows Road, Chennai. Tel. No. 044-28232642
- iv. FRRO, 237, A.J.C. Bose Road, Kolkata. Tel.No. 033-22470549
- v. FRRO, D-123,Ranjeet Avenue, Amritsar. Tel.No. 0183-2508250.



Comparative chart on NRI/PIO/PIO CARD HOLDERS/OCI				
	NRI	PIO	PIO Card holder	OCI
1. Who?	An Indian citizen who is ordinarily residing outside India and holds an Indian passport	A person who or whose any of ancestors was an Indian national and who is presently holding another country's citizenship/nationality i.e. he/she is holding foreign passport	A person registered as PIO card Holder under MHA's scheme vide Notification No. 26011/4/98-F.I dated 19.08.2002.	A person registered as Overseas Citizen of India (OCI) under section 7A of the citizenship Act,1955
2. Who is eligible?	-	-	Any person who at any time held an Indian passport; or he or either of his parents or grand parents was born in or was permanently resident in India as defined in government of India Act, 1935 and other territories that become part of India thereafter provided neither was at any time a citizen of Afghanistan, Bhutan, China, Nepal, Pakistan and Sri Lanka,. Or who is a spouse of a citizen of India or a person of Indian origin as mentioned above.	A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that become part of India after 15.08.1947 and his/her children and grand children, provided his/her country of citizenship allows dual citizenship in some form or other under the local laws, is eligible for registration as overseas citizen of India (OCI) Minor children of such person are also eligible for OCI .However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI..

3. How can one get?	-	-	Eligible persons to apply in the prescribed form along with enclosures. Form available on MHA's website ; www.mha.nic.in .	Eligible persons to apply on line /down load application form from MHA's website: www.mha.nic.in .
4. Where to apply?	-	-	To the Indian Mission/ Post in the country where the applicant is ordinarily resident; if in India on long term visa (more than one year), to the FRRO, Delhi, Mumbai, Kolkata, Amritsar, CHIO, Chennai or to the joint secretary (foreigners),MHA.	To the Indian Mission/ Post of the country of applicant's citizenship or where he/she is not in the country of citizenship, to the Indian Mission/Post of the country in which he/she is ordinarily resident. If the applicant is in India he/she can apply to the FRRO at Delhi, Mumbai, Kolkata, Amritsar, CHIO, Chennai or to the Under Secretary, OCI Cell, Citizenship Section Foreigners Division, Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi-110011.
5. Fees?	-	-	Rs. 15000/- or equivalent in local currency for adults. For the children upto the age of 18 years, the fee is Rs. 7500/- or equivalent in local currency.	US \$ 275 or equivalent in local currency. In case of PIO card holders, it is US \$ 25 or equivalent in local currency.



6. Which nationals are eligible?	-	-	PIO of all countries except Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka	PIOs of all countries except Pakistan and Bangladesh provided the country of nationality allows dual citizenship in some form or other under local laws.
7. What benefits one is entitled to?	All benefits as available to Indian citizen subject to notification issued by the Government from time to time.	No specific benefits.	<p>(1) Shall not require a separate visa to visit India.</p> <p>(2) Will be exempt from the requirements of registration if his/her stay on any single visit in India does not exceed 180 days.</p> <p>(3) In the event of continuous stay in India exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned FRRO/FRO.</p> <p>(4) Parity with NRIs in respect of all facilities available to the later in the economic, financial and educational fields except in matters relating to the acquisition of agricultural / plantation properties. No parity shall be allowed in the sphere of political rights.</p>	<p>(1) A multiple entry multi-purpose life long visa for visiting India.</p> <p>(2) Exemption from registration with local police authority for any length of stay in India.</p> <p>(3) Parity with non resident Indians (NRIs) in respect of economics financial and educational fields except in relation to the acquisition of agricultural or plantation properties. No parity shall be allowed in the sphere of political rights.</p> <p>Any other benefit to OCIs will be notified by the Ministry of Overseas Indian Affairs (MOIA) under section 7B (1) of the Citizenship Act 1955.</p>

8. Does he/she require visa for visiting India?	No	Yes and of specific type depending on his /her purpose of visit.	Can visit India without visa for 15 year from the date of issue of PIO card.	Can visit India without visa for life long.
9. Is he required to register with local police authorities in India ?	No	Yes	Yes one time when the stay in India exceeds 180 days for the first time	No
10. What activities can be under taken in India?	All activities	Activity as specified in the visa	All activities except mountaineering, missionary and research work and existing PAP/ RAP Which require specific permit.	All activities except mountaineering, missionary and research work and existing PAP/ RAP Which require specific permit
11. How can one acquire Indian citizenship?	He/she is an Indian citizenship	As per section 5 (1) (a) & 5(1) (c) of the Citizenship Act, he/she has to reside in India for minimum 7 years before making application for granting Indian citizenship	As per section 5 (1) (a) & 5(1) (c) of the Citizenship Act, he/she has to reside in India for minimum 7 years before making application for granting Indian citizenship	Registered OCI may be granted Indian citizenship after 5 years from date of registration provided he/she stays for one year in India before making application



PIO CARD

THE PIO CARD SCHEME

In a significant step towards granting dual citizenship to Overseas Indians, the Government approved the person of Indian origin (PIO) card scheme to permit all such individuals visa-free entry into the country.

Definition of Person of Indian Origin (PIO)

“Person of Indian Origin” means a foreign citizen [not being a citizen of Pakistan, Bangladesh and other countries as may be specified by the central government from time to time] if,

- i. He/she at any time held an Indian passport;
- ii. He/she or either of his/her parents or grand parents or great grand parents was born in and permanently resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the specified countries; or
- iii. He/she is a spouse of a citizen of India or a person of Indian origin covered under (i) or (ii) above.

Procedure for Application for PIO Card

The card would be issued to eligible applicants through the concerned Indian Embassies/ High Commission / Consulates (Annexure II) and for those staying in India on a long term visa, from the concerned Foreigners Regional Registration Officer (Delhi, Mumbai, Calcutta, Chennai) and also from the Ministry of Home Affairs, Foreigners Division, Lok Nayak Bhawan, Khan Market, New Delhi-110003. (Refer Annexure 1 for the Application for PIO Card Scheme).

The fees for the card, which will have a validity of 15 years, would be Rs.15, 000/- and for the minor (below 18 years), the fees is Rs.7,500/-.

Benefits of Person of Indian Origin (PIO) Card Scheme

Besides making their journey back to their roots simpler, easier and smoother, this scheme entitles the PIOs to a wide range of economic, financial, educational and cultural benefits.

The benefits envisaged under the scheme include:-

- (i) No requirement of visa to visit India;
- (ii) No separate “Student Visa” or “Employment Visa” required for

admission in colleges/ institution or for taking up employment respectively;

- (iii) No requirement to register with the Foreigners Registration Officer if continuous stay does not exceed 180 days. Registration is required to be done within a period of 30 days after expiry of 180 days;
- (iv) Parity with Non-Resident Indians in respect of facilities available to the latter in economic, financial, educational fields, etc. These facilities will include:
 - (a) Acquisition, holding, transfer and disposal of immovable properties in India except for agricultural/plantation properties;
 - (b) Admission of children in educational institution in India under the general category quota for NRIs—including medical/engineering colleges, IITs, IIMs etc.;
 - (c) Various housing schemes of Life Insurance Corporation of India, State Government and other Government agencies;
 - (d) Special counters at the immigration check post for speedy clearance.
 - (v) All future benefits that would be extended to NRIs would also be made to PIO Card holders
 - (vi) They however cannot enjoy political rights in India.

