



Overseas Indian Facilitation Centre

A Public Private Partnership of Ministry of Overseas Indian Affairs  
and Confederation of Indian Industry

# GUIDE BOOK FOR OVERSEAS INDIANS ON FOREIGN DIRECT INVESTMENTS IN INDIA



प्रवासी भारतीय कार्य मंत्रालय  
Ministry of Overseas Indian Affairs  
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Confederation of Indian Industry

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ON  
FOREIGN DIRECT INVESTMENTS IN INDIA

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*Price: 500.00 (INR)*

***DISCLAIMER***

*This Guide Book 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 Guide Book 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 Guide Book and the relevant Act, Rules, Regulations, Policy Statements etc., the latter shall prevail.*

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## Overseas Indian Facilitation Centre

The Indian Diaspora is the largest in the world to day after China and has roots in every country in the globe. The Diaspora contribution to their state of origin has been made in various ways, through remittances, foreign direct investment (FDI), transfer of knowledge and entrepreneurial networks.

In order to expand the entrepreneurial ties and engage them as partners in India's progress, an Overseas Indian Facilitation Centre, a not for profit public private initiative of Ministry of Overseas Indian Affairs (MOIA) and Confederation of Indian Industry (CII), was launched on 28th May 2007.

With a strong intention to facilitate and bridge the gap between the Overseas Indians and India, OIFC has a mandate to cover broad areas: investment facilitation, knowledge networking and ensuring business-to-business partnerships in focus sectors like real estate, wealth management, taxation, legal, healthcare, education and infrastructure.

### **The key objectives of OIFC are:**

- 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 and promote investment opportunities to overseas Indians in key focus sectors.

In line with the above objectives, OIFC provides the following services:

- To appraise the Indian Diaspora with the up-to-date investment opportunities existing in India provide hand-holding services via its knowledge partners
- To provide customized services in the form of finding sector and state specific investment projects, preparing feasibility reports and organizing and assisting in overseas road shows to attract FDI
- To assist in effective business-to-business partnerships
- To maintain a strong Diaspora Knowledge Network
- To provide consular services in the long run



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# 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. Under Foreign Direct Investment scheme investments can be made by non-residents in the shares/convertible debentures of an Indian company, 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. Entry route for non-resident investors in India as well as sector specific investment limits in India are given as Annexure 2.

### 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 (Annexure 1):

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

Agriculture (excluding Floriculture, Horticiculture, 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).

### Eligibility for Investing in India

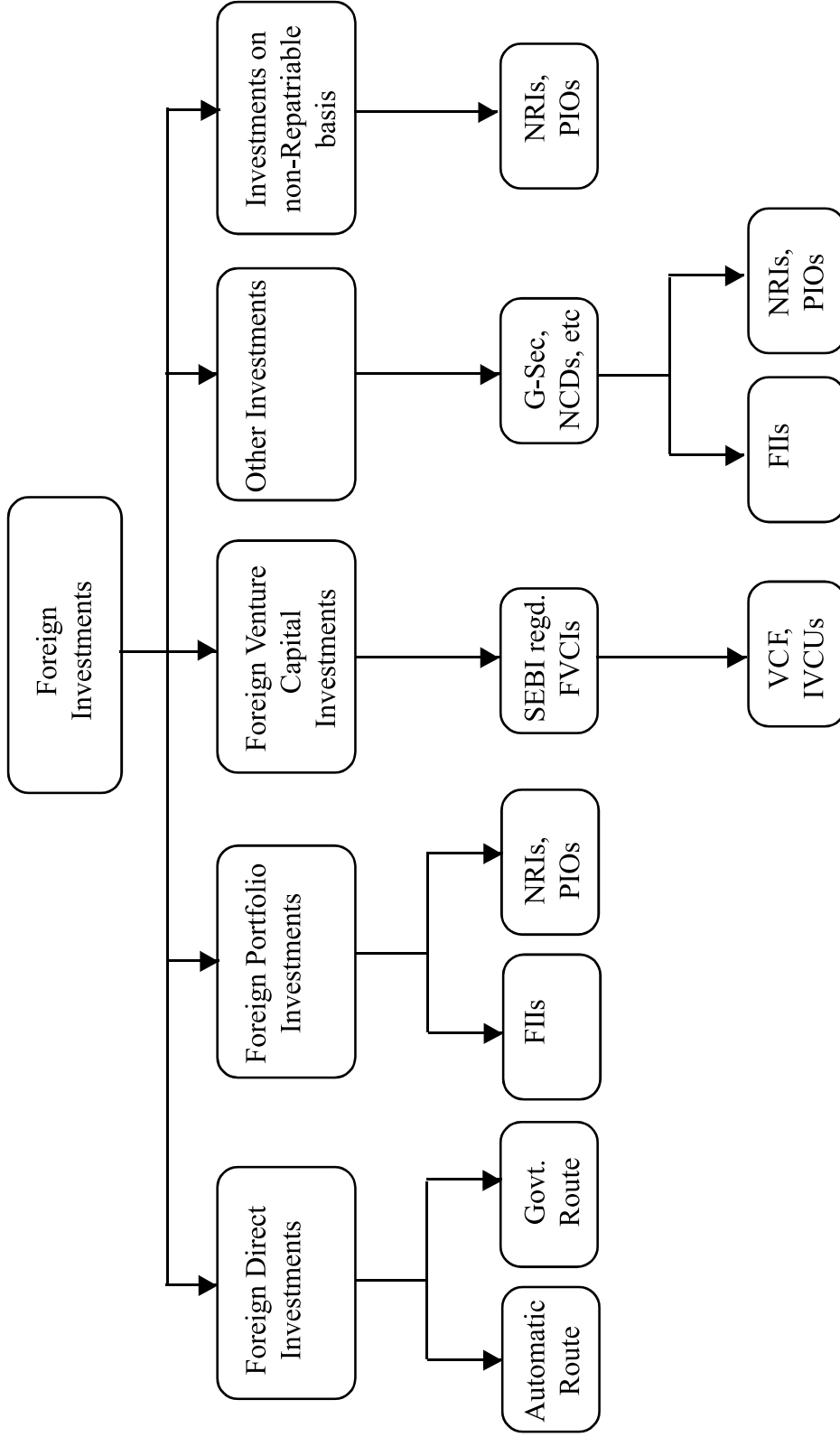
A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India, (other than an entity incorporated in Pakistan or Bangladesh) can invest in India, subject to the FDI policy of the Government of India.

A person who is citizen of Bangladesh or an entity incorporated in Bangladesh can invest in India under the FDI scheme, with prior approval of FIPB.

Overseas corporate Bodies (OCBs) are entities



Part - I  
Foreign Investments in India-Schematic representation :



established outside India and predominantly owned by NRIs (at least 60% of the paid up capital). Erstwhile OCBs which are incorporated outside India and are not under adverse notice of Reserve Bank can make fresh investments under the FDI as incorporated non-resident entities, with the prior approval of government if the investment is through government route and with the prior approval of Reserve Bank if the investment through automatic route.

### **Type of Instruments**

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

Issue of other types of preference shares such as non-convertible, optionally convertible or partially convertible have to be in accordance with the guidelines applicable for External Commercial Borrowing (ECB). Since these instruments are denominated in rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread permissible for ECBs of corresponding maturity.

As far as debentures are concerned, only those which are fully and mandatorily convertible into equity, within a specified time would be reckoned as part of equity under the FDI policy.

### **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 can Issue 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 registered with SEBI can invest

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

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%:

- i. FDI will be allowed with specific prior approval of FIPB; and
- ii. FIIs can invest only through purchase in the secondary market.

### Investment in Credit Information Companies

Foreign investment in Credit Information companies is permitted in compliance with the Credit Information Companies (Regulations) Act, 2005 and subject to the following:

- i. The aggregate Foreign investment in credit information companies is permitted only up to 49 per cent of the paid up capital.
- ii. Foreign Investment upto 49 per cent is allowed only with the prior approval of FIPB and regulatory clearance from RBI.
- iii. Investment by SEBI Registered FIIs is permitted only through purchases in the secondary market to an extent of 24 per cent.

- iv. Investment by SEBI Registered FIIs to an extent of 24 per cent should be within the overall limit of 49 per cent for Foreign Investment.
- v. No FII can individually hold directly or indirectly more than 10 per cent of the equity.

### Investment in Commodity Exchanges

Foreign Investment in Commodity Exchanges is permitted subject to the following conditions:

- i. There is a composite ceiling of 49 per cent for Foreign Investment, with a FDI limit of 26 per cent and an FII limit of 23 per cent.
- ii. FDI is allowed with specific approval of the government.
- iii. The FII purchases in equity of commodity Exchanges is restricted to the secondary markets only.
- iv. Foreign Investment in Commodity Exchanges is also subject to compliance with the regulations issued, in this regard, by the Forward Market Commission.

### Investment in Public Sector Banks

FDI and portfolio investment in nationalised banks are subject to overall statutory limits of 20 per cent as provided under Section 3(2D) of the Banking Companies (Acquisition & Transfer of Undertakings) Acts, 1970/80. The same ceiling would also apply in respect of such investments in state Bank of India and its associate banks.

### 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.

### Issue of Rights/Bonus Shares to erstwhile OCBs

FEMA provisions allow Indian companies to freely issue Rights / 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 laws/ statues 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

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. 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. As such, entitlements of rights shares is not automatically available to OCBs.

However, bonus shares can be issued to erstwhile OCBs.

### Additional allocation of rights shares 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 share entitlements. The investee company can allot the additional rights shares out of unsubscribed portion; 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 cap.

### 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 shareholders 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 (ESOPs)

Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad who are residents outside India, other than to citizens of Pakistan. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:

- ii. 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.

Unlisted companies have to follow the provisions of the Companies Act, 1956. The Indian company can issue ESOPs to employees who are resident outside India, other than to citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior FIPB approval. 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.

## 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 amount of consideration to the Reserve Bank not later than 30 days from the date of receipt. The forms can also be downloaded from the Reserve Bank's website [http://www.rbi.org.in/Scripts/BS\\_ViewFemaForms.aspx](http://www.rbi.org.in/Scripts/BS_ViewFemaForms.aspx).

Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares/convertible debentures, through an AD Category-I Bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor from the overseas bank remitting the amount. The report would be acknowledged by the Regional Office concerned, which would allot a Unique Identification Number (UIN) for the amount reported.

### Time frame within which shares have to be issued

The equity instruments should be issued within 180 days from the date of receipt of the inward

remittance or by debit to the NRE/FCNR(B) account of the non-resident investor. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR(B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR(B) account, as the case may be. Non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions. In exceptional cases, refund of the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the Reserve Bank on the merits of the case.

### 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/BS\\_ViewFemaForms.aspx](http://www.rbi.org.in/Scripts/BS_ViewFemaForms.aspx).

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

The following documents have to be submitted along with part A:

- 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;
- 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.
- 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.

The report of receipt of consideration as well as FC-GPR 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 by the Indian company directly with the Reserve Bank.

This is an annual return to be submitted by 31st of July every year, pertaining to all investments by way of direct/portfolio investments/ re-invested earnings/others in the Indian company made during the previous years (i.e. the information in Part B submitted by 31st July, 2008 will pertain to all the investments made in the previous years upto March 31, 2008). The details of the investments to be reported would include all foreign investments made into the company which is outstanding on the balance sheet date. The details of overseas investment in the company both under direct/ portfolio investment may be separately indicated.

Issue of bonus/rights shares 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/import of capital goods by SEZs 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 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.

### Transfer of Shares and convertible debentures

- i. Foreign investors can also invest in Indian companies by purchasing / acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents / NRIs for acquisition of shares by way of transfer subject to the following: -
  - a) A person resident outside India (Other than NRI and OCB) may transfer by way of sale or gift the shares or convertible debentures to any person resident outside India (including NRIs)
  - b) NRIs and erstwhile OCBs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

In both the above cases, if the transferee has previous venture or tie-up in India through investment / technical collaboration / trade mark agreement in the same field in which the Indian company, whose shares are being transferred, is engaged, he has to obtain prior permission of SIA/FIPB to acquire the shares. This restriction is, however, not applicable to the transfer of shares to international financial institutions (i.e. ADB, IFC, CDC, DEG) and transfer of shares to Indian company engaged in Information Technology Sector.

- c) A person resident outside India can transfer any security to a person resident in India by way of gift.
- d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a Recognized Stock Exchange in India through a registered broker.
- e) A person resident in India can transfer by way of sale, shares / convertible debentures (including transfer of subscriber's shares), of an Indian company in sectors other than financial service sector (i.e. Banks, NBFC, Insurance, ARCs and infrastructure companies in the securities market viz. Stock Exchanges, Clearing Corporations and Depositories) under private arrangement to a person resident outside India, subject to the guidelines.
- f) General permission is also available for transfer of shares / convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines.
- g) The above General Permission also covers transfer by a resident to a non-resident of shares / convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route of RBI, as well as transfer of shares by a non-resident to an Indian company under buy-back and / or capital reduction scheme of the company. However, this General Permission is not available for transfer of shares / debentures of an entity engaged in any activity in the financial service sector (i.e. Banks, NBFCs, ARCs, Insurance and infrastructure providers in the securities market such as Stock Exchanges, Clearing Corporations, etc.)
  - (ii). Reporting of transfer of shares between residents and non-residents and vice versa is to be done in Form FC-TRS. This Form needs to be submitted to the AD Category – I bank, which will forward the same to its link office. The link office will consolidate the Forms and submit a report to the Reserve Bank.
  - (iii). AD Category – I banks have been given general permission to open Escrow account and Special account by non-resident corporates for open offers / exit offers and delisting of shares. The relevant SEBI (SAST) Regulations or any other applicable SEBI Regulations / provisions of the Companies Act, 1956 will be applicable.

### Prior permission of RBI in Certain cases for transfer of shares / convertible debentures

- (i). A person resident in India, who intends to transfer any security, by way of gift to a person resident outside India, has to obtain prior approval from Reserve Bank. While forwarding applications to Reserve Bank for approval for transfer of shares by way of gift, the prescribed documents may be enclosed. Reserve Bank considers the following factors processing such applications:
  - a) The transferee (donee) is eligible to hold such security under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.
  - b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company / each series of debentures/each mutual fund scheme.
  - c) The applicable sectoral cap limit in the Indian company is not breached.
  - d) The transferor (donor) and the transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time.
  - e) The value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 during a calendar year.
  - f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.
- (ii). The following instances of transfer of

shares from residents to non-residents by way of sale requires RBI approval:

- i Transfer of shares or convertible debentures of an Indian company engaged in financial sector (i.e. Banks, NBFCs, Asset Reconstruction Companies, Insurance and Infrastructure providers in the securities market such as Stock Exchanges, Clearing Corporations, etc.)
- ii Transactions which attract the provisions of SEBI (Substantial Acquisition of Shares and Takeovers), Regulations, 1997.
- (iii). The following instances of transfer of shares from residents to non-residents by way of sale or otherwise requires Government approval followed by permission from RBI:
  - a. Transfer of shares of companies engaged in sectors falling under the Government Approval Route.
  - b. Transfer of shares resulting in foreign investments in the Indian company, breaching the sectoral cap applicable.

### Conversion of ECB / Lumpsum Fee / Royalty / Import of capital goods by SEZs into Equity

- (i). Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) into shares / preference shares, subject to the following conditions and reporting requirements.
  - a. The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company.



- b. The foreign equity after conversion of ECB into equity is within the sectoral cap, if any.
  - c. Pricing of shares is as per SEBI regulations or erstwhile CCI guidelines in the case of listed or unlisted companies respectively.
  - d. Compliance with the requirements prescribed under any other statute and regulation in force.
- (ii). The conversion facility is available for ECBs availed under the Automatic or Approval Route. This would also be applicable to ECBs, due for payment or not, as well as secured / unsecured loans availed from non-resident collaborators. General permission is also available for issue of shares/preference against lump-sum technical know-how fee, royalty, under automatic route or SIA / FIPB route, subject pricing guidelines of SEBI / CCI and compliance with applicable tax laws.
- (iii). Units in Special Economic Zones (SEZs) are permitted to issue equity shares to non-residents against import of capital goods subject to the valuation done by a Committee consisting of Development Commissioner and the appropriate Customs officials.
- (iv). **Reporting**  
 Details of issue of shares against conversion of ECB has to be reported to the concerned Regional Office of the Reserve Bank, as indicated below:
- a. In case of full conversion of ECB into equity, the company shall report the conversion in form FC-GPR to the concerned Regional Office of the Reserve Bank as well as in form ECB-2 to the Department of Statistical and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai-400 051, within seven working days from the close of month to which it relates. The words “ECB wholly converted to equity” shall be clearly indicated on top of the ECB-2 form. Once reported, filling of form ECB-2 in the subsequent months is not necessary.
  - b. In case of partial conversion of ECB, the company shall report the converted portion in form FC-GPR to the concerned Regional Office as well as in form ECB-2 clearly differentiating the converted portion from the non-converted portion. The words “ECB partially converted to equity” shall be indicated on top of the ECB-2 form. In the subsequent months, the outstanding balance of ECB shall be reported in ECB-2 form to DSIM.
  - c. The SEZ unit issuing equity as mentioned in para (iii) above, should report the particulars of the shares issued in the form FC-GPR.

### Remittance of sale proceeds

AD Category-I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC / tax clearance certificate from the Income Tax Department has been produced.

### Remittance on winding up / liquidation of Companies

AD Category-I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up; under the provisions of the Companies Act, 1956. AD Category - I banks shall allow the remittance provided the applicant submits:-

- i No objection or Tax clearance certificate from Income Tax Department for the remittance.
- ii Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
- iii Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 1956.
- iv In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

### Issue of shares by Indian companies under ADR / GDR

- (i). Depository Receipts (DRs) are negotiable securities issued outside India by a Depository Bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded in Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those

listed and traded elsewhere are known as Global Depository Receipts (GDRs). In the Indian context, DRs are treated as FDI.

- (ii). Indian companies can raise foreign currency resources abroad through the issue of ADRs / GDRs, in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993 and guidelines issued by the Government of India thereunder from time to time.
- (iii). A company can issue ADRs/GDRs if it is eligible to issue shares to persons resident outside India under the FDI Scheme. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs / GDRs.
- (iv). Unlisted companies, which have not yet accessed the ADR/GDR route for raising capital in the international market would require prior or simultaneous listing in the domestic market, while seeking to issue such instruments. Unlisted companies, which have already issued ADRs / GDRs in the international market, have to list in the domestic market on making profit or within three years of such issue of ADRs / GDRs, whichever is earlier.
- (v). ADRs / GDRs are issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue. The proceeds so raised have to be kept abroad till actually required in India. Pending repatriation or utilisation of the proceeds, the Indian

- company can invest the funds in:
- a) Deposits with or Certificate of Deposit or other instruments offered by banks who have been rated by Standard and Poor, Fitch, IBCA or Moody's, etc. and such rating not being less than the rating stipulated by Reserve Bank from time to time for the purpose, (current rating applicable is AA(-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's);
  - b) Deposits with branch/es of Indian Authorised Dealers outside India; and
  - c) Treasury bills and other monetary instruments with maturity or unexpired maturity of one year or less.
- (vi). There are no end-use restrictions except for a ban on deployment / investment of such funds in Real Estate or the Stock Market. There is no monetary limit upto which an Indian company can raise ADRs / GDRs.
- (vii). The ADR / GDR proceeds can be utilised for first stage acquisition of shares in the disinvestment process of Public Sector Undertakings / Enterprises and also in the mandatory second stage offer to the public in view of their strategic importance.
- (viii). Voting right on shares issued under the Scheme shall be as per the provisions of Companies Act, 1956 and in a manner in which restriction on voting rights imposed on ADR/GDR issues shall be consistent with the Company Law provisions. Voting right in the case of banking companies will continue to be in terms of the provisions of the Banking Regulation Act, 1949 as applicable to all shareholders exercising voting rights.
- (ix). Erstwhile OCBs who are not eligible to invest in India and entities prohibited to buy, sell or deal in securities by SEBI will not be eligible to subscribe to ADRs / GDRs issued by Indian companies.
  - (x). The pricing of ADR / GDR issues should be made at a price not less than the higher of the following two averages:
    - i 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;
    - ii The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.
 The "relevant date" means the date, thirty days prior to the date on which the meeting of the general body of shareholders is held, in terms of section 81(IA) of the Companies Act, 1956, to consider the proposed issues.

### Two-way Fungibility Scheme

A limited Two-way Fungibility scheme has been put in place by the Government of India for ADRs / GDRs. Under this Scheme, a stock broker in India, registered with SEBI, can purchase shares of an Indian company from the market for conversion into ADRs / GDRs based on instructions received from overseas investors. Reissuance of ADRs / GDRs would be permitted to the extent of ADSs / GDRs which have been redeemed into underlying shares and sold in the Indian market.

### Sponsored ADR / GDR issue

An Indian company can also sponsor an issue of ADR / GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs / GDRs can be issued abroad. The proceeds of the ADR / GDR issue is remitted back to India and distributed among the resident investors who had offered their rupee denominated shares for conversion. These proceeds can be kept in Resident Foreign Currency (Domestic) accounts in India by the resident shareholders who have tendered such shares for conversion into ADR / GDR.

### Reporting of ADR / GDR issues

The Indian company issuing ADRs / GDRs has to furnish to the Reserve Bank, full details of such issue within 30 days from the date of closing of the issue. The company should also furnish a quarterly return to Reserve Bank within 15 days of the close of the calendar quarter. The quarterly return has to be submitted till the entire amount raised through ADR / GDR mechanism is either repatriated to India or utilized abroad as per the Reserve Bank guidelines.

## 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 Category-I bank.

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

AD Category-I Banks 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 to arrive at the actual cost that can be offered.

## 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 category-I 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. Purchase of debt instruments by FIIs are subject to limits notified by SEBI.

### Investment by Multilateral Development Banks (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 Rupee denominated 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 Rupee denominated 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 Rupee denominated Debt capital instruments (Tier II) shall

- be outside the limits stipulated by SEBI for FIIs investment in corporate debt instruments.
- d) Investment By NRIs in Rupee denominated 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 Rupee denominated.

Investment by FIIs in rupee denominated 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.