Issue of Gratis PIO Card

Gratis PIO Card may be issued to an exceptionally eminent person of Indian Origin, who plays an important role in building bridges between India and the country of his/her adoption, if he/she expresses a desire to obtain the PIO Card.

Duplicate PIO Card

Duplicate PIO Card can be obtained in case of loss, etc., on a request supported by FIR and other documents. A duplicate PIO Card shall be issued on depositing a fee of US \$ 100. Duplicate PIO Cards will be issued by the same office that issued the original one.

PIO cards issued earlier as per PIO Card Scheme for US \$1000 will continue to remain valid without any extra fee, with validity extendable by 10 more years.



BAGGAGE RULES AND VISA RULES

BAGGAGE RULES

Baggage Rules is an aspect of customs network which the common man going abroad or returning from abroad has to deal with at customs.

Under the General Baggage Rules,

- (1) used personal effects, and
- (2) new articles up to a value of Rs. 12,000/- per adult passenger (Rs. 25,000/- if the person returns to India after more than three days) are exempt.

A lower Free Allowance of Rs. 6,000/- is allowed to passengers coming (after 3 days) from Nepal, Bhutan, Burma or China provided they do not come across land borders with these countries.

Passengers returning from Pakistan by road are allowed duty free baggage up to Rs. 12,000/-.

For child passengers (below 10 years of age), free allowance is 50% of the allowance admissible to an adult passenger of that category.

The General Free Allowance of passenger is not clubbable with similar allowance of another passenger (for example, husband or wife or any other relative traveling with the passenger) to permit clearance of a costly article of baggage.

Laptop computer (computer notebook) brought by a passenger of the age of 18 years and above has been exempted w.e.f from 9-1-2004.

Alcoholic liquor or wines up to two litres, 200 cigarettes and jewellery upto Rs. 20,000/- for a lady and Rs. 10,000/- for a gentleman can be brought as part of the free baggage allowance. Import of cinematography films, exposed but not developed, brought as part of baggage has also been made duty free.

In case a single article exceeding the limit of Rs. 12,000 (or Rs. 25,000 in value) is brought, 35% flat rate of duty with no SAD or CVD is payable on excess value. 40% without SAD & CVD is also the effective rate of duty for any article of bona fide baggage brought in excess of free allowance except for fire arms, cartridges of fire arms exceeding 50 and excess cigarettes, cigars or tobacco.

But in terms of exemption Notification No. 49/96-Cus., dated 23-7-1996, specified goods covered under listed Headings and Notifications therein attract merit rate (as applicable to cargo) even if imported as baggage. Conditions, if any, prescribed in the listed Notification will apply to imports under baggage also. Free allowance is restricted in case of visit to contiguous countries like Maldives, Sri Lanka, Nepal

and Bhutan.

‘Baggage’ does not include motor vehicle, fire arms and goods of commercial nature or in commercial quantities.

There are value/ quantity restrictions on bringing jewellery, cigarettes and liquor. However, primary gold up to ten kgs. per passenger and silver up to one hundred kgs. per passenger can be imported on payment of normal duties in convertible foreign exchange provided the concerned passenger is coming to India after at least six months’ stay abroad. For crew members of a vessel or aircraft, free allowance for petty gifts is Rs 600/-.

TRANSFER OF RESIDENCE

In the case of passengers transferring their residence to India after stay abroad of two years or more, personal and household effects in use abroad and six new specified household gadgets are exempt from duty but 15 % flat duty without SAD has to be paid on 17 listed articles of consumer durables within value ceiling of 5 lakhs. In the case of transfer of residence after stay abroad of at least one year, other personal and household effects in use abroad and not exceeding Rs. 75,000/- in aggregate value can be brought in free. In addition, there are free allowances of varying value for professional artisans coming to India after 3

months/6 months (duty free household article worth Rs. 12,000/- and professional equipment worth Rs. 20,000/- /40,000/-).

Allowance for gifts as well as for travel souvenirs in the case of foreign tourists is Rs. 8,000/- (Rs.6,000/- in the case of tourists from Pakistan origin), apart from personal effects in use of the tourist. Peak rate of duty for baggage goods of Heading 98.03 is 150% non-bona fide baggage is in addition to fine and penalty.

Foreign Travel Tax and Inland Air Travel Tax have been exempted for all passengers with effect from 9-1-2004.

Passengers not carrying any dutiable goods can walk through the Green Channel. Others are required to come to the Red Channel and report at customs counter. There are now no restrictions on resale of baggage goods.

Passengers importing / exporting commercial samples as accompanied baggage should follow the procedure laid down in this behalf. If an importer is desirous of paying duty on an article at the cargo rate but by mistake he has brought the said article as baggage, he can rectify the error by filling an application before the authorities along with submission of a bill of entry (Collector v. A.K.Dhawan)

Please visit the website www.cbec.gov.in for the complete Baggage Rules 1998



VISA RULES

GENERAL VISA REQUIREMENTS FOR ENTRY / STAY IN INDIA

UNITED STATES OF AMERICA

Visa application forms (available at www.indiacgny.org) should be accompanied for all types of visas by two photographs and applicant's original passport should have validity of six months.

Type of Visa	Other requirements/conditions
Tourist Visa	Nil
Transit Visa	Copy of airline tickets
Entry Visa	Issued to People of Indian Origin only
Business Visa	Letter from the sponsoring organization indicating nature of applicant's business, probable duration of stay, validity of visa, places and organizations to be visited and also a guarantee to meet maintenance expenses etc.
Employment Visa	Contract with the employer
Student Visa	A letter confirming admission to the institution along with evidence of financial arrangements for stay in India. In case of admission in medical or paramedical courses in India, NOC from Ministry of Health, Govt. of India. In case of admission in graduate or post graduate courses in engineering/technical institutions in India, NOC from Ministry of Human Resources Development (Department of Education)
Research Visa	Approval of Ministry of Human Resource Development
Journalist Visa	Given to professional journalists and photographers for upto three months stay in India
Conference Visa	Letter of invitation from the organizer of the conference

UNITED KINGDOM

Visa application forms (available at <http://www.hcilondon.net>) should be accompanied for all types of visas by two photographs and applicant's original passport should have validity of six months.

Type of Visa	Other requirements/conditions
Tourist Visa	Nil
Business Visa	Letter explaining the nature of business and duration from UK company and letter of invitation from an Indian Company
Conference Visa	Letter of invitation from the conference organizer
Transit Visa	Evidence of onward travel outside India is required
Entry Visa	Issued to People of Indian Origin only
Long Term Visa	This settlement visa is issued to people of Indian origin
Student Visa	Letter of admission from recognized educational institution with duration of the course
Journalist Visa	Letter from employer where applicable
Employment Visa	An employment contract signed by both the parties should be submitted
Sports Visa	Invitation Letter from India

SOUTH AFRICA

Visa application forms (available at <http://www.indconjoburg.co.za>) should be accompanied for all types of visas by two photographs, original passport (South Africa or any other country), one air ticket copy (except two for business visa) and birth certificate/South African ID.

Type of Visa	Other requirements/conditions
Tourist Visa	Nil
Business Visa	Two copies of invitation letter from India and two copies of letter from South African company
Study Visa	Letter from School, Institution or college (Duration of study must be mentioned)
Employment Visa	Employment Letter from company and letter of NOC from Ministry of Labour, India



MAURITIUS

Visa application forms (available at <http://indiahighcom.intnet.mu>) should be accompanied for all types of visas by three passport size photographs, photocopy of confirmed return air ticket and applicant's original passport should have validity of six months.