ANNEXURE-1

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

<b>(A)</b>	<b>List of activities for which Automatic Route of RBI for investment from person resident outside India is not available.</b>
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	Establishment & Operation of satellite
10	Tea Sector
11	Development of Integrated Township
12	Asset Reconstruction Companies
<b>(B)</b>	<b>List of activities or items for which FDI is prohibited.</b>
1	Retail Trading
2	Atomic Energy
3	Lottery Business
4	Gambling & Betting
5	Housing & Real Estate business
6	Agriculture ( <b>excluding</b> floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture & Cultivation of vegetables, Mushrooms etc. under controlled conditions & services related to agro & allied sectors) and Plantations ( <b>other than Tea plantations</b> )

## 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 banking from time to time
2.	Non-Banking Financial Companies	100%	FDI / NRI investments allowed in the following 18 NBFC activities shall be as per the levels indicated below:
			<b>(a) Activities Covered</b>
			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 Rating Agencies
			12. Leasing & Finance
			13. Housing Finance
			14. Forex broking
			15. Credit Card Business
			16. Money changing Business
			17. Micro credit
			18. Rural credit
			<b>(b) Minimum capitalisation norms for fund based NBFCs</b>
			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.
			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.



S. No.	Sector	Investment cap	Description of Activity / Items / conditions
			<b>(c) Minimum capitalisation norms for non fund based activities</b> Minimum capitalisation norm of US \$ 0.5 million is applicable in respect of non-fund based NBFCs with foreign investment.
			<b>(d)</b> 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)
			<b>(e)</b> 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.
			<b>(f)</b> 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%	<b>(i)</b> In basic, cellular, Value added Services, and Global Mobile Personal Communication by Satellite, FDI is limited to 49% 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.
			<b>(ii)</b> 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.
			<b>(iii)</b> No equity cap is applicable to manufacturing activities.
			<b>(iv) FDI upto 100% is allowed for the following activities in the telecom sector.</b>

S. No.	Sector	Investment cap	Description of Activity / Items / conditions
			(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
			<b>The above would be subject to the following conditions:</b>
			(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
			(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% in case 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.

S. No.	Sector	Investment cap	Description of Activity / Items / conditions
			(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.
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:
			(a) Exports
			(b) Bulk imports with export/ex-bonded warehouses sales;
			(c) Cash and carry wholesale trading.

S. No.	Sector	Investment cap	Description of Activity / Items / conditions
			(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/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 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. <b>Such companies would engage only in business to business (B2B) e-commerce and not in retail trading.</b>
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.

S. No.	Sector	Investment cap	Description of Activity / Items / conditions
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, Port 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 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 (1A)
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 The sector would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure	100%	The investment shall be subject to the following guidelines:

S. No.	Sector	Investment cap	Description of Activity / Items / conditions
			(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 of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.
			(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.

S. No.	Sector	Investment cap	Description of Activity / Items / conditions
			(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.
			<b>Note:</b> 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

Such offices can undertake activities permitted under the foreign exchange management (Establishment in India of branch office or other place of business) regulations, 2000.

### 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 FCGPR evidencing the existing holding of non-residents.
- If the sellers/transfersors 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.

**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 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.
    - 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.** Yes, 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?**

**A.16.** 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 Investment Scheme (PIS)

- (i) Foreign institutional Investors (FIIs) registered with SEBI and Non-resident Indians (NRIs) are eligible to purchase shares and convertible debentures issued by Indian companies under the Portfolio Investment Scheme (PIS)
- (ii) The FIIs who have been granted registration by SEBI should approach their designated AD Category - I bank (known as Custodian Bank), for opening a foreign currency account and/or a Non Resident Special Rupee Account.
- (iii) NRIs can approach the designated branch of any AD Category - I Bank authorised by the Reserve Bank to administer the Portfolio Investment Scheme for permission to open a NRE/ NRO account under the Scheme for routing investments.

## Investment by FIIs under PIS

Reserve Bank has given general permission to SEBI registered FIIs/sub-account to invest under the PIS

### (i) Shareholding

- (a) Total shareholding of each FII/sub-account under this Scheme shall not exceed 10 per cent of the total paid up capital or 10 per cent of the paid up value of each series of convertible debentures issued by the Indian company.
- (b) Total holding of all FIIs/sub-accounts put together shall not exceed 24 per cent of the paid-up capital or paid-up value of each series of convertible debentures. This limit of 24 per cent can be increased to the sectoral cap / statutory limit, as applicable to the Indian company concerned, by passing a resolution of its Board of directors followed by a special

resolution to that effect by its General Body.

- (c) A domestic asset management company or portfolio manager, who is registered with SEBI as an FII for managing the fund of a sub-account can make investments under the Scheme on behalf of
  - i. a person resident outside India who is a citizen of a foreign state, or
  - ii. a body corporate registered outside India;

Provided such investment is made out of funds raised or collected or brought from outside through normal banking channel. Investments by such entities shall not exceed 5 per cent of the total paid-up equity capital or 5 per cent of the paid-up value of each series of convertible debentures issued by an Indian company, and shall also not exceed the overall ceiling specified for FIIs.

### (ii) Prohibition on investments

- (a) FIIs are not permitted to invest in equity shares issued by an Asset Reconstruction Company. They are also not allowed to invest in any company which is engaged or proposes to engage in the following activities:
  - i). Business of chit fund, or
  - ii). Nidhi Company , or
  - iii). Agriculture or plantation activities or
  - iv). Real estate business, or construction of farm houses
  - v). Trading in Transferable Development Rights (TDRs)

“Real Estate Business” mentioned above, does not include development of townships, construction of residential/commercial premises, roads or bridges.

### Short Selling by FIIs

Foreign Institutional Investors (FIIs) registered with SEBI and sub-accounts of FIIs are permitted to short sell, lend and borrow equity shares of Indian companies. Short selling, lending and borrowing of equity shares of Indian companies shall be subject to such conditions as may be prescribed in that behalf by the Reserve Bank and the SEBI / other regulatory agencies from time to time. The above permission is subject to the following conditions:

- (a) The FII participations in short selling as well as borrowing / lending of equity shares will be subject to the current FDI policy and short selling of equity shares by FIIs shall not be permitted for equity shares which are in the ban list and / or caution list of Reserve Bank.
- (b) Borrowing of equity shares by FIIs shall only for the purpose of delivery into short sales.
- (c) The margin / collateral shall be maintained by FIIs only in the form of cash. No interest shall be paid to the FII on such margin/collateral.

### Exchange Traded Derivative Contracts

- (i) SEBI registered FIIs are allowed to trade in all exchange traded derivative contracts on recognised Stock Exchanges in India subject to the position limits as prescribed by SEBI from time to time. The SEBI registered FII/sub-account may open a separate account under their Special Non-Resident Rupee Account through which all receipts and payments pertaining to trading/investment in exchange traded derivative contracts will be made (including initial margin and mark to market settlement, transaction charges, brokerage, etc.) further, transfer of funds between the Special Non-

Resident Rupee Account and the separate account maintained for the purpose of trading in exchange traded derivative contracts can be freely made. However, repatriation of the rupee amount will be made only through their Special Non-Resident Rupee Account subject to payment of relevant taxes. The AD Category – I banks have to keep proper records of the above mentioned separate account and submit them to Reserve Bank as and when required.

- (ii) FIIs are allowed to offer foreign sovereign securities with AAA rating as collateral to the recognised Stock Exchanges in India for their transactions in derivatives segment. SEBI approved clearing corporations of stock exchanges and their clearing members are allowed to undertake the following transactions subject to the guidelines issued from time to time by SEBI in this regard :
  - a. to open and maintain demat accounts with foreign depositories and to acquire, hold, pledge and transfer the foreign sovereign securities, offered as collateral by FIIs;
  - b. to remit the proceeds arising from corporate action, if any, on such foreign sovereign securities; and
  - c. to liquidate such foreign sovereign securities if the need arises.
- (iii) Clearing Corporation have to report, on a monthly basis, the balance of foreign sovereign securities, held by them as non-cash collaterals of their clearing members to the Reserve Bank. The report should be submitted by the 10th of the following month to which it relates.

## Forward cover & cancellation and rebooking

- (i) Designated branches of AD Category-I Banks maintaining accounts of FIIs can provide forward cover with rupee as one of the currencies to such customers subject to the following conditions:
- FIIs are allowed to hedge the market value of their entire investment in equity and/or debt in India as on a particular date. If a hedge becomes naked in part or full owing to shrinking of the value of portfolio, for reasons other than sale of securities, the hedge may be allowed to continue to the original maturity, if so desired;
  - FIIs may be allowed to cancel and rebook forward contracts up to a limit of 2 per cent of the market value of their entire investment in equity and / or debt in India. The limit for calculating the eligibility for rebookings shall be based upon market value of portfolio as at the beginning of the financial year (April – March). The outstanding contracts must be duly supported by underlying exposure at all times. These contracts may be rolled over on or before maturity. The monitoring of forward cover must be done on a fortnightly basis by the AD banks, and reported to the Reserve Bank on a monthly basis, as per the format prescribed.
  - the cost of hedge is met out of repatriable funds and /or inward remittance through normal banking channel;
  - all outward remittance incidental to the hedge are net of applicable taxes.

- (ii) The eligibility for cover may be determined on the basis of the declaration of the FII. A review may be undertaken on the basis of market price movements, fresh inflows, amounts repatriated and other relevant parameters to ensure that the forward cover outstanding is supported by an underlying exposure. The AD Category – I bank has to ensure that (i) total forward contracts outstanding should not exceed the market value of portfolio, and (ii) forward contracts permitted to be rebooked should not exceed 2 percent of the market value as determined at the beginning of the financial year.

## Margin requirements

SEBI registered FIIs / sub-accounts are allowed to keep with the Trading Member / Clearing Member amount sufficient to cover the margins prescribed by the Exchange / Clearing House and such amounts as may be considered necessary to meet the immediate needs.

## Accounts with AD Category – I banks

- FIIs/sub-accounts can open a Foreign Currency denominated Account and / or a Special Non-Resident rupee account with an AD Category – I bank, for the purpose of investment.
- They can transfer sums from the foreign currency account to the rupee account for making genuine investments in securities in terms of the SEBI (FII) Regulation, 1995.
- The sums may be transferred from foreign currency account to rupee account at the prevailing market rate and the AD category – I bank may transfer repatriable proceeds (after payment of tax) from the rupee account to the foreign currency account.

- (iv) The Special Non-Resident Rupee Account May be credited with the proceeds of sale of shares / debentures, dated government securities, Treasury Bills etc. Such credits are allowed, subject to the condition that the AD category – I bank should obtain confirmation from the investee company / FII concerned that tax at source, wherever necessary, has been deducted from the gross amount of dividend / interest payable / approved income to the share / debenture / Government securities holder at the applicable rate, in accordance with the Income Tax Act.
- (v) The Special Non-Resident Rupee Account may be debited for purchase of shares / debentures, dated Government securities, Treasury Bills etc., and for payment of fees to applicant FIIs' local chartered Accountant / Tax Consultant where such fees constitute an integral part of their investment process.