Type of Visa	Proof/ Other requirements/conditions
Tourist Visa	Hotel booking in cities intended to travel in India, Travellers cheques or receipt of exchange of money in the name of applicant \$50 per day per person for stay in India or notarized letter of sponsorship from person residing in India, guaranteeing all expenses of stay, travel etc of the applicant in India or Credit Cards accompanied by covering letter of Bank
Business Visa	Business in Mauritius Letter from company in Mauritius showing exact nature of business to be transacted and details of person deputed for the purpose and Letter from company in India, indicating the details of person, visiting India and the nature of Business
Education Visa for freshers	Eligibility certificate from concerned university
Student Visa Extension	Eligibility certificate from concerned university Photocopy of college Identity Card, Bonafide certificate, Residence permit photocopy

Note: the above VISA rules are not applicable to the holders of diplomatic and official passport.

MALAYSIA

Visa application forms (available at <http://www.indianhighcommission.com.my>) should be accompanied for all types of visas by three photographs and applicant's original passport should have validity of six months.

Type of Visa	Other requirements/conditions
Transit Visa	Confirmed Air Ticket
Tourist Visa	Nil
Business Visa	Proof of business in India
Student Visa	Proof of admission in recognized institution in India
Employee Visa	Proof of employment in India
Other Visa	Consult the counter

UNITED ARAB EMIRATES

Visa application forms (available at www.indianembassy.org.sa) should be accompanied for all types of visas by two photographs, Saudi exit/re-entry visa on the passport and applicant's original passport should have validity of two months beyond the validity of visa,

Type of Visa	Other requirements/conditions
Tourist Visa	Letter of recommendation from sponsor
Business Visa	Letter of request from business establishment in Saudi Arabia
Transit Visa	Letter of recommendation from sponsor
Student Visa	Provisional admission letter from recognized educational institution in India. Letter of financial support/guardian along with a bank guarantee worth Saudi riyals Seven Thousand. Letter of recommendation from sponsor
Visa to visit relatives or for Medical Treatment	Names and complete addresses of relatives to be visited in India. Medical Reports/Hospital References in case of medical treatment. Letter of recommendation from sponsor.
Employment Visa	Copy of contract signed with the employer in India or letter regarding offer of appointment in India. Letter of recommendation from sponsor.
Diplomatic/ Official Visa	Note verbale from the applicant's embassy indicating the purpose of the visit

CANADA

Visa application forms (available at <http://www.hciottawa.ca>) should be accompanied for all types of visas by one photograph for the business visa and two photographs for the rest and a valid passport.

Type of Visa	Others requirements/conditions
Business Visa	Letter from the applicant's company stating the purpose of visit and another letter from Indian company inviting the applicant Additional Business Information Sheet to be filled in
Student Visa	Letter of admission from Government of India recognized school/institution
Long Term Visa	Sufficient reason with documentary proof for granting long term visa



FOREIGN CONTRIBUTION (REGULATION) ACT, 1976

INTRODUCTION

Foreign Contribution (Regulation) Act, 1976 (FCRA) was enacted in the year 1976 with the prime objective of regulating the acceptance and utilization of foreign contribution and foreign hospitality by persons and associations working in the important areas of national life. The focus of this Act is to ensure that the foreign contribution and foreign hospitality is not utilized to affect or influence electoral politics, public servants, judges and other people working the important areas of national life like journalists, printers and publishers of newspapers, etc. The Act also seeks to regulate flow of foreign funds to voluntary organizations with objective of preventing any possible diversion of such funds towards activities detrimental to the national interest and to ensure that such individuals and organizations may function in a manner consistent with the values of sovereign democratic republic.

The organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programmes may either obtain registration or prior permission to receive foreign contribution from Ministry of Home Affairs by making application in the prescribed format and furnishing details of the activities

and audited accounts. The registration is granted only to such association, which has proven track record of functioning in the chosen field of work during last three years, and after registration, such organization is free to receive foreign contribution from any foreign source for stated objectives. Registration is granted only after thorough security vetting of the activities and antecedents of the organization and office bearers thereof. However, such organizations which are newly established and do not have proven track record of functioning may also receive foreign contribution for specific activities, for a specific purpose and from a specific source after seeking project based prior permission (PP) from the Ministry of Home Affairs.

In order to bring in transparency in the administration of the Foreign Contribution (Regulation) Act, 1976 and the Rules framed there under, improve the functioning, disseminate the information and enhance user friendliness of the various procedures the web-site is uploaded with all the FCRA forms, Citizens' Charter, list of registered associations, State-wise status of application for registration/prior permission, etc. In our efforts to bring in further improvements in the system, the following additional charters/materials are uploaded for information and guidance of all concerned:

- Citizens charter
- Charter for NGO/Associations applying for grant of Prior permission/Registration under the FCRA.
- Charter for NGOs/Associations granted Prior permission/Registration under the FCRA.
- Charter for the Chartered Accountants.
- Charter for the Banks.
- Dealing officers

CITIZENS CHARTER

Receipt of Foreign Contribution

The provisions of the Foreign Contribution (Regulation) Act, 1976 regulate the receipt of foreign contribution in the country. The Foreign Contribution (Regulation) Rules 1976 contain the various forms prescribed for this purpose.

What is Foreign Contribution

Foreign contribution means the donation, delivery or transfer, made by any foreign source of any,

- a) Article, not given to a person as a gift, for personal use, if the market value, in India, of such article exceeds one thousand rupees;
- b) Currency, whether Indian or foreign; or,
- c) Foreign security as defined in clause 2(i) of the Foreign Exchange Regulation Act, 1973.

NOTE: Contributions made by a citizen of India living in another country, from his personal savings, through the normal banking channels, is not treated as foreign contribution. It is advisable to obtain the passport details of the concerned citizen of India before accepting such contributions.

What is a Foreign Source

Foreign source means the government of any foreign country or territory or its agency; international agency; a foreign company; citizen of a foreign country. For more details see section 2(1)(e) of the Foreign Contribution (Regulation) Act, 1976.

Who cannot Receive Foreign Contribution

Foreign contribution cannot be accepted by a candidate for election; correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; judge, government servant or employee of any corporation; member of any legislature; political party or office bearer thereof.

Who can Receive Foreign Contribution

An association having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after it obtains the prior permission of the Central Government, or gets itself registered with the Central Government.

Forms Prescribed for this Purpose

An application for seeking prior permission to accept foreign contribution is to be made in Form FC – 1A and for grant of registration in Form FC – 8 respectively.



Designated Bank Account

An association granted prior permission or registration under the Act can receive the foreign contribution and subsequently utilise it using a single designated bank account, as intimated in the application form. Do not deposit any local funds in this bank account.

Maintenance of Accounts

An association granted prior permission or registration under the Act must maintain a separate set of accounts and records exclusively for the foreign contribution received and utilised in the prescribed manner. For more details see rule 8 of the Foreign Contribution (Regulation) Rules, 1976.

Receipt of Scholarships etc

A citizen of India receiving any scholarship, stipend or any payment of a like nature from any foreign source is required to give, within thirty days of such a receipt, an intimation to the Central Government as to the amount of the scholarship, stipend or other payment received; the foreign source from which and the purpose for which, such scholarship, stipend or other payment has been, or is being received. The intimation is to be given in Form FC – 5.

Time Taken to Dispose Application

An application for registration is normally disposed within six months. An application seeking prior permission is disposed within 90/120 days. It is advisable to obtain a certificate, in the format incorporated at the

end of the application form, from any of the competent authority mentioned therein viz., Any concerned Collector of District; Department of the State Government; Ministry / Department of the Government of India.

Where should the Application be Sent

An application (one copy only) for seeking prior permission or registration is to be sent by registered post to the Secretary, Ministry of Home Affairs, Foreigners Division, Jaisalmer House, 26 Man Singh Road, New Delhi 110011.

Proper Filing of Application

Please familiarise yourself with the provisions of the Foreign Contribution (Regulation) Act, 1976 and the Foreign Contribution (Regulation) Rules, 1976 before making an application. Please fill the relevant application form with due care. Ensure that you furnish information exactly in the manner stated in the form. An incomplete application will be summarily rejected.

Filing of Returns

An association permitted to accept foreign contribution is required to submit an annual return, duly certified by a Chartered Accountant, giving details of the receipt and purpose-wise utilization of the foreign contribution. The return is to be filed for every year (1st April to 31st March) within a period of four months from the closure of the year i.e. by 31st July of each year. The

return is to be submitted, in duplicate, in Form FC-3. It is to be accompanied with the balance sheet and statement of receipt and payment, duly certified by a Chartered Accountant, also in duplicate.

Availability of Forms

Please use the correct and current form. The forms can be obtained, free of cost, from the above-mentioned address. The forms are also available on the Ministry of Home Affairs' web site – <http://mha.nic.in/fore.htm>

Penalties for Violation

Whoever accepts, or assists any person, political party or organisation in accepting any foreign contribution or any currency from a foreign source, in contravention of the provisions of the Foreign Contribution (Regulation) Act, 1976, or the rules made thereunder, shall be punished with imprisonment for a term, which may extend to five years, or with fine or with both. "All the above services & commitments will be honoured without the citizens having to pay any bribe."

CHARTER FOR NGOs / ASSOCIATIONS APPLYING FOR GRANT OF PRIOR PERMISSION / REGISTRATION UNDER THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976.

- Any NGO wishing to receive Foreign Contribution (FC) must have a definite cultural, economic, educational, religious or social programme.

- It shall neither receive nor utilise any FC without obtaining either prior permission or registration from the Central Government.
- Details of FC received prior to obtaining either prior permission or registration should be mentioned clearly at the time of applying for prior permission or registration, as the case may be.
- An application for seeking prior permission to accept foreign contribution is to be made in Form FC-1A, and for grant of registration in Form FC-8, respectively. The forms can be downloaded from Ministry of Home Affairs Web Site at <http://mha.nic.in/fcra.htm>
- The application should be complete in all respects and no column should be left blank.
- Each Prior permission application should be sent for receiving a specific amount, for a specific purpose and from a specific donor. The donor's commitment letter specifying the amount of FC and copy of project for which FC is solicited should invariably be sent along with the FC-1A form.
- Copies of following documents are required to be sent along with FC-1A and FC-8 form.
 1. Copy of certificate of registration issued under the Societies Registration Act, 1860 or Trust deed, as the case may be;



2. Details of activities during the last three years;
3. Copies of audited statement of accounts for the past three years (Asset and Liabilities, Receipt and Payment, Income and Expenditure);
4. If any printed work is brought out by the association, a certificate from the Press Registrar that the publication is not a newspaper in terms of section 1(1) of the Press Registration of Books Act, 1867.

CHARTER FOR NGOs / ASSOCIATIONS GRANTED PRIOR PERMISSION OR REGISTRATION UNDER THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976.

- An association granted prior permission or registration under the Foreign Contribution (Regulation) Act, 1976 (FCRA) should receive the FC and subsequently utilise it using an exclusive designated bank account, as intimated in the application form. Do not deposit any local funds in this bank account.
- An association granted prior permission or registration under FCRA is required to carry out the activities, for which FC is received, in India only and the amount should not be utilised for purposes other than for which it is received.
- Any fixed asset acquired out of the FC and any article received in kind from the foreign source should be in the name of the association and not in the name of any individual in the association.
- Not more than 30% of the FC shall be defrayed to meet administrative expenses of the association.
- An association granted prior permission or registration under FCRA should maintain a separate set of accounts and records, exclusively for foreign contribution received and utilised.
 - i. In Form FC-6, where the FC relates only to articles;
 - ii. In the cash book and ledger account on double entry basis, where the FC relates to currency received and utilised.
 - iii. In Form FC-7, where the FC relates to foreign securities.
- Every account giving details of the receipt and purpose-wise utilisation of the FC, including the interest earned on the FC amount, should be maintained on an yearly basis, commencing on the 1st day of April each year and every such yearly account, duly certified by a chartered accountant in Form FC-3 along with a balance sheet and statement of receipt and payment should be furnished in duplicate, within four months of the

closure of the year i.e. before 31st July. Even if no FC is received during a year, a 'Nil' return is required to be filed with the Ministry of Home Affairs within the prescribed time limit.

- No FC should be transferred to an association, which has not obtained either prior permission or registration under FCRA or to any person or association, prohibited under FCRA from receiving any FC.
- Change of name, address, registration, nature of activities or aims and objectives of an association should be intimated to the Ministry of Home Affairs within 30 days of effecting the change, alongwith the documentary evidence effecting the change.
- Prior permission of Ministry of Home Affairs should be obtained for replacing 50% or more of the office bearers.
- Prior permission of Ministry of Home Affairs should be obtained for changing bank account for valid and convincing reasons.
- The forms can be downloaded from Ministry of Home Affairs Web Site at <http://mha.nic.in/fcra.htm>.

CHARTER FOR THE CHARTERED ACCOUNTANTS

Since the FCRA Act, 1976 is national security legislation; NGOs are required to

exercise extreme care and caution in dealing with foreign contribution from the time of its receipt to its final utilization. As the Chartered Accountants (CA's) audit the accounts of the NGOs and they certify the accounts before being submitted to the FCRA division, CA's are required to provide meaningful guidance to the NGOs.

- To verify whether the associations are eligible to receive foreign contribution
- To guide the applicant organization to apply to the Home Ministry for necessary registration / prior permission;
- To assist in the proper maintenance of prescribed books of accounts;
- To furnish the required certificate in the prescribed format after careful scrutiny of the accounts of the NGO;
- Before certifying the accounts of an association in FC-3 returns, the CA concerned must ensure that they have been prepared in accordance with the provisions of FC(R) Act, 1976 and Rules framed thereunder.

CHARTER FOR THE BANKS

- No bank should credit any foreign contribution to the account of an association/NGO unless it produces documentary evidence of having obtained registration/prior permission from the Central Government for the same.



- In case any foreign contribution is credited to the account of an NGO/ Association/Trust directly, the bank should not allow utilization of such fund and inform the NGO/Association/ Trust concerned to obtain necessary permission/registration from the Central Government for the same. Simultaneously, the bank should inform the Deputy Secretary (FCRA), Ministry of Home Affairs, Govt. of India, New Delhi about such receipt.
- Non-compliance of the above by the bank will constitute a violation and will render the defaulting bank liable for appropriate action by the Reserve Bank of India.

CHECKLIST FOR ENSURING PROPER SUBMISSION OF APPLICATIONS, UNDER THE PROVISIONS OF THE FOREIGN CONTRIBUTION (REGULATION) ACT, 1976, FOR ACCEPTANCE OF FOREIGN CONTRIBUTION

Eligible Category

An association with a definite cultural, economic, educational, religious or social programme.

Types of Permission

- (i) Registration under section 6(1)(a); and,
- (ii) Prior permission under section 6 (1A).

Application Form

- (i) For grant of registration in form FC-8 and,
- (ii) For grant of prior permission in form FC-1A.

ESSENTIAL REQUIREMENTS

(A) Bank Account

Open a separate bank account for the receipt and utilisation of foreign contribution in a bank of your choice and furnish particulars of the same at the appropriate place.