### Private placement with FIIs

SEBI registered FIIs have been permitted to purchase shares / convertible debentures of an Indian company through offer/private placement, subject to the ceiling prescribed, i.e. individual FII/sub-account – 10 per cent and all FIIs/sub-account put together -24 per cent of the paid-up capital of the Indian company and to the sectoral limits, as applicable. Indian company is permitted to issue such shares provided that:

- i. in the case of public offer, the price of shares to be issued is not less than the price at which shares are issued to residents; and
- ii. in the case of issue by private placement, the price is not less than the price arrived at in terms of SEBI guidelines or guidelines

issued by the erstwhile Controller of Capital Issues, as applicable. Purchases can also be made of PCDs / FCDs/ Right Renunciations / Warrants / Units of Domestic Mutual Fund Schemes.

### Allocation of funds

The SEBI registered FII shall restrict allocation of its total investment between equities and debt in the Indian capital market in the ratio of 70:30. The FII may form a 100% debt fund and get such fund registered with SEBI. Investment in debt securities by FIIs are subject to limits, if any, stipulated by SEBI in this regard.

### Reporting of FII investments

- (i) An FII may invest in a particular share issue of an Indian company either under the FDI Scheme or the Portfolio Investment Scheme. The AD Category – I banks have to ensure that the FIIs who are purchasing the shares by shares debit to the special rupee accounts report these details separately in the LEC (FII) returns.
- (ii) The Indian company which has issued shares to FIIs under the FDI Scheme (for which the payment has been received directly into company's account) and the portfolio Investment Scheme (for which the payment has been received from FIIs' account maintained with an AD Category – I bank in India) should report these figures separately under item no. 5 of form FC-GPR (Post issue pattern of shareholding) so that the details could be suitably reconciled for statistical / monitoring purposes.
- (iii) A daily statement in respect of all transactions (except derivative trade) have to be submitted by the custodian bank in floppy/soft copy in the

prescribed format directly to Reserve Bank to monitor the overall ceiling/sectoral cap/statutory ceiling.

### **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 through designated ADs on repatriation and non-repatriation basis under PIS route upto 5% of the paid up capital/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. Short selling is not permitted.

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 Category-I 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**

Reserve Bank monitors the investment position of NRIs in listed Indian companies, reported by Custodian Banks on a daily basis in Forms LEC (FII) and LEC (NRI).

### **Caution List**

When the total holdings of FIIs/NRIs under the Scheme reach the trigger limit, which is 2% below the applicable limit (for companies with a paid-up capital of Rs. 1000 crores and above, the trigger limit is 0.5% below the applicable limit), Reserve Bank will issue a notice to all designated branches of AD Category-I banks cautioning that any further purchases of shares of the particular Indian company will require prior approval of Reserve Bank. Reserve Bank gives case by case approvals to FIIs for purchase of shares of companies included in the caution list. This is done on a first come first served basis.

### **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 FII or 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 nonrepatriable 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 traveler's cheque or by foreign currency notes or by other mode other 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. Such payment cannot be made either by traveler's cheque or by foreign currency notes or other mode other than those specifically mentioned above.
- iii. By way of gift from a person resident in India or a NRI or a PIO.

A PIO may acquire any immovable property in India 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)

- a) 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 immovable property to an AD Category-I 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

- ii. 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 funds 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; and
- 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 to Citizens of Certain Countries for Acquisition or Transfer of Immovable Property in India

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan whether resident in India or outside India 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 or purchase 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 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?

**A.5.** 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?**

**A.7.** 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?**

**A.8.** 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 person resident in India.
- 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

- a person resident in India or
- an NRI or
- a PIO.

(b) PIO can sell property in India to-

- a person resident in India.
- an NRI or
- 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

- a person resident in India
- an NRI
- a PIO

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

**A.13.**

- NRI/ PIO may sell agricultural land /plantation property/farm house to a person resident in India who is a citizen of India.
- 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.

- NRI/ PIO may gift residential/ commercial property to

  - person resident in India or
  - an NRI or
  - PIO.

- 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 traveler'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?**

**A. 21.** 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/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.

- 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.

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 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 for a period not exceeding five years. 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 have to submit annual activity certificates from chartered accountants to RBI.

### **Branch Office In Special Economic Zones (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,

In the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an Authorized Dealer Category-I Bank with the documents as mentioned in “Closure of Office” except the copy of RBI approval.

### **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 from the Reserve Bank.

### **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) 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

AD Category-I Banks can open non-interest bearing Foreign Currency Account for Project Office in India subject to the following:

- a) The Project Office has been established in India, with the general/ specific permission of Reserve Bank, having the requisite approval from the concerned project Sanctioning Authority,
- b) The contract under which the project has been sanctioned, specifically provides for payment in foreign currency,
- 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 Category-I 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, 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 India. 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 Offices

At the time of winding up of the Liaison Offices, the company has to approach the respective Regional Office of the Reserve Bank with the

documents

- Copy of the Reserve Bank's permission for establishing the Office in India
- Auditor's certificate
  - (i) 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.
  - (ii) 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;
  - (iii) 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 RBI's Regional Office grants approval AD Category-I Banks can allow remittance of surplus.

At the time of closure of Branch Offices, the entities have to approach the Central Office of the Reserve Bank 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](http://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?

**A.4** 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 a 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 (NRI) or a Person of Indian Origin (PIO) resident outside India can invest by way of contribution to the capital of a firm or 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 Authorised Dealers/ Authorised Banks.
- 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 concerns/partnership firms 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 (addressed to the Chief General Manager in charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central office Mumbai) 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 facilities for Non Resident Indians (NRIs)/persons of Indian Origin (PIO) and Foreign Nationals**

The Regulations for transfer of assets outside India by a person whether resident in India or not are given in the Notifications No. FEMA 13/2000-RB and FEMA 21/2000-RB both dated May 3, 2000 and the related amendments to these Notifications. Accordingly, remittance of capital assets in India held by a person whether resident in or outside India would require approval or the Reserve Bank except to the extent provided in FEMA or Rules or Regulations made there under.

## **Definition of NRI/PIO**

NRI for this purpose is defined as a person resident outside India who is citizen of India.

In terms of Regulation 2 FEMA Notification No. 13 dated May 3, 2000, Non-Resident Indian (NRI) means a person resident outside India who is a citizen of India. Person of Indian Origin (PIO) means a citizen of any country other than Bangladesh or Pakistan who had (a) at any time held Indian passport or (b) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act 1955 or (c) the person is a spouse of an Indian citizen or a person referred to in (a) or (b).

## **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 NRI/ 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 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. Here it is clarified that in case settlement is done without retaining any life interest in the property it would tantamount to regular transfer by way of gift. Therefore, if property is received by NRI/PIO by way settlement without the settler retaining life interest it may be reckoned as transfer by way of gift and remittance of sale proceeds of such property would be guided by the extant instructions on remittance of balance in the NRO account.

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.

The facility of remittance of sale proceeds of other financial assets is not available to citizens 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 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 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 (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.

### **Authorisation to Regional Rural Banks (RRBs)**

With a view to make foreign exchange services available to the NRIs/PIO on a wider scale, RRBs are now authorised to open and maintain FCNR (B) Deposit accounts also by NRIs/PIO.

### Repatriation of maturity proceeds of FCNR (B) deposits

Authorised Dealer banks are permitted to make remittance or the maturity proceeds of FCNR (B) deposits to the third parties outside India, provided the transaction is specifically authorised by the account holder and the authorised dealer is satisfied about the bonafides of the transaction.

### ESOP to NRI Employees

Authorised Dealer Banks are permitted to grant Rupee loans to NRIs employees of Indian companies for acquiring shares of the companies under the ESOP Scheme. The loan scheme should be as per the policy approved by the bank's Board and would further be subject to the following conditions:

- (i) The loan amount should not exceed 90 per cent of the purchase price of the shares or Rupees 20 lakhs per NRI employee, whichever is lower.
- (ii) The rate of interest and margin on such loans may be decided by the banks, subject to the directives issued by the Reserve Bank from time to time.
- (iii) The amount shall be paid directly by the bank to the company and should not be credited to the borrowers' non-resident accounts in India.
- (iv) The loan amount should be repaid by the borrower by way of inward remittances or by debit to his NRO/NRE/FCNR (B) account.
- (v) The loans will be included for reckoning capital market exposures and the bank will ensure compliance with prudential limits, prescribed by the Reserve Bank (DBOD) from time to time, for such exposure to capital market.

### 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 USD 100,000 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 NRO 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 referred to in sub clause (a) or (b).

### 2. Eligibility

- a) Any person resident outside India (as per Section 2 of FEMA), may open NRO account with an Authorised Dealer bank for the purpose of putting through bonafide transactions denominated in Rupees, not involving any violation of the provision of FEMA, Rules, Regulations 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, savings, 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 as a resident or out of Rupee funds as NRI/PIO, without any lock in-period, subject to the above limit of USD 1 million, per 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 (B)/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 vide 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 SCHEME**

#### **1. Eligibility:**

The Non-resident Indians (NRIs) and Overseas Corporate Bodies (OCBs) are permitted to open and maintain these accounts with authorised dealers, and with banks (including cooperative banks) authorised by the Reserve Bank to maintain such accounts.



The account should be opened by the non-resident account holder himself and not by the holder of the power of attorney in India.

**Note:** Opening of NRE accounts in the names of individuals/entities of Bangladesh/Pakistan Nationality /ownership requires approval of Reserve Bank.

## 2. Types of accounts:

The accounts may be maintained in any form, e.g. savings, current, recurring or fixed deposit account etc.

## 3. Permitted Credits:

- a) Proceeds of remittances to India in any permitted currency.
- b) Proceeds of personal cheques drawn by the account holder on his foreign currency account and of travelers cheques, bank drafts payable in any permitted currency including instruments expressed in Indian rupees for which reimbursement will be received in foreign currency, deposited by the account holder in person during his temporary visit to India, provided the authorised dealer/bank is satisfied that the account holder is still resident outside India, the travelers' cheques/drafts are standing/endorsed in the name of the account holder and in the case of travelers' cheques, they were issued outside India.
- c) Proceeds of foreign currency/bank notes tendered by account holder during his temporary visit to India, provided (i) the amount was declared on a Currency Declaration Form (CDF), where applicable, and (ii) the notes are tendered to the authorised dealer in person by the account holder himself and the authorised dealer is satisfied that account holder is a person resident outside India.
- d) Transfers from other NRE/FCNR accounts.
- e) Interest accruing on the funds held in the account.
- f) Interest on Government securities and dividend on units of mutual funds, provided the securities/ units were purchased by debit to the account holder's NRE/FCNR account or out of inward remittance through normal banking channels.
- g) Maturity proceeds of Government securities including National Plan/Savings Certificates as well as proceeds of Government securities and units of mutual funds sold on a recognised stock exchange in India and sale proceeds of units received from mutual funds, provided the securities/units were originally purchased by debit to the account holder's NRE/FCNR account or out of remittances received from outside India in free foreign exchange.
- h) 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 remittance from outside India through normal banking channels.
- i) Refund of application/earnest money made by the house building agencies on account of non-allotment of flat/plot, together with Interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE/FCNR account of the account holder or remittance from outside India through normal banking channels and the authorised dealer is satisfied about

- the genuineness of the transaction.
- j) Any other credit if covered under general or special permission granted by Reserve Bank.