Note: Do not deposit any local funds, other than the essential initial deposit specified by the bank for opening an account, in this account.

(B) Documents

Remember to enclose copies of the following documents with your application –

- a) Certified copy of registration certificate or Trust deed, as the case may be;
- b) Details of activities during the last three years;
- c) Copies of audited statement of accounts for the past three years (Asset and Liabilities, Receipt and Payment, Income and Expenditure);
- d) Commitment letter from foreign donor specifying the amount of foreign contribution (only with prior permission application);

- e) Copy of project for which foreign contribution was solicited is being offered (only with prior permission application);
- f) If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Press Registrar that the publication is not a newspaper in terms of section 1(1) of the said Act.

Miscellaneous

Furnish information exactly in the manner asked for in the form, especially the names and addresses of the members of the Executive Committee/Governing Council etc. The forms can be downloaded from Ministry of Home Affairs Web Site at <http://mha.nic.in/fcra/intro/forms.htm>

Chartered Accountants / Banks

Chartered Accountants, before certifying the accounts of an association in form FC – 3, must ensure that they have been prepared in accordance with the provisions of the Foreign Contribution (Regulation) Act, 1976 and the Rules framed thereunder.

No bank should credit any foreign contribution to the account of an association/organisation unless it produces documentary proof of having obtained registration/prior permission from the Central Government for the same. Crediting of foreign contribution by a bank to the account of an association / organisation that has not obtained

registration or prior permission from the Central Government constitutes a violation and will render the defaulting bank liable for action by the Reserve Bank of India.

COMMON GROUND FOR REJECTION OF APPLICATION UNDER FCRA

To remove certain lacunae noticed during administration of the FCRA and the Rules made there under, certain guidelines were laid down for considering applications for grant of prior permission /registration under the Act. Some of the common grounds for rejection of applications are enlisted below as illustrations to bring in transparency and benefit the applicants in taking due care and caution:

- If the association is not registered under the Societies Registration Act, 1860 or Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956.
- If any of the office bearers/trustees, including the chief functionary is a foreign national, other than of Indian origin.
- If the association has a single office bearer/member.
- If the association is found to have been formed for personal gain or for diversion of the funds for undesirable purposes.
- If the association is found to be fictitious or 'benami' in nature.



- If the credibility of any member of the governing body is in doubt.
 - If the association has close links with another association which has been refused registration under FCRA or prohibited under FCRA or violated the provisions of FCRA.
 - If the association has links with any banned organization.
 - If the principal office bearers of the association have been convicted by any court of law under any act or if a prosecution for any offence is pending against them.
 - If the principal office bearers of the association have been found guilty of diversion or misutilisation of funds of the said association or any other association in the past.
 - If the activities of the association are found to be aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another.
 - If the association is found to be propagate sedition or to advocate violent methods to achieve its ends.
 - If the association is found to be creating communal tensions or disharmony.
 - If the office bearers of the association are also office bearers of another association and one of these association has come to adverse notice.
 - If the association's printed work is not certified by the Press registrar of India not to be a newspaper in terms of section 1(1) of the Press Registration of Books Act, 1867.
 - If the source of foreign contribution is found to be adverse to the interests of the country.
 - If the acceptance of foreign contribution by the association is likely to be prejudicial to (a) the sovereignty and integrity of India; (b) free and fair election to any Legislature or House of Parliament; (c) public interest; (d) friendly relations with a foreign state; or (e) harmony between any religious, social, linguistic, regional groups, caste or community.
 - If the association has not filed its annual FC-3 returns, of receipt and utilization of foreign contribution received with prior permission, within the stipulated period.
 - If the association has violated any provisions of the Act or Rules in the preceding three years and the said violation has not been remedied or rectified.
- Additional Grounds for Rejection of Applications for Registration**
- If the association is not in existence for three years at least.

- If the association has not carried on any activity in chosen field during the last three years.
- If the association has not received foreign contribution with prior permission, during the preceding three years.
- If the association has not made any substantial contribution, excluding expenditure on administration, (Rs.6,00,000 over a period of three years or Rs.2,00,000 per year) in its field of interest.

Additional Grounds for Rejection of Applications for Prior Permission

- If the application is not accompanied by the 'commitment letter' of the donor.
- If the application is not accompanied by the copy of project for which foreign contribution was solicited/is being offered.

Frequently Asked Questions (FAQs)

Q.1. What is foreign contribution?

- A.1. Foreign contribution means the donation, delivery or transfer, made by any foreign source of any,
- a) Article, not given to a person as a gift for personal use, if the market value, in India, of such article exceeds one thousand rupees;
 - b) Currency, whether Indian or foreign;
or

- c) Foreign security

Q.2. What is foreign source?

- A.2. Foreign source includes the Government of any foreign country or territory or its agency; an international agency; a foreign company; and citizen of a foreign country. Agencies of the United Nations, World Bank and some other International agencies/multilateral organisations are exempted from the definition of 'foreign source'. List of such exempted agencies/organisations is available on the website <http://mha.nic.in/fore.htm>

Q.3. Whether donation given by Non-Resident Indians (NRIs) is treated as 'foreign contribution'?

- A.3. Contributions made by a citizen of India living in another country (i.e. Non-Resident Indian), from his personal saving, through the normal banking channels, is not treated as foreign contribution. However, while accepting any donations from such NRI, it is advisable to obtain his passport details to ascertain that he/she is an Indian passport holder.

Q.4. Whether donations by person of Indian Origin (PIO) Card holder or Persons of Indian Origin (PIO) who hold other country's passports or registered Overseas Citizens of India (OCI) would be considered 'foreign source'?



A.4. Yes, because persons under all these three categories are foreign nationals and hold passports of the country of their nationality.

Q.5. Whether foreigners can be appointed as Executive Committee members?

A.5. Foreign nationals are generally discouraged from being appointed as member of Executive Committee by an association. However, foreign nationals, fulfilling the following conditions, may be appointed as Executive Committee members, after obtaining prior permission of the Central Government:

- a) The foreigner is married to an Indian citizen;
- b) The foreigner has been living and working in India for at least five years;
- c) The foreigner has made available his/her specialised knowledge, especially in the medical and health related fields on a voluntary basis in India, in the past;
- d) The foreigner is part of the Board of Trustees/Executive Committee in terms of the provisions in an inter governmental agreement;
- e) The foreigner is part of the Board of Trustee/Executive

Committee, in an ex-officio capacity representing a multilateral body which is exempted from the definition of foreign source.

The need for such an appointment should, however, be adequately justified.

Q.6. Who can receive foreign contribution?

A.6. An association having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after it obtains the prior permission of the Central Government, or gets itself registered with the Central Government. An illustrative but not exhaustive list of activities which are permissible and may be carried out by associations of different nature are available on the website <http://mha.nic.in/fore.him>

Q.7. Who cannot receive foreign contribution?

- A.7. Foreign contribution cannot be accepted by:
- i. A candidate for election;
 - ii. Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
 - iii. Judge, Government servant or employee of any Corporation;

- iv. Member of any legislature;
 - v. Political party or office bearer thereof; and
 - vi. Individuals or associations specifically notified under section 10 (a) of foreign contribution (Regulation) Act, 1976 who have been prohibited from receiving foreign contribution.
- Q.8. Can foreign contribution be received in and utilised from multiple Bank Accounts?**
- A.8. No, All foreign contribution should be received in and utilised from same single Bank Account mentioned in the order for registration or prior permission granted by MHA. This account number is same as has been intimated by the organisation in their application for registration/prior permission. **Use of multiple bank accounts is legally prohibited.**
- Q.9. Can foreign contribution be mixed with local receipts?**
- A.9. No, foreign contribution should not be mixed with local funds being handled by the organisation.
- Q.10. Can foreign contribution be received in rupees?**
- A.10. Yes. Any amount received from 'foreign source' in rupees or foreign currency is construed as 'foreign contribution' under law. Such transactions even in rupees term are considered foreign contribution.
- Q.11. Will interest earned from foreign contribution be considered foreign contribution?**
- A.11. Yes.
- Q.12. What is the Procedure for change of designated Bank Account?**
- A.12. For the change of Bank account, an application in prescribed form mentioning the details of the old bank account and the proposed new bank account alongwith justification for change may be submitted to MHA alongwith copy of resolution of the executive committee for such change. This form is available on website <http://mha.nic.in/fore.htm>. This new account may be made operational only after seeking MHA's approval.
- Q.13. What are the eligibility criteria for registration?**
- A.13. An organisation in formative stage is not eligible for registration. Such organisation may apply for grant of prior permission under the law. For grant of registration, the association should:
- a) be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956;



- b) be in existence for at least three years and have made significant contribution in chosen area of activity. For this purpose, the association should have spent at least Rs. 6,00,000 over last three years on its activities, excluding administrative expenditure. Statement of Income & Expenditure duly audited by Chartered Accountant for last three years may be enclosed to substantiate financial parameter.

Q.14. Whether recommendation of District Collector, etc. is mandatory?

- A.14. No, Submission of verification certificate from the District Collector, etc. is not mandatory. However, in certain cases, if the area of activity of an association is in non-border/coastal/tribal region and amount applied for prior permission is less than Rs.50 lakhs, submission of such a certificate assists in speedy clearance of the application

Q.15. What are the eligibility criteria for grant of prior permission?

- A.15. Prior permission is granted for receipt of specific amount from specific donor for carrying out specific activities/projects. For this purpose, the association should:

- A.15. a) be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956;
- b) submit commitment letter from the donor; and
- c) submit copy of project for which foreign contribution is solicited/is being offered.

Q.16. What are the documents to be enclosed with the application?

- A.16. i. Following documents should be enclosed with the application for grant of registration:
- a) certified copy of registration certificate or Trust deed, as the case may be;
- b) details of activities during last three years;
- c) copies of audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure);
- d) if functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Press Registrar that the publication is not a

newspaper in terms of section 1(1) of the said Act.

- ii. Following documents should be enclosed with the application for grant of prior permission:
 - a) certified copy of registration certificate or Trust deed, as the case may be;
 - b) commitment letter from foreign donor specifying the amount of foreign contribution;
 - c) copy of project for which foreign contribution was solicited/is being offered;
 - d) if functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Press Registrar that the publication is not a newspaper in terms of section 1(1) of the said Act.

Q.17. Is there any restriction on transfer of funds to other organizations?

- A.17. Yes, No foreign contribution can be transferred from an association granted registration or prior permission under FCRA to another association unless the letter has also obtained either registration or prior permission under FCRA.

Q.18. How to find the status of pending application for registration/prior permission?

- A.18. Status of pending application for grant of registration or prior permission may be checked on line from the Ministry of Home Affairs website <http://mha.nic.in/fore.htm>. One needs to fill in the numbers on acknowledgement letter or any correspondence from MHA (Foreigners Division) in the blank format, which pops on the screen after selection of status enquiry icon (registration/prior permission, as the case may be).

Q.19. What is the procedure to be followed by a Liaison Office to receive foreign contribution?

- A.19. Prior permission under FCRA is required by a Liaison Office of a foreign company for receiving remittances from its Head Office abroad for conducting conferences or carrying out other activities/programmes, etc. in India.

Q.20. What is the procedure for filing of FC -3 returns ?

- A.20. An association permitted to accept foreign contribution is required under law to maintain separate set of accounts and records exclusively for the foreign contribution received and utilized and submit an annual return, duly certified by a Chartered



Accountant, giving details of the receipt and purpose-wise utilization of the foreign contribution. The return is to be filed for every financial year (1st April to 31st March) within a period of four months from the closure of the year i.e. by 31st July of the year. Submission of even a 'Nil' return if there is no receipt/utilization of foreign contribution during the year, is mandatory, under law.

The return is to be submitted, in prescribed Form FC-3, duly accompanied with the balance sheet and statement of receipt and payment, which is certified by a Chartered

Accountant. The form is available on MHA's web-site – <http://mha.nic.in/fore.htm>

Q.21. What is foreign hospitality?

A.21. Foreign hospitality means any offer, not being a purely casual one, made by a foreign source for providing a person with the cost of travel to any foreign country or territory or with free board, lodging, transport or medical treatment.

Q.22. Who cannot accept foreign hospitality without prior approval of MHA ?

A.22. No member of a legislature, office bearer of a political party, judge, Government servant or employee of any corporation shall, while visiting

any country or territory outside India, accept, except with the prior permission of the Central Government any foreign hospitality.

Q.23. How one can seek permission of the Government for receiving foreign hospitality?

A.23. Application form (form FC-2) for his purpose is available on MHA's web-site – <http://mha.nic.in/fore.htm>. One must apply on this form through the controlling officer at least three weeks in advance to seek prior approval of the Government for receiving foreign hospitality.

Q.24. Where should the applications be sent?

A.24. All applications be sent to the Secretary, Ministry of Home Affairs, Foreigners, Division, Jaisalmer House, 26, Man Singh Road, New Delhi – 110011. The forms can be downloaded from the web-site–<http://mha.nic.in/fore.htm>.

Q.25. What is the procedure for seeking change in the name/address of the association?

A.25. For seeking change in the name/address of the association, one should use the prescribed form available on MHA's web-site – <http://mha.nic.in/fore.htm>.

26. Who should be contacted for any information on FCRA?

A.26. Names of the officers, their contact details including telephone numbers are available on MHA's web-site – <http://mha.nic.in/fore.htm>.

Q.27. Which other materials on FCRA are available on the MHA's website?

A.26. Following material on FCRA are available on MHA's web-site – <http://mha.nic.in/fore.htm>.

1. Foreign Contribution (Regulation) Act, 1976
2. Foreign Contribution (Regulation) Rules, 1976
3. Citizens charter, Charter for NGOs/Associations applying for grant of prior permission/registration under FCRA
4. Charter for NGOs/Associations granted prior permission/registrations under FCRA
5. Charter for the Chartered Accountants
6. Charter for the Banks
7. Illustrative programmes permitted to be carried out by association having different nature.
8. Check List for ensuring proper submission of applications
9. Agencies not covered by the definition of 'foreign source'

10. Common grounds for rejection of applications

11. Details of registered associations

12. On-Line status of pending applications

13. Annual summary on FCRA, FC forms

14. List of associations placed in prohibited category/prior permission category u/s 6(1), 10 (a) and 10 (b) of the Act

15. Directory of officers dealing with FCRA.

Q.28. Can an organization, whose violation under FCRA has been condoned, apply for registration/prior permission?

A.28. After the violation committed by an association has been condoned, the association can apply for prior permission (PP) only by submitting an application in form FC 1-A. Once the PP has been granted and foreign contribution received for specific purpose has been fully/partially utilised and organisation has submitted annual FC3 returns and accounts in prescribed format pertaining to the PP, it becomes eligible for consideration of registration under FCRA. Registration would be granted under FCRA, if other parameters are fulfilled by the association.



Q.29. Can NGOs use the foreign contributions for investment in Mutual Funds and other speculative investments?