#### 4. Permitted Debits:

- a) Local disbursements.
- b) Remittances outside India.
- c) Transfer to NRE/FCNR accounts of the account holder or any other person eligible to maintain such account.
- d) Investment in shares/securities/commercial paper of an Indian company or for purchase of immovable property in India provided such investment/purchase is covered by the regulations made, or the general/special permission granted, by the Reserve Bank.
- e) Any other transaction if covered under general or special permission granted by the Reserve Bank.

#### 5. Rate of Interest:

Rate of interest applicable to these accounts shall be in accordance with the directions/instruction issued by Reserve Bank from time to time.

#### 6. Loans against security of funds held in the account:

##### a) 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 agriculture/plantation activities or for investment in real estate business. The authorised dealer/bank should ensure that the advances are fully secured by the fixed deposits and regulations relating to

normal margin, interest rate, etc., are complied with. Repayment shall be made either 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 contribution 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) Regulations, 2000.
- iii). the purpose of acquisition of flat/house in India for his own residential use subject to the provisions of the relevant Regulations made under the Act.

##### b) To third parties:

Authorised dealers and authorised 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 purposes 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.

### c) 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 bonafide 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 outstandings.

### 7. Change of resident status of the account holder:

NRE accounts should be redesignated as resident accounts or the funds held in these accounts may be transferred to the RFC accounts (if the account holder is eligible for maintaining RFC account) at the option of the account holder immediately upon 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 intention to stay in India for an uncertain period. Where the account holder is only on a short visit to India, the account may continue to be treated as NRE account even during his stay in India.

### 8. Repatriation of funds to non-resident nominee:

Authorised dealers/authorised banks may allow remittance of funds lying in the NRE account of the deceased account holder to his non-resident nominee.

### 9. Miscellaneous:

- a) Joint accounts: Joint accounts in the names of two or more non-resident individuals may be opened provided all the account holders are persons of Indian nationality or origin. When one of the joint holder becomes resident, the authorised dealer may either delete his name and allow the account to continue as a NRE account or redesignate the account as a resident account, at the option of the account holders. Opening of these accounts by a non-resident jointly with a resident is not permissible.
- b) Opening of account during temporary visit: An account may be opened in the name of an eligible NRI during his temporary visit to India against tender of foreign currency travelers cheques or foreign currency notes and coins tendered, provided the authorised dealer is satisfied that the person has not ceased to be a non-resident.
- c) Operations by Power of attorney: Authorised dealers/authorised banks may allow operations on an NRE account in terms of Power of Attorney or other authority granted in favour of a resident by the non-resident account holder, provided such operations are restricted to withdrawals for local payments or remittance to the account holder himself through normal banking channels. In cases where the account holder or a bank designated by him is eligible to

- make investments in India, the Power of Attorney holder may be permitted by authorised dealers to operate the account to facilitate such investment. The resident Power of Attorney holder shall not, however be allowed to repatriate outside India funds held in the account under any circumstances other than to the account holder himself, nor to make payment by way of gift to a resident on behalf of the account holder or transfer funds from the account to another NRE account.
- d) Special Series of Cheques: For easy identification and quicker processing of cheques drawn on NRE accounts, authorised dealers/banks shall issue cheque books containing a special series of cheques to their constituents holding NRE accounts.
- e) Temporary overdrawings: Authorised dealers/authorised banks may at their discretion/commercial judgment allow for a period of not more than two weeks, overdrawings in NRE savings bank accounts, upto a limit of Rs.50,000 subject to the condition that such overdrawings together with the interest payable thereon are cleared/repaid within the said period of two weeks, out of inward remittances through normal banking channels or by transfer of funds from other NRE/FCNR accounts.
- f) Remittances abroad by Resident nominee: Application from a resident nominee for remittance of funds outside India for meeting the liabilities, if any, of the deceased account holder or for similar other purposes, should be forwarded to the Reserve Bank for consideration.
- g) Tax Exemption: Income from interest on balances standing to the credit of NRE Accounts is exempt from Income tax. Likewise balances held in such accounts are exempt from wealth tax.
- h) Reporting: The transactions in these accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

## FOREIGN CURRENCY (NON-RESIDENT) ACCOUNT (BANKS) SCHEME – FCNR (B)

### 1. Eligibility :

- (a) NRIs and OCBs are eligible to open and maintain these accounts with an authorised dealer.

**NOTE:** Opening of FCNR (B) accounts in the names of NRIs/OCBs of Bangladesh/Pakistan nationality/ownership requires approval of Reserve Bank.

- (b) These accounts may be opened with funds remitted from outside India through normal banking channels or funds received in rupees by debit to the account of a non-resident bank maintained with an authorised dealer in India or funds which are of repatriable nature in terms of the regulations made by Reserve Bank. Accounts may also be opened by transfer of funds from existing NRE/FCNR accounts.
- (c) 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 this, if the remittance is received in a currency other than the designated currency (including funds received in rupees by debit to the account of a non-resident bank), it should be converted

into the latter currency by the authorised dealer at the risk and cost of the remitter and account should be opened/credited in only the designated currency.

- (d) In case the 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 may also be done between two designated currencies.

## 2. Designated currencies:

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

## 3. Type of account:

These accounts may be opened only in the form of term deposit for any of the three maturity periods, viz. one year and above but less than two years, two years and above but less than three years and three years only.

## 4. Rate of Interest:

The rate of interest on funds held in these deposit accounts will be in accordance with the directives issued by the Reserve Bank from time to time.

## 5. Permissible Debits/Credits:

All debits/credits permissible in respect of NRE accounts as specified in NRE Rupee Account Scheme shall be permissible in respect of these accounts also.

## 6. Rate for Conversion of Rupees into Designated Currencies and vice versa:

- i). Remittances received in Indian rupees for opening these accounts shall be converted by the authorised dealer into the designated foreign currency at the clean T.T. selling rate for that currency ruling on the date of conversion.
- ii). For the purpose of payment in rupees, funds held in these accounts shall be converted into rupees at the authorised dealer's clean T.T. buying rate for the concerned currency ruling on the date of withdrawal.

## 7. Inland Movement of Funds:

Any inland movement of funds for the purpose of opening these accounts as well as for repatriation outside India of balances held in these accounts will be free of inland exchange or commission for the non-resident depositors. The Authorised dealer receiving foreign currency remittances in these accounts will also, on request, pass on the foreign currency to another authorised dealer if the account has to be opened with the latter, at no extra cost to the remitter.

## 8. Manner of Payment of Interest:

- i). Interest on balances held in these accounts may be paid half-yearly or on an annual basis as desired by the depositor.
- ii). Interest may be credited to a new FCNR(B) account or an existing/new NRE/NRO/NRNR/NRSR account in the name of the account holder, at his option.

## 9. Loans/overdrafts against security of funds held in the account:

- i). 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.
- ii). The margin requirement shall be notionally calculated on the rupee equivalent of the deposits.

#### **10. Change of resident status of the account holder:**

When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. However, except 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.

#### **11. Joint account, repatriation of balances, etc. :**

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

#### **12. Reporting:**

The transactions in these accounts shall be reported to Reserve Bank in accordance with the directions issued by it from time to time

#### **13. Other Features:**

- (a) Reserve Bank will not provide exchange rate guarantee to authorised dealers for deposits of any maturity in these accounts.
- (b) Lending of resources mobilised by authorised dealers under these accounts are not subject to any interest rate stipulations.

**NOTE:** Premature withdrawal of FCNR(B) deposits for the purpose of opening NRNR Rupee Deposit accounts with an authorised dealer other than the one with whom the account FCNR(B) is maintained will attract penalty as per the directions issued by Reserve Bank from time to time.

## 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
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

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
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: Fixed Deposits: 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 close of business on January 31, 2007. <b>Saving Bank Account</b> Interest rate shall be at the rate applicable to domestic savings account with effect from close of business in India on 17-1-2005.	Banks are free to determine interest rates for term deposits.
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.	



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
<b>Loans</b>			
a. In India	Permitted upto Rs. 20 lakhs	Permitted upto Rs. 20 lakhs	Permitted
To the Account holder			
To Third Parties	Permitted upto Rs. 20 lakhs	Permitted upto Rs. 20 lakhs	Permitted
b. Abroad	Permitted upto Rs. 20 lakhs	Permitted upto Rs. 20 lakhs	Not Permitted
To the Account holder			
To Third Parties	Permitted upto Rs. 20 lakhs	Permitted upto Rs. 20 lakhs	Not permitted
c. Foreign Currency Loans in India			
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.	

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 Third Party	Fund based and / or non-fund based facilities for personal purposes or for carrying on business activities*	Fund based and / or non-fund based facilities for personal purposes or for carrying on business activities*	Personal requirement and/ or business purpose. *
<b>b.</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 of 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

### 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 exceeding the limit 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 global conferences and specialized training,
  - e) Remittance for participation in international events / competitions (towards training, sponsorship and prize money),

- 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/Subsription/ 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 Authorised Dealers may release foreign exchange for travel puporse on the basis of a declaration given by the traveler regarding the amount of foreign exchange availed of during the financial year.
- 2.3 In case of issue of travelers cheques, the traveler should sign the cheques in the presence of an authorised official and the purchaser's acknowledgement for receipt of the travelers cheques should be held on record.
- 2.4 Out of the overall foreign exchange being sold to a traveler, exchange in the form of foreign currency notes and coins may be sold upto the limit indicated below:
- a) Travelers 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) Travelers proceeding to Iraq or Libya, not exceeding USD 5000 or its equivalent.  
 c) Travelers 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 not exceeding 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 a person who is availing of foreign exchange for travel outside India for any purpose upto the limits 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 traveler, as the case may be.

The liberalized uniform limit of 180 days is applicable only to resident individuals and that too in areas other than export of goods and services.

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 traveler. Exchange so brought back can be utilised

- by the individual for his /her subsequent visit abroad.
- 8.2 However, a returning traveler is also permitted to retain with him, foreign currency travelers 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 traveler 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 travelers 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 travelers 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 authorized person for surrender of unspent / unutilized 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 traveler 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 traveler 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 travelers from India, provided the Authorised Dealer is satisfied that the remittance is being made out of the foreign exchange purchased by the concerned traveler 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 for providing hotel accommodation or making other tour arrangements for travelers from India provided:

- a) The credits to the account are by way of depositing
  - i. Collections made in foreign exchange from travelers, 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 9.2 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 travelers' 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 import of services. 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.

In case of invocation of the guarantee, the Authorised Dealer is required to submit to the Chief General Manager - in-Charge, 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 for Resident Individuals**

13.1 Under this scheme, Authorised Dealers may freely allow remittances by resident 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 (of listed companies or otherwise) or debt instruments 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](http://www.fatf-gafi.org) or as notified by the Reserve Bank.

13.8 For undertaking transactions under the Scheme, resident individuals may use the



#### Application-cum-Declaration Form.

Beginning from April 2008, AD Category-I banks are required to furnish the information on a monthly basis to the Chief General Manager -in-Charge, Foreign Exchange Department, (FID -EPD), Reserve Bank of India, Central Office, 11th Floor, Central Office Building, Mumbai -400 001, on or before fifth of the following month to which it relates. A soft copy of the statement (in Excel format) may also be sent by e-mail to fedcofid@rbi.org.in

#### 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 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 required 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 Authorised Dealers have specifically been advised that they may release foreign exchange upto USD 1,00,000 each for employment, emigration, maintenance of close relatives, 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.

In addition, the existing facility of release of exchange by Authorised Persons upto USD 10,000 or its equivalent in one financial year for one or more private visits to any country (except Nepal and Bhutan) will continue to be available on a self - declaration basis.

#### 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 software or import of any other item permissible under Foreign Trade Policy (FTP).
- 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 limit will be the credit limit fixed by the card issuing banks. There is no monetary ceiling fixed by the Reserve Bank for remittances, if any, under this facility.
- 16.7 payment to establishment overseas during his visit abroad. It is clarified that IDCs can be used only for permissible current account transactions 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.
- 17.3 The International Banking Divisions/ Foreign Exchange Departments of AD banks may submit a statement as on December 31, each year in case the aggregate forex utilization by the IDC holders exceeds USD 100,000 in a calander year. The statement should reach the Chief General Manager - in - Charge, Foreign Exchange Department, External Payments Divison, Central Office, Mumbai-400 001 on or before 20th January of the succeeding year.

### **A.18 Store Value Cards/Charge Cards/ Smart Cards, etc.**

Certain AD 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.17 International Debit Cards**

- 17.1 Banks authorised to deal in foreign exchange are issuing International Debit Cards (IDCs) which can be used by a resident for drawing cash or making

### **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, Ministry of Finance, Government of India in their circular No. 10/2002 dated October 9, 2002. [c.f. A. P. (DIR Series) circular No. 56 dated November 26, 2002].

## ANNEXURE-I

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

### 1. Short title and commencement

- 1). These rules may be called the Foreign Exchange Management (Current Account Transactions) Rules, 2000:
- 2). They Shall come into effect on the 1st day of June 2000.

### 2. Definitions - In these rules, unless the context otherwise requires:

- (a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);
- (b) "Drawal" means drawal of foreign exchange from an authorised person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM Card or any other thing by whatever name called which has the effect of creating foreign exchange liability;
- (c) "Schedule" means a schedule appended to these rules;
- (d) The words and expressions not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act.

### 3. 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.

### 4. 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.

### 5. 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.

6. (1) Nothing contained in Rule 4 or Rule 5 shall apply to drawal made out of funds held in Exchange Earners' Foreign Currency (EEFC) account of the remitter.
- (2) Notwithstanding anything contained in sub-rule(1), restrictions imposed under rule 4 or rule 5 shall continue to apply where the drawal of foreign exchange from the Exchange Earners Foreign currency (EEFC) Account is for the purpose specified in items 10 and 11 of schedule II, or item 3, 4, 11, 16, 17 of schedule III as the case may be.

### 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

**TRANSACTION WHICH REQUIRE PRIOR APPROVAL OF  
THE CENTRAL GOVERNMENT  
(SEE RULE - 4)**

S. NO.	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)

S. NO.	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 Commerce and Industry
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.	Omitted	
11.	Remittance for membership of P & I Club	Ministry of Finance, (Insurance Division)

## SCHEDULE-III

**TRANSACTION WHICH REQUIRE PRIOR APPROVAL  
OF RESERVE BANK  
(SEE RULE - 5)**

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Omitted.</li> <li>2. 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).</li> <li>3. Gift remittance exceeding USD 5,000 per remitter/donor per annum.</li> <li>4. Donation exceeding USD 5,000 per remitter/donor per annum.</li> <li>5. Exchange facilities exceeding USD 100,000 for persons going abroad for employment.</li> <li>6. Exchange facilities for emigration exceeding USD 100,000 or amount prescribed by country of emigration.</li> <li>7. Remittance for maintenance of close relatives abroad,             <ol style="list-style-type: none"> <li>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-                 <ol style="list-style-type: none"> <li>(a) is a citizen of a foreign State other than Pakistan; or</li> <li>(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.</li> </ol> </li> <li>ii. Exceeding USD 100,000 per year, per recipient, in all other cases.</li> </ol> </li> </ol> | <ol style="list-style-type: none"> <li>assignment; the duration of which does not exceed three years, is a resident but not permanently resident.</li> <li>8. Release of foreign exchange, exceeding USD 25,000 to a person, irrespective of period of stay, for 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.</li> <li>9. Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.</li> <li>10. Release of exchange for studies abroad exceeding the estimate from the institution abroad or USD 100,000 per academic year, whichever is higher.</li> <li>11. 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.</li> <li>12. Omitted</li> <li>13. Omitted</li> <li>14. Omitted</li> <li>15. Remittance exceeding USD 1,000,000 per project, for any consultancy service procured from outside India.</li> <li>16. Omitted</li> <li>17. Remittance exceeding USD 100,000 by an entity in India by way of reimbursement of pre-incorporation expenses.</li> <li>18. Omitted</li> </ol> |
|--|---|
- 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



## FREQUENTLY ASKED QUESTIONS (FAQs)

### 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?

**A.3.** 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.org.in](http://www.fedai.org.in)).

#### 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.

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 release of foreign exchange of USD 100,000 is to meet the expenses involved in treatment and it is in addition to the amount of USD 25,000 released 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.

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

**A.6.** Authorised Dealers may release foreign exchange for 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. 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.** In case of 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 180 days of purchase. In case it is not possible to use the foreign exchange within the period of 180 days, it should be surrendered to an authorised person.
- 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 person 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 return from a foreign trip, travellers are required to surrender the unspent foreign exchange, whether in the form of currency notes or travellers cheques, within 180 days of return. However, they are free to retain foreign exchange upto USD 2000, in the form of foreign currency notes or TCs for future use or credit to their RFC (Domestic) Accounts without any limit.

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

**A.16.** Residents have the choice of either holding foreign currency upto USD 2,000 or its equivalent or credit the amount to their RFC (Domestic) Accounts provided the foreign exchange was acquired by them:-

- 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.** The residents can hold foreign coins without any limit.

**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 I donation to a person resident outside India?**

**A.19.** ADs have been permitted to make remittances on account of donations by corporates for some specified purposes subject to a limit of one percent of the foreign exchange earning during the previous three financial years or USD 5 million, whichever is less. Other residents like 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:
- up to Rs. 5,000 from any country other than Nepal or Bhutan, and
  - 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.** A person is allowed to carry foreign exchange in the form of currency notes/ coins up to USD 2,000 or its equivalent only. Balance amount as applicable 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 and exporter submits a declaration that goods of gifts are not more than Rs. 5,00,000 in value.

**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. EEFC account holders can now maintain outstanding balances to the extent of USD 1 million in the form of term deposits upto one year maturing on or before 31st October 2008. The rate of interest will be determined by the bank themselves.

**b. Resident Foreign Currency 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 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 may also be credited to this account.

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

#### **c. Resident Foreign Currency (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. 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

**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. What are the purpose/s for which remittance can be made under the Scheme?**

**A.32.** 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.33. Who is eligible to avail of this Liberalised Remittance Facility?**

**A.33.** The facility is available to resident individuals only.

**Q.34. Provide an illustrative list of capital account transactions permitted under the scheme?**

**A.34.** The remittance under the Scheme is available to the resident individuals for any permitted current or capital account transactions or a combination of both. Under the Scheme, resident individuals can acquire and hold immovable property or shares or debt instruments or any other assets outside India, without prior approval of the Reserve Bank. Individuals can also open, maintain and hold foreign currency accounts with banks outside India. However, it is clarified that remittance from India for margins or margin calls to overseas exchanges / overseas counterparty are not allowed under the Scheme.

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

- i) Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery/sweep stakes, tickets, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- ii) Remittances made directly or indirectly to Bhutan, Nepal, Mauritius or Pakistan.
- iii) Remittances made directly or indirectly to countries identified by the

Financial Action Task Force (FATF) as “non co-operative countries and territories” from time to time.

- iv) Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

**Q.35. Whether this facility is in addition to existing facilities detailed in Schedule III under remittances?**

**A.35.** The facility under the Scheme is in addition to those already available for private travel, business travel, studies, medical treatment, etc., as described in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Scheme can also be used for these purposes. However, gift and donation remittances cannot be made separately and have to be made under the Scheme only. Accordingly, resident individuals can remit gifts and donations up to USD 200,000 per financial year under the Scheme.

**Q.36. Whether resident individuals under this Scheme have to repatriate the accrued yield on deposits/ investments abroad, over and above the principal amount?**

**A.36.** The investor can retain and reinvest the income earned on investments made under the Scheme. Currently, the residents are not required to repatriate the funds or income generated out of investments made under the Scheme.

**Q.37. Whether remittance under the Scheme is on gross basis or net basis (net of repatriation from abroad)?**



- A.37.** Remittance under this scheme is on a gross basis.
- Q.38. Whether minors can also avail of the remittance facility?**
- A.38.** The facility is available to all the resident individuals including minors.
- Q.39. Whether remittances under the facility can be consolidated in respect of family members?**
- A.39.** Remittances under the facility can be consolidated in respect of family members subject to the individual family members complying with the terms and conditions of the Scheme.
- Q.40. Whether the Scheme can be used for purchase of objects of art (paintings, etc.,) either directly or through auction house?**
- A.40.** Remittances under the Scheme can be used for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.
- Q.41. Whether small value remittance of USD 5000/- (gifts, donation, etc.,) is in addition to LRS of USD 200,000?**
- A.41.** Remittance against gifts and donations cannot be made separately and have to be made under the Scheme only and therefore, no separate limits for gift and donation are available
- Q.42. Whether the AD is required to check permissibility of remittances based on nature of transaction or allow the same based on remitters declaration?**
- A.42.** AD will be guided by the nature of transaction as declared by the remitter and will certify that the remittance is in conformity with the instructions issued by Reserve Bank.
- Q.43. Whether under this scheme a customer can remit funds for acquisition of ESOPs?**
- A.43.** The Scheme can also be used for remittance of funds for acquisition of ESOPs.
- Q.44. Whether the scheme is in addition to acquisition of ESOPs linked to ADR/GDR (i.e USD 50,000/- for a block of 5 calendar years)?**
- A.44.** The remittance under the Scheme is in addition to acquisition of ESOPs linked to ADR/GDR.
- Q.45. Whether the Scheme is in addition to acquisition of qualification shares (i.e USD 20,000/- or 1% of paid up capital of overseas company whichever is lower)?**
- A.45.** The remittance under the Scheme is in addition to acquisition of qualification shares.
- Q.46. Whether a resident individual can invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc., under this scheme?**
- A.46.** A resident individual can invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc under this Scheme. Further, the resident can invest in such securities out of the bank account opened abroad under the Scheme.