A.29. No. The foreign contributions received after prior permission/grant of registration under the Act are to utilise for the purpose for which they have been received and they are not to be invested in any speculative investments. Further, it is clarified that foreign contributions can be received through a single Bank Account designated for the purpose under the order for registration/prior permission or changed thereafter with prior approval of the Government.

Q.30. Whether Capital Assets purchased with the help of foreign contributions can be acquired in the name of the office bearers of the association?

A.30. No. Every assets acquired out of foreign contributions should be acquired and possessed in the name of the association since association has a separate legal entity distinct from its members.

Q.31. Can the NGOs/Trusts invest in profitable ventures and proceeds can be utilised for welfare activities?

A.31. No. The NGOs/Trusts should utilise the funds for the welfare purpose or related activities for which it is

received. The utilization should be in line with the objectives of the association. However, foreign contributions can be utilised for self-sustaining activities, not meant for commercial purposes.

Q.32. Whether interest earned out of foreign contribution be shown as fresh foreign contribution receipt during that year or not?

A.32. Yes, the interest earned out of such deposit should be shown as second/subsequent foreign contribution receipt in the FC-3 returns during the year in which it is earned.

Q.33. Whether grant received from MNCs be treated as FC or not?

A.33. If the funds are received from an Indian Company incorporated under the Company Act, 1956 the same will not be treated as foreign contribution. But if the ownership and control rights of the company are vested in foreign source, it will be treated as foreign contribution.

Q.34. If an application for registration is submitted on-line by an NGO, does it need to submit the application in physical form also?

A.34. Yes. When an application is filed on-line, a printout of the same may be taken after submission and thereafter, it should be submitted alongwith the requisite enclosure, duly signed, to Ministry of Home Affairs.

SPECIAL ECONOMIC ZONES

INTRODUCTION

India was one of the first in Asia to recognize the effectiveness of the Export Processing Zone (EPZ) model in promoting exports, with Asia's first EPZ set up in Kandla in 1965. With a view to overcome the shortcomings experienced on account of the multiplicity of controls and clearances; absence of world-class infrastructure, and an unstable fiscal regime and with a view to attract larger foreign investment in India, the Special Economic Zone (SEZs) policy was announced in April 2000.

The policy intended to make SEZs an engine for economic growth supported by quality infrastructure complemented by an attractive fiscal package, both at the Centre and State level, with the minimum possible regulations. SEZs in India functioned from 1.11.2000. to 09.02.2006 under the provisions of the Foreign Trade Policy and fiscal incentives were made effective through the provisions of relevant statutes.

The SEZ Act, 2005, supported by SEZ Rules, came into effect on 10th February 2006, providing for drastic simplification of procedures and for single window clearance on matters relating to central as well as state governments. The main objectives of the SEZ Act are:

- a) Generation of additional economic activity
- b) Promotion of exports of goods and services;
- c) Promotion of investment from domestic and foreign sources;
- d) Creation of employment opportunities;
- e) Development of infrastructure facilities;

It is expected that this will trigger a large flow of foreign and domestic investment in SEZs, in infrastructure and productive capacity, leading to generation of additional economic activity and creation of employment opportunities.

The SEZ Act 2005 envisages key role for the State Governments in export promotion and creation of related infrastructure. A single window SEZ approval mechanism has been provided through a 19 member inter-ministerial SEZ Board of approval (BOA). The application duly recommended by the respective State Government /UT Administration are considered by this BOA periodically. All decisions of the Board of approvals are with consensus.

The SEZ Rules provide for different minimum land requirement for different class of SEZs, Every SEZ is divided into a processing area where alone the SEZ units



would come up and the non-processing area where the supporting infrastructure is to be created.

The SEZ Rules provide for:

- Simplified procedure for development, operation, and maintenance of the Special Economic Zones and for setting up units conducting business in SEZs;
- Single window clearance for setting up of an SEZ;
- Single window clearance for setting up a unit in a Special Economic Zone
- Single window clearance on matters relating to Central as well as State Governments;
- Simplified compliance procedures and documentation with an emphasis on self certification.

APPROVAL MECHANISM AND ADMINISTRATIVE SET UP OF SEZS

(a) Approval Mechanism

The developer submits the proposal for establishment of SEZ to the concerned State Government. The State Government has to forward the proposal with its recommendation within 45 days from the date of receipt of such proposal to the Board of Approval. The applicant also has the option to submit the proposal directly to the Board of Approval.

The Board of Approval has been constituted by the Central Government in the exercise of the powers conferred under the SEZ Act. All the decisions are taken in the Board of Approval by consensus. The Board of Approval has 19 members. Its constitution is as follows:

1.	Secretary, Department of Commerce	Chairman
2.	Member, CBEC	Member
3.	Member, IT, CBDT	Member
4.	Joint Secretary (Banking Division) Department of Economic Affairs, Ministry of Finance	Member
5.	Joint Secretary (SEZ), Department of Commerce	Member
6.	Joint Secretary, DIPP	Member
7.	Joint Secretary, Ministry of Science and Technology	Member
8.	Joint Secretary, Ministry of Small Scale Industries and Agro and Rural Industries	Member
9.	Joint Secretary, Ministry of Home Affairs	Member
10.	Joint Secretary, Ministry of Defence	Member
11.	Joint Secretary, Ministry of Environment and Forests	Member

12.	Joint Secretary, Ministry of Law and Justice	Member
13.	Joint Secretary, Ministry of Overseas Indian Affairs	Member
14.	Joint Secretary, Ministry of Urban Development	Member
15.	A nominee of the State Government concerned	Member
16.	Director General of Foreign Trade or his nominee	Member
17.	Development Commissioner concerned	Member
18.	A professor in the Indian Institute of Management or the Indian Institute of Foreign	Trade Member
19.	Director or Deputy Secretary, Ministry of Commerce and Industry, Department of Commerce	Member Secretary

(b) Administrative Set Up

The functioning of the SEZs is governed by a three tier administrative set up. The Board of approval is the apex body and is headed by the Secretary, Department of Commerce. The Approval Committee at the Zone level deals with approval of units in the SEZs and other related issues. Each Zone is headed by a Development Commissioner, who is ex-officio chairperson of the Approval Committee.

Once an SEZ has been approved by the Board of Approval and Central Government has notified the area of the SEZ, units are allowed to be set up in the SEZ. All the proposal for setting up of units in the SEZ are approved at the Zone level by the Approval Committee consisting of Development Commissioner, Customs Authorities and representatives of State Government. All post approval clearances including grant of importer-exporter code number, change in the name of the company

or implementing agency, broad banding diversification, etc. are given at the Zone level by the Development Commissioner. The performance of the SEZ units are periodically monitored by the Approval Committee and units are liable for penal action under the provision of Foreign Trade (Development and Regulation) Act, in case of violation of the conditions of the approval.

INCENTIVE AND FACILITIES OFFERED TO THE SEZs

The incentives and facilities offered to the units in SEZs for attracting investments into the SEZs, including foreign investment include: -

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units.
- 100% Income Tax exemption on export income for SEZ units under Section



10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.

- Exemption from minimum alternative tax under section 115JB of the Income Tax Act.
- External commercial borrowing by SEZ units upto US \$500 million in a year without any maturity restriction through recognized banking channels.
- Exemption from Central Sales Tax.
- Exemption from Service Tax.
- Single window clearance for Central and State level approval.
- Exemption from State Sales Tax and other levies as extended by the respective State Governments.

The major incentives and facilities available to **SEZ developers** include:

- Exemption from customs/excise duties for development of SEZs for authorized operations approved by the BOA.
- Income Tax exemption on export income for a block of 10 years in 15 years under section 80-IAB of the Income Tax Act.
- Exemption from minimum alternative tax under section 115JB of the Income Tax Act.
- Exemption from dividend distribution tax under section 115O of the Income Tax Act.

- Exemption from Central Sales Tax (CST).
- Exemption from Service Tax (Section 7, 26 and Second Schedule of the SEZ Act).

SEZ APPROVAL STATUS

Consequent upon the SEZ Rules coming into effect w.e.f. 10th February 2006, nineteen meetings of the Board of Approvals have since been held. During these meetings, formal approval has been granted to 404 SEZ proposals and in-principle approval has been granted to 167 SEZ proposals. Out of the formal approvals, 172 SEZs have been notified.

BENEFITS DERIVED FROM SEZs

Benefits derived from SEZs are evident from the investment, employment, exports and infrastructural developments additionally generated. Investment of the order of Rs.1, 00,000 crores including FDI of US \$ 5-6 billion is expected by the end of December 2007, 5,00,000 direct jobs are expected to be created by December 2007. The benefits derived from multiplier effect of the investments and additional economic activity in the SEZs and the employment generated thus will far outweigh the tax exemptions and the losses on account of land acquisition. Stability in fiscal concession is absolutely essential to ensure credibility of Government intensions.

(a) Exports from the Functioning SEZs during the Last Three Years are as under:

Year (Rs. Crore)	Value	Growth rate (over the previous year)
2003-2004	13,854	39%
2004-2005	18,314	32%
2005-2006	22,840	24.7%
2006-2007	34,787	52.3%

Projected exports from all SEZs for 2007-08: Rs. 67,088 crores

(b) Investment and Employment in the SEZs Set up Prior to the SEZ Act, 2005

At present, 1332 units are in operation in the SEZs. In the SEZs established prior to the Act coming into force, there are 1179 units providing direct employment to over 2.08 lakh persons; about 40% of whom are women. Private investment by entrepreneurs in these SEZs established prior to the SEZ Act is of the order of over Rs. 5844 crore.

(c) Investment and Employment in the SEZs Notified under the SEZ Act 2005:

Current investment and employment:

Investment	Rs.52,193 Crores
Employment	46,814 Persons

Expected Investment and employment

Investment	Rs. 2,85,279 Crores
Employment	21,42,089 Additional jobs

(d) Expected Investment and Employment if 405 Formal Approvals become Operational:

Investment	Rs. 3,00,000 Crores
Employment	4 million additional jobs

IMPACT OF THE SCHEME

The overwhelming response to the SEZ scheme is evident from the flow of investment and creation of additional employment in the country. The SEZ scheme has generated tremendous response amongst the investors, both in India and abroad, which is evident from the list of Developers who have set up SEZs:

- Nokia SEZ in Tamilnadu
- Quark city SEZ in Chandigarh
- Flextronics SEZ in Tamilnadu
- Mahindra world city in Tamilnadu
- Motorola DELL and Foxconn
- Apache SEZ (Adidas Group) in Andhra Pradesh
- Divvy's Laboratories, Andhra Pradesh
- Rajiv Gandhi Technology Park, Chandigarh
- ETL Infrastructure IT SEZ, Chennai
- Hyderabad Gems limited, Hyderabad



LIST OF WEBSITES

WEBSITE ADDRESSES OF IMPORTANT MINISTRIES/DEPARTMENTS

OVERSEAS INDIAN FACILITATION CENTER	http://www.oifc.in
MINISTRY OF OVERSEAS INDIAN AFFAIRS	http://www.moia.gov.in
CONFEDERATION OF INDIAN INDUSTRY	http://www.ciionline.org
Ministry of Biotechnology	http://dbtindia.nic.in
Bureau of Indian Standards	http://www.bis.org.in
Ministry of Chemicals & Petrochemicals	http://chemicals.nic.in
Ministry of Civil Aviation	http://civilaviation.nic.in
Department of Commerce	http://commerce.nic.in
Ministry of Coal	http://coal.nic.in
Ministry of Company Affairs	http://dca.nic.in
Department of Education	http://education.nic.in
Ministry of Environment and Forests	http://envfor.nic.in
Department of Explosives	http://explosives.nic.in
Ministry of External Affairs	http://www.meanindia.nic.in
Ministry of Finance	http://finmin.nic.in
Directorate General of Foreign Trade	http://dgft.delhi.nic.in
Department of Heavy Industries	http://dhi.nic.in
Department of Industrial Policy & Promotion	http://dipp.nic.in
Ministry of Information and Broadcasting	http://mib.nic.in
Department of Information Technology	http://www.mit.gov.in
Ministry of Labour	http://labour.nic.in
Department of Mines	http://mines.nic.in
Ministry of Non-Conventional Energy Sources	http://mnnes.nic.in
Office of The Controller General Of Patents	http://patentoffice.nic.in
Ministry of Petroleum And Natural Gas	http://petroleum.nic.in
Ministry of Power	http://powermin.nic.in
Ministry of Railways	http://www.indianrailways.gov.in
Reserve Bank of India	http://www.rbi.org.in
Ministry of Road Transport & Highways	http://morth.nic.in
Department of Shipping	http://shipping.nic.in
Ministry of Small Scale Industries & Agro and Rural Industries	http://ssi.nic.in
Ministry of Statistics and Programme Implementation	http://mospi.nic.in
Department of Telecommunication	http://www.dotindia.com
Ministry of Textile	http://texmin.nic.in
Ministry of Tourism	http://tourismofindia.com
Ministry of Urban Development	http://urbanindia.nic.in
Ministry of Water Resources	http://wrmin.nic.in

WEBSITE ADDRESS OF STATES/UNION TERRITORIES

Andaman & Nicobar (UT)	http://andaman.nic.in
Andhra Pradesh	http://www.andhrapradesh.com
Arunachal Pradesh	http://arunachalpradesh.nic.in
Assam	http://assamgovt.nic.in
Bihar	http://bihar.nic.in
Chandigarh (UT)	http://chandigarh.nic.in
Chhattisgarh	http://chattisgarh.nic.in
Dadra & Nagar Haveli	http://oidc.nic.in
Daman & Diu	http://daman.nic.in
Delhi	http://delhigovt.nic.in
Goa	http://goagovt.nic.in
Gujarat	http://www.gujaratindia.com
Haryana	http://haryana.nic.in
Himachal Pradesh	http://himachal.nic.in
Jammu & Kashmir	http://jammukashmir.nic.in
Jharkhand	http://jharkhand.nic.in
Karnataka	http://www.karnataka.nic.in
Kerala	http://www.kerala.gov.in
Lakshadweep(UT)	http://lakshadweep.nic.in
Madhya Pradesh	http://www.mp.nic.in
Maharashtra	http://maharashtra.gov.in
Manipur	http://manipur.nic.in
Meghalaya	http://meghalaya.nic.in
Mizoram	http://mizoram.nic.in
Nagaland	http://nagaland.nic.in
Orissa	http://orissagov.nic.in
Pondicherry(UT)	http://pondicherry.nic.in
Punjab	http://punjabgovt.nic.in
Rajasthan	http://www.rajasthan.gov.in
Sikkim	http://sikkimgov.nic.in
Tamil Nadu	http://www.tn.gov.in
Tripura	http://tripura.nic.in
Uttar Pradesh	http://upgovt.nic.in
Uttanchal	http://gov.ua.nic.in
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Kindly give us your feedback on the document as this will help us in making the revised edition of this book more valuable. We will be obliged if any mistake, error or discrepancy is brought to our notice for carrying out necessary corrections and modifications.

SUGGESTIONS

Please mail/fax/e-mail your suggestions to

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