- Q.47. Whether an individual, who has availed of a loan abroad while a non-resident can repay the same on return to India, under this Scheme as a resident?**
- A.47.** This is permissible.
- Q.48. Whether it is mandatory for resident individuals to have PAN number for sending outward remittances under the Scheme?**
- A.48.** It is mandatory to have PAN number to make remittances under the Scheme.
- Q.49. In case a resident individual requests for an outward remittance by way of issuance of a demand draft (either in his own name or in the name of the beneficiary with whom he intends putting through the permissible transactions) at the time of his private visit abroad, whether against self declaration of the remitter such an outward remittance can be effected?**
- A.49.** Such outward remittance in the form of a DD can be effected against the declaration by the resident individual in the format prescribed under the Scheme.
- Q.50. Is there any frequency for the remittance?**
- A.50.** There is no restriction on the frequency. However, the total amount of foreign exchange purchased from or remitted through, all sources in India during a financial year should be within the limit of USD 200,000/-.
- Q.51. Can residents avail of this facility for acquiring immovable property and other assets abroad?**
- A.51.** 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.52. Can individuals open foreign currency account abroad for making remittance under the Scheme?**
- A.52.** 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.53. What are the requirements to be complied with by the remitter?**
- A.53.** 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. If the applicant seeking to make the remittance is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation and maintenance of the account. Further the AD should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained. 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.54. Can an individual, who has repatriated the amount remitted during the financial year, avail of the facility once again?**

**A.54.** 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.55. Can remittances be made only in US Dollars?**

**A.55.** The remittances can be made in any currency equivalent to USD 200,000 in a financial year.

**Q.56. In the past 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.56.** 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.57. Are intermediaries expected to seek specific approval for making overseas investments available to clients?**

**A.57.** 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.58. Are there any restrictions on the kind/ quality of debt or equity instruments an individual can invest in?**

**A.58.** 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.59. Whether credit facilities in Indian Rupees or foreign currency would be permissible against security of such deposits?**

**A.59.** No. The Scheme does not envisage extension of credit facility against the security of the deposits.

**Q.60.** Can bankers open foreign currency accounts in India for residents under the Scheme?

**A.60.** No. Banks in India can not open foreign currency accounts in India for residents under the Scheme.

**Q.61.** 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.61.** No. For the purpose of the Scheme, an OBU in India is not treated as an overseas branch of a bank in India.

# EXTERNAL COMMERCIAL BORROWINGS (ECB)

## RELEASE OF FOREIGN EXCHANGE BY AUTHORISED DEALERS

### RELEASE OF FOREIGN EXCHANGE BY AUTHORISED DEALERS

#### A.1 General

- (a) External Commercial Borrowings (ECB) refer to commercial loans [in the form of bank loans, buyers' credit, suppliers' credit, securitised instruments (e.g. floating rate notes and fixed rate bonds)] availed from non-resident lenders with minimum average maturity of 3 years.
- (b) Foreign Currency Convertible bonds (FCCBs) mean a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency. Further the bonds are required to be issued in accordance with the scheme viz., "Issue of Foreign Currency convertible bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993", and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments. The policy for ECB is also applicable to FCCBs. The issue of FCCBs are also required to adhere to the provisions of Notification FEMA No. 120/RB-2004 dated July 7, 2004 as amended from time to time.
- (c) ECB can be accessed under two routes, viz., (i) Automatic Route outlined in

Paragraph I (A) and (ii) Approval Route outlined in paragraph I (B).

- (d) ECB for investment in real sector – industrial sector, especially infrastructure sector-in India, are under Automatic Route, i.e. do not require RBI/Government approval. In case of doubt as regards eligibility to access Automatic Route, applicants may take recourse to the Approval Route.

#### I. (A) AUTOMATIC ROUTE

##### (i) Eligible borrowers

- (a) Corporates (registered under the companies Act except financial intermediaries (such as banks, financial institutions (FIs), housing finance companies and NBFCs) are eligible to raise ECB. Individuals, Trusts and Non-Profit making Organisations are not eligible to raise ECB.
- (b) Units in Special Economic Zones (SEZ) are allowed to raise ECB for their own requirement. However, they cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff Area.

##### (ii) Recognised lenders

Borrowers can raise ECB from internationally recognised sources such as (i) international banks, (ii) international capital markets, (iii) multilateral financial institutions (such as IFC, ADB, CDC, etc.), (iv) export credit agencies, (v) suppliers of equipment, (vi) foreign collaborators and (vii) foreign equity

holders (other than erstwhile OCBs). A “foreign equity holder” to be eligible as “recognized lender” under the automatic route would require minimum holding of equity in the borrower company as set out below:

- (i) For ECB up to USD 5 million – minimum equity of 25 per cent held directly by the lender.
- (ii) For ECB more than USD 5 million – minimum equity of 25 per cent held directly by the lender and debt-equity ratio not exceeding 4:1 (i.e. the proposed ECB not exceeding four times the direct foreign equity holding).

### (iii) Amount and Maturity

- (a) The maximum amount of ECB which can be raised by a corporate is USD 500 million or equivalent during a financial year.
- (b) ECB up to USD 20 million or equivalent in a financial year with minimum average maturity of three years.
- (c) ECB above USD 20 million and upto USD 500 million or equivalent with a minimum average maturity average maturity of five years.
- (d) ECB upto USD 20 million can have call / put option provided the minimum average maturity of three years is complied with before exercising call / put option.

### (iv). All-in-cost ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. Moreover, the payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost.

The all-in-cost ceilings for ECB are reviewed from time to time. The following ceilings are valid till reviewed:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and upto five years	200 basis points
More than five years	350 basis points

\* for the respective currency of borrowing or applicable benchmark

### (v) End-use

- (a) Investment e.g. import of capital goods (as classified by DGFT in the Foreign Trade Policy), by new or existing production units, in real sector- industrial sector including small and medium enterprises (SME) and infrastructure sector – in India. Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks, and (vii) urban infrastructure (water supply, sanitation and sewage projects);
- (b) Overseas direct investment in Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.

### vi) Ends-users not permitted

- (a) Utilisation of ECB proceeds is not permitted for on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate,
- (b) Utilisation of ECB proceeds is not permitted in real estate,
- (c) Utilisation of ECB proceeds is not permitted for working capital, general

corporate purpose and repayment of existing Rupee loans.

**vii) Guarantees**

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) relating to ECB is not permitted.

**viii) Security**

The choice of security to be provided to the lender / supplier is left to the borrower. However, creation of charge over immovable assets and financial securities, such as shares, in favour of the overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000 respectively, as amended from time to time.

**ix) Parking of ECB proceed overseas**

ECB raised for foreign currency expenditure for permissible end-uses shall be parked overseas and not to be remitted to India. ECB proceeds parked overseas can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor / Fitch IBCA or Aa3 by Moody's; (b) deposits with overseas branch of an Authorised Dealer in India; and (c) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

**x) Prepayment**

Prepayment of ECB upto USD 500 million may be allowed by AD banks without prior approval of RBI subject to compliance with the stipulated minimum average maturity period as applicable to the loan.

**xi) Refinancing of an existing ECB**

The existing ECB may be refinanced by raising a fresh ECB subject to the condition that the fresh ECB is raised at a lower all-in-cost and the outstanding maturity of the original ECB is maintained.

**xii) Debt Servicing**

The designated Authorised Dealer (AD bank) has the general permission to make remittances of installments of principal, interest and other charges in conformity with ECB guidelines issued by Government / Reserve Bank of India from time to time.

**xiii) Procedure**

Borrowers may enter into loan agreement complying with ECB guidelines with recognised lender for raising ECB under Automatic Route without prior approval of RBI. The borrower must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB. The procedure for obtaining LRN is detailed in para II (i) (b).

**I. (B) APPROVAL ROUTE**

**i). Eligible Borrowers**

The following types of proposals for ECB are covered under the Approval Route

- a). Financial institutions dealing exclusively with infrastructure or export finance such as IDFC, IL&FS, Power Finance Corporation, Power Trading Corporation, IRCON and EXIM Bank are considered on a case by case basis.
- b). Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government are also permitted to the extent of their investment in the package and assessment by Reserve Bank based on prudential norms. Any ECB availed for this purpose so far will be deducted from their entitlement.
- c). ECB with minimum average maturity of 5 years by Non-Banking Financial Companies (NBFCs) from multilateral financial institutions, reputable regional financial institution, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects.
- d). Foreign Currency Convertible Bonds (FCCBs) by housing finance companies satisfying the following minimum criteria: (i) the minimum net worth of the financial intermediary during the previous three years shall not be less than Rs.500 cores, (ii) a listing on the BSE or NSE, (iii) minimum size of FCCB is USD 100 million, (iv) the applicant should submit the purpose / plan of utilization of funds.
- e). Special Purpose Vehicles, or any other entity notified by the Reserve Bank, set upto finance infrastructure companies / projects exclusively, will be treated as Financial Institutions and ECB by such entities will be considered under the Approval Route.
- f). Multi-State Co-operate Societies engaged in manufacturing activity satisfying the following criteria (i) the Co-operative Society is financially solvent and (ii) the Co-operative Society submits its up-to-date audited balance sheet.
- g). Corporates engaged in industrial sector and infrastructure sector in India can avail ECB for Rupee expenditure for permissible end-uses.
- h). Non-Government Organisations (NGOs) engaged in micro finance activities are eligible to avail ECB for Rupee expenditure for permissible end-uses. Such NGO (i) should have a satisfactory borrowing relationship for at least 3 years with a scheduled commercial bank authorised to deal in foreign exchange and (ii) would require a certificate of due diligence on 'fit and proper' status of the board / committee of management of the borrowing entity from designated AD Bank.
- i). Corporate in services sector viz. hotels, hospitals and software companies can avail ECB for import of capital goods.
- j). Cases falling outside the purview of the automatic route limits and maturity period indicated at paragraph I A (iii).
- ii). Recognised Lenders**
- (a) Borrowers can raise ECB from internationally recognised sources such as (i) international banks, (ii) international capital markets, (iii) multilateral financial institutions (such as IFC, ADB, CDC, etc.), (iv) export credit agencies, (v) suppliers' of equipment, (vi) foreign collaborators and (vii) foreign equity holders (other than erstwhile OCBs)
- (b) From 'foreign equity holder' where the minimum equity held directly by the



- foreign equity lender is 25 per cent but debt-equity ratio exceeds 4:1 (i.e. the proposed ECB exceeds four times the direct foreign equity holding).
- (c) Overseas organisations and individuals complying with following safeguards may provide ECB to Non-Government Organisations (NGOs) engaged in micro finance activities.
- (i) Overseas Organisations proposing to lend ECB would have to furnish a Certificate of due diligence from an overseas bank which in turn is subject to regulation of host-country regulator and adheres to Financial Action Task Force (FATF) guidelines to the AD bank of the borrower. The certificate of due diligence should comprise the following (i) that the lender maintains an account with the bank for at least a period of two years, (ii) that the lending entity is organised as per the local law and held in good esteem by the business / local community and (iii) that there is no criminal action pending against it.
  - (ii) Individual Lender has to obtain a certificate of due diligence from an overseas bank indicating that the lender maintains an account with the bank for at least a period of two years. Other evidence / documents such as audited statement of account and income tax return which the overseas lender may furnish need to be certified and forwarded by the overseas bank. Individual lenders from countries wherein banks are not required to adhere to Know Your Customer (KYC) guidelines are not eligible to extend ECB.
- iii). Amount and Maturity**
- (a) Corporates can avail of ECB of an additional amount of USD 250 million with average maturity of more than 10 years under the approval route, over and above the existing limit of USD 500 million under the automatic route, during a financial year. Other ECB criteria such as end-use, all-in-cost ceiling, recognised lender, etc., need to be complied with. Prepayment and call / put options, however, would not be permissible for such ECB upto a period of 10 years.
  - (b) Corporates in infrastructure sector {as defined in paragraph 1(A) (v) (a)} can avail ECB up to USD 100 million and Corporates in industrial sector can avail ECB up to USD 50 million for Rupee capital expenditure for permissible end-uses within the overall limit of USD 500 million per borrower, per financial year, under Automatic Route.
  - (c) NGOs engaged in micro finance activities can raise ECB up to USD 5 million during a financial year. Designated AD bank has to ensure that at the time of drawdown the forex exposure of the borrower is hedged.
  - (d) Corporates in the services sector viz. hotels, hospitals and software companies can avail ECB up to USD 100 million, per borrower, per financial year, for import of capital goods.
- iv). All-in-cost ceilings**
- All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fee payable in Indian Rupees. Moreover, the payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost.

The current all-in-cost ceilings are as under:  
The following ceilings are valid till reviewed:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and upto five years	200 basis points
More than five years	350 basis points

\* For the respective currency of borrowing or applicable benchmark

#### v). End-Use

- (a) Investment [such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), implementation of new projects, modernization / expansion of existing production units] in real sector – industrial sector including small and medium enterprises (SME) and infrastructure sector – in India. Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks and (vii) urban infrastructure (water supply, sanitation and sewage projects);
- (b) Overseas direct investment in Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct investment in JV/WOS abroad.
- (c) The first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.
- (d) Import of capital goods by Corporates in the service sector, viz., hotels, hospitals and software companies.

#### vi). End-uses not permitted

- (a) Utilisation of ECB proceeds is not permitted for on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate except banks and financial institutions eligible under paragraph I(B)(i)(A) and I(b)(i)(b),
- (b) Utilisation of ECB proceeds is not permitted in real estate,
- (c) Utilisation of ECB proceeds is not permitted for working capital, general corporate purpose and repayment of existing Rupee loans

#### vii). Guarantee

Issuance of guarantee standby letter of credit, letter of undertaking or letter of comfort by banks, financial institutions and NBFCs relating to ECB is not normally permitted. Applications for providing guarantee / standby letter of credit or letter of comfort by banks, financial institutions relating to ECB in the case of SME will be considered on merit subject to prudential norms. With a view to facilitating capacity expansion and technological upgradation in Indian Textile industry issue of guarantees, standby letters of credit, letters of undertaking and letters of comfort by banks in respect of ECB by textile companies for modernization or expansion of textile units will be considered under the Approval Route subject to prudential norms.

#### viii). Security

The choice of security to be provided to the lender / supplier is left to the borrower. However, creation of charge over immovable assets and financial

securities, such as shares, in favour of the overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000 as amended from time to time, respectively.

**ix). Parking of ECB proceeds overseas**

ECB raised for foreign currency expenditure for permissible end-uses shall be parked overseas and not remitted to India and ECB raised for Rupee expenditure for permissible end-uses shall be parked overseas until actual requirement in India. ECB proceeds parked overseas can be invested in the following liquid assets (a) deposits or certificate of deposits or other products offered by banks rated not less than AA(-) by Standard and Poor / Fitch IBCA or Aa3 by Moody's; (b) deposits with overseas branch of an AD bank in India; and (c) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

**x). Prepayment**

- (a) Prepayment of ECB upto USD 500 million may be allowed by AD bank without prior approval of Reserve Bank subject to compliance with the stipulated minimum average maturity period as applicable to the loan.
- (b) Pre-payment of ECB for amounts exceeding USD 500 million would be considered by the Reserve Bank under the Approval Route.

**xi). Refinancing of an existing ECB**

Existing ECB may be refinanced by raising a fresh ECB subject to the condition that the fresh ECB is raised at a lower all-in-cost and the outstanding maturity of the original ECB is maintained.

**xii). Debt Servicing**

The designated AD bank has general permission to make remittances of instalments of principal, interest and other charges in conformity with ECB guidelines issued by Government / Reserve Bank of India from time to time.

**xiii). Procedure**

Applicants are required to submit an application in form ECB through designated AD bank to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Central Office, External Commercial Borrowings Division, Mumbai – 400 001, along with necessary documents.

**xiv). Empowered Committee**

Reserve Bank has set up an Empowered Committee to consider proposals coming under the Approval Route.

**II. REPORTING ARRANGEMENTS AND DISSEMINATION OF INFORMATION**

**i). Reporting Arrangements**

- a). With a view to simplify the procedure, submission of copy of loan agreement is dispensed with.
- b). For allotment of loan registration

- number, borrowers are required to submit Form 83, in duplicate, certified by the Company Secretary (CS) or Chartered Accountant (CA) to the designated AD bank. One copy is to be forwarded by the designated AD bank to the Director, Balance of Payments Statistics Division, Department of Statistics and Information System (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051 [Note: copies of loan agreement, offer documents for FCCB are not required to be submitted with Form 83].
- c). The borrower can draw-down the loan only after obtaining the loan registration number from DSIM, Reserve Bank of India.
  - d). Borrowers are required to submit ECB-2 Return certified by the designated AD bank on monthly basis so as to reach DSIM, RBI within seven working days from the close of month to which it relates.

[Note: All previous returns relating to ECB viz. ECB 3 – ECB 6 have been discontinued with effect from January 31, 2004].

#### ii). Dissemination of Information

For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic Route and Approval Route are put on the Reserve Bank website on a monthly basis with a lag of one month to which it relates.

### III. STRUCTURED OBLIGATIONS

In order to enable Corporates to raise resources domestically and hedge exchange rate risks,

domestic rupee denominated structured obligations are permitted to be credit enhanced by international banks / international financial institutions / joint venture partners. Such applications will be considered under the Approval Route.

### IV. COMPLIANCE WITH ECB GUIDELINES

The primary responsibility to ensure that ECB raised / utilised are in conformity with the ECB guidelines and the Reserve Bank regulations / directions is that of the concerned borrower and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under FEMA 1999 ( cf. A.P. (DIR Series) Circular No.31 dated February 1, 2005). The designated AD bank is also required to ensure that raising / utilisation of ECB is in compliance with ECB guidelines at the time of certification.

### V. CONVERSION OF ECB INTO EQUITY

- (i). **Conversion of ECB into equity is permitted subject to the following conditions:**
  - (a) The activity of the company is covered under the Automatic Route for Foreign Direct investment or Government approval for foreign equity participation has been obtained by the company,
  - (b) The foreign equity holding after such conversion of debt into equity is within the sectoral cap, if any,
  - (c) Pricing of shares is as per SEBI and erstwhile CCI guidelines / regulations in the case listed / unlisted companies as the case may be.

(ii). **Conversion of ECB may be reported to the Reserve Bank as follows:**

- (a) Borrowers are required to report full conversion of outstanding ECB into equity in the form FC-GPR to the concerned Regional Office of the Reserve Bank as well as in form ECB-2 submitted to the DSIM, RBI within seven working days from the close of month to which it relates. The words “ECB wholly converted to equity” should be clearly indicated on top of the ECB-2 form. Once reported, filing of ECB-2 in the subsequent months is not necessary.
- (b) In case of partial conversion of outstanding ECB into equity, borrowers are required to report the converted portion in form FC-GPR to the concerned Regional Office as well as in form ECB-2 clearly differentiating the converted portion from the unconverted portion. The words “ECB partially converted to equity” should be indicated on top of the ECB-2 form. In subsequent months, the outstanding portion of ECB should be reported in ECB-2 form to DSIM.

## VI. CRYSTALLISATION OF ECB

AD banks design to crystallize their foreign exchange liability arising out of guarantees provided for ECB raised by corporates in India into Rupees, may make an application to the Chief General Manager-in-Charge, Foreign Exchange Department, External Commercial Borrowing Division, Reserve Bank of India, Central Office, Mumbai, giving full details viz., name of the borrower, amount raised, maturity, circumstances leading to invocation of guarantee / letter of comfort, date of default, its impact on the liabilities of the overseas branch of the AD concerned and other relevant factors.

## VII. ECB UNDER THE ERSTWHILE USD 5 MILLION SCHEME

Designated AD banks are permitted to approve elongation of repayment period for loans raised under the erstwhile USD 5 Million Scheme, provided there is a consent letter from the overseas lender for such reschedulement without any additional cost. Such approval with existing and revised repayment schedule along with the Loan Key / Loan Registration Number should be initially communicated to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, ECB Division, Mumbai within seven days of approval and subsequently in ECB – 2.

## TRADE CREDITS FOR IMPORTS INTO INDIA

“Trade Credits’ (TC) refer to credits extended for imports directly by the overseas supplier, bank and financial institution for maturity of less than three years. Depending on the source of finance, such trade credits include suppliers’ credit or buyers’ credit. Suppliers credit relates to credit for imports in to India extended by the overseas supplier, while buyers’ credit refers to loans for payment of imports in to India arranged by the importer from a bank or financial institution outside India for maturity of less than three years. It may be noted that buyers’ credit and suppliers’ credit for three years and above come under the category of External Commercial Borrowings (ECB) which are governed by ECB guidelines.

### a). **Amount and Maturity**

AD banks are permitted to approve trade credits for imports into India up to USD 20 million per import transaction for imports permissible under the current Foreign Trade Policy of the

DGFT with a maturity period up to one year (from the date of shipment). For import of capital goods as classified by DGFT, AD banks may approve trade credits up to USD 20 million per import transaction with a maturity period of more than one year and less than three years. No roll-over / extension will be permitted beyond the permissible period.

AD banks shall not approve trade credit exceeding USD 20 million per import transaction.

#### b). All-in-cost Ceilings

The current all-in-cost ceilings are as under.

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Up to one year	75 basis points
More than one year but less than three years	125 basis points

\*For the respective currency of credit or applicable benchmark.

The all-in-cost ceilings include arranger fee, upfront fee, management fee, handling / processing charges, out of pocket and legal expenses, if any.

#### c). Guarantee

AD Bank are permitted to issue Letters of Credit / guarantees / Letter of Undertaking (LoU) / Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution, upto USD 20 million per transaction for a period up to one year for import of all non-capital goods permissible under Foreign Trade Policy (except gold) and up to three years for import of capital goods, subject to

prudential guidelines issued by Reserve Bank from time to time. The period of such Letters of credit / guidelines / LoU / LoC has to be co-terminus with the period of credit, reckoned from the date of shipment.

#### d). Reporting Arrangements

AD banks are required to furnish details of approvals, drawal, utilisation, and repayment of trade credit granted by all its branches, in a consolidated statement, during the month, in form TC from April 2004 onwards to the Director, Division of International Finance, Department of Economic Analysis and Policy, Reserve Bank of India, Central Office Building, 8th Floor, Fort, Mumbai – 400 001 (and in MS-Excel file through email to [deapdif@rbi.org.in](mailto:deapdif@rbi.org.in)) so as to reach not later than 10th of the following month. Each trade credit may be given a unique identification number by the AD bank.

AD banks are required to furnish data on issuance of LCs / guarantees / LoU / LoC by all its branches, in a consolidated statement, at quarterly intervals to the Chief General Manager-in-Charge, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office Building, Fort, Mumbai – 400 001 (and in MS-Excel file through email to [fedcoecbd@rbi.org.in](mailto:fedcoecbd@rbi.org.in)) from December 2004 onwards so as to reach the department not later than 10th of the following month.

# CONTACT DETAILS

## Contact Details of Overseas Indian Facilitation Center

- 1. Mr. G. Gurucharan**  
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- 2. Col. Harmit Singh Sethi**  
Chief Executive Officer  
